

Software Enterprise License Agreement

This **Software Enterprise License Agreement ("Agreement")** is between Bank of America, N.A. ("**Bank**" or "Bank of America"), a national banking association, and the Company (both the individual downloading the Software Extension and any legal entity on behalf of which such individual is acting) ("Company" or "You" or "Your").

BY INSTALLING OR USING THE SOFTWARE EXTENSION OR THE DOCUMENTATION, COMPANY ACKNOWLEDGES AND AGREES THAT (1) COMPANY HAS READ AND REVIEWED THIS AGREEMENT IN ITS ENTIRETY, (2) COMPANY AGREES TO BE BOUND BY THIS AGREEMENT, (3) COMPANY HAS THE POWER, AUTHORITY AND LEGAL RIGHT TO ENTER INTO THIS AGREEMENT, AND (4) THIS AGREEMENT CONSTITUTES BINDING AND ENFORCEABLE OBLIGATIONS ON COMPANY.

1. DEFINITIONS

- (a) "Bank of America Services" means the Bank of America payment management and fraud solutions provided via any electronic payment platform maintained and operated by Bank of America and any of its affiliates.
 - (b) "Services Agreement" means an agreement between Company and Bank of America or one of its affiliate(s) or partner(s) for Bank of America Services.
 - (c) "Documentation" means the materials made available to Company in connection with the Software Extension by or on behalf of Bank of America pursuant to this Agreement.
 - (d) "Software Extension" means all components of the software made available to You by or on behalf of Bank of America pursuant to this Agreement intended to enable You to connect to and use certain Bank of America Services via one or more applicable third party applications, including but not limited to any associated object code, source code, code libraries, development or configuration tools, Documentation and any upgrades, modified versions, updates, and/or additions thereto, if any, made available to You by or on behalf of Bank of America pursuant to this Agreement.
2. Limited License. Subject to the terms and conditions contained herein, Bank of America hereby grants Company a limited, non-exclusive, non-transferable license to the Software Extension and accompanying Documentation for the following purposes: (i) to install and use the Software Extension to access the Services pursuant to the Services Agreement; (ii) to use the Documentation solely for the purposes of using the Software Extension pursuant to the Services Agreement; (iii) to modify the Software Extension solely to the extent required to enable the connection to the Services, subject to the requirements of the Agreement; and (iv) to execute and copy the Software described in each Services Agreement as necessary to conduct Services in accordance with the terms and restrictions of this Section and any special terms and restrictions stated on the applicable Services Agreement.

3. Restrictions and Requirements.

- (a) Company shall not (and shall have no right to): (i) make or distribute copies of the Software Extension or the Documentation, in whole or in part, except as expressly permitted pursuant to Section 2; (ii) alter or remove any copyright, trademark, trade name or other proprietary notices, legends, symbols or labels appearing on or in the Software Extension or Documentation; (iii) sublicense (or purport to sublicense) the Software Extension or the Documentation, in whole or in part, to any third party except as expressly permitted pursuant to Section 2; (iv) engage in any activity with the Software Extension, including the development or distribution of any application, that interferes with, disrupts, damages, or accesses in an unauthorized manner the Services, or the services or systems of the Bank, or any of the Bank's affiliates or any third party; or (v) otherwise use or exploit the Software Extension or the Documentation for any purpose other than to access the Services pursuant to the Agreement.
- (b) Company shall: (i) to the extent you distribute and sublicense the Software Extension or the Documentation as permitted in Section 2, bind the sublicensee to terms and obligations relating to its use of the Software

Extension, Documentation, and Support (as defined in Section 5 of this Agreement) which are at least as protective of Bank of America as this Agreement is with regard to Company's rights and obligations relating to the Software Extension, Documentation, and Support (such sublicensee terms and obligations, the "Sublicense Agreement"), and also provide that Bank of America is a third party beneficiary of the Sublicense Agreement; (ii) be liable for any acts of any party to whom You distribute the Software Extension or Documentation; and (iii) be solely liable for any damages caused by modification of the Software Extension or Documentation.

4. **Ownership.** Company acknowledges and agrees that all right, title and interest in and to the Software Extension, Documentation, and any Support provided by Bank of America shall, at all times, be and remain the exclusive property of Bank of America and its licensors and that Company does not have or will not acquire any rights, express or implied, in the Software Extension, Documentation, or any Support provided by Bank of America, except for those rights expressly granted under this Agreement.
5. **No Support.** Bank of America has no obligation to provide support, maintenance, upgrades, modifications or new releases of the Software Extension, including any modifications to the Software Extension not made by Bank of America ("Support"). To the extent Bank of America in its sole discretion chooses to provide Support, such Support is provided on an "AS IS" and "AS AVAILABLE" basis and all warranties in such Support are disclaimed per Section 9 of this Agreement.
6. **Open Source Software.** Company hereby acknowledges that the Software Extension, Documentation, or Support may contain software or other materials that is distributed under third party or "open source" license terms ("Open Source Software"). Company's right to use such Open Source Software is governed by the applicable Open Source Software license. Company understands and agrees that Bank of America is not liable for any loss or damage that Company may experience as a result of Company's use of Open Source Software and that Company will look solely to the copyright owner of the Open Source Software in the event of any such loss or damage.
7. **License to Bank of America.** In the event that Company chooses to make modifications to the Software Extension or Documentation or submit any suggestions, feedback or other information or materials related to the Bank of America Services, Software Extension or Documentation or Company's use thereof (each of the foregoing in this Section 7, collectively, "Feedback") to Bank of America, Company hereby grants to Bank of America and its affiliates a worldwide, non-exclusive, royalty-free, fully paid up, transferable, sublicensable, perpetual and irrevocable license to use and otherwise exploit without restriction such Feedback in connection with the Bank of America Services, Software Extension, Documentation, Support, and other products and services.
8. **Use.**
 - (a) You represent, warrant and agree to use the Software Extension, Documentation, and any Support only for purposes permitted by: (i) this Agreement; (ii) Your applicable Services Agreement; (iii) applicable law and regulation, including, without limitation, the Payment Card Industry Data Security Standard (PCI DSS); and (iv) generally accepted practices or guidelines in the relevant jurisdictions.
 - (b) You represent, warrant and agree that You are solely responsible for (and that neither Bank of America nor its affiliates have any liability for or responsibility to You or to any third party for): (i) any data, content, or resources that You obtain, transmit or display through the Software Extension; (ii) any modifications to the Software Extension, Documentation, or any Support, and any damages that may arise due to such modifications; and (iii) any breach of Your or Your sublicensees' obligations under this Agreement, any applicable third party license, or any applicable law or regulation, and for the consequences of any such breach.
9. **Warranty Disclaimer.** THE SOFTWARE EXTENSION, THE DOCUMENTATION, AND ANY SUPPORT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH NO WARRANTY. YOU AGREE THAT YOUR USE OF THE SOFTWARE EXTENSION, THE DOCUMENTATION, AND ANY SUPPORT IS AT YOUR SOLE RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH USE. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, BANK OF AMERICA AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE EXTENSION, THE DOCUMENTATION, AND ANY SUPPORT, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. NEITHER BANK OF AMERICA NOR ITS AFFILIATES WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE EXTENSION, THE DOCUMENTATION, AND ANY SUPPORT WILL MEET ANY REQUIREMENTS OR NEEDS YOU MAY HAVE, OR THAT THE SOFTWARE EXTENSION,

DOCUMENTATION, OR ANY SUPPORT WILL OPERATE ERROR FREE, OR THAT THE SOFTWARE EXTENSION, DOCUMENTATION, OR ANY SUPPORT IS COMPATIBLE WITH ANY PARTICULAR OPERATING SYSTEM.

10. Limitation of Liability. Bank of America shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages, even if Bank of America has knowledge of the possibility of such damages. In no event shall the entire liability of Bank of America arising from or relating to this Agreement exceed one hundred dollars (\$100).
11. Indemnification. Company shall indemnify, defend, and hold harmless Bank of America and its Representatives, successors and permitted assigns from and against any and all claims or legal actions of whatever kind or nature that are made or threatened by any third party and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation, defense or settlement ("Damages"), which arise out of, are alleged to arise out of, or relate to the following: (i) Company or Company's sublicensee's use, modification, or distribution of the Software Extension, the Documentation, or any Support (or any portion thereof including Open Source Software), including, but not limited to, any allegation that any such use, modification, or distribution infringes, misappropriates or otherwise violates any intellectual property (including, without limitation, copyright, patent, and trademark), privacy, publicity or other rights of any third party, or has caused the death or injury of any person or damage to any property; (ii) any breach in a representation, covenant or obligation of Company contained in this Agreement; (iii) the alleged or actual breach of this Agreement by any party to whom Company has provided the Software Extension, Documentation, or any Support; or (iii) Company or Company's sublicensee's alleged or actual violation of or non-compliance with any applicable laws, legislation, policies, rules, regulations or governmental requirements (including, without limitation, any laws, legislation, policies, rules, regulations or governmental requirements related to privacy and data collection).
12. Termination. This Agreement and the licenses granted to you herein are effective until terminated. Bank of America may terminate this Agreement and the licenses granted to Company at any time, with or without cause. Upon termination of this Agreement, Company shall (and shall cause Your sublicensees to) promptly: terminate any and all sublicense agreements; cease all use of the Software Extension, the Documentation, and any Support; and return to Bank of America or destroy all copies of the Software Extension, Documentation, and any Support and related materials in Company's (or Company's sublicensees') possession, and so certify to Bank of America. Except for the license granted to Company herein, the terms of this Agreement shall survive termination.
13. CONFIDENTIAL INFORMATION
 - (a) You hereby agree (i) to hold Bank of America's Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions Company employ with respect to Company's own confidential materials), (ii) not to disclose any such Confidential Information to any third person except as expressly agreed to by Bank of America in writing prior to such disclosure; (iii) not to make any use whatsoever at any time of such Confidential Information except as provided hereunder, (iv) not to remove or export from the United States or re-export any such Confidential Information or any direct product thereof, except in compliance with this Agreement, and with all licenses and approvals required under applicable U.S. and foreign export laws and regulations, including, without limitation, those of the U.S. Department of Commerce. Company may disclose Confidential Information in response to a court order or requirement of law, regulation, or a governmental body of the United States, but only to the extent required, and Company must notify Bank of America in writing of the required disclosure and afford Bank of America a reasonable opportunity under the circumstances to seek an appropriate protective order.
 - (b) "Confidential Information" shall mean this Agreement, all data or information, oral or written, treated as confidential that relates to Bank of America's past, present, or future research, development or business activities, including without limitation any unannounced products and services, any information relating to services, developments, inventions, processes, plans, financial information, customer data, revenue, transaction volume, forecasts, projections, application programming interfaces, the Software Extension, Documentation, and any Support.
14. General Terms
 - (a) Law. This Agreement shall be governed by the internal laws, and not by the laws regarding conflicts of laws, of the State of New York. Each Party hereby submits to the exclusive jurisdiction of the courts of such state, and waives any objection to venue with respect to actions brought in such courts.
 - (b) Arbitration. Any controversy or claim between or among the Parties shall at the request of a Party be determined by arbitration. The arbitration shall be conducted by one independent arbitrator who shall be an attorney or retired judge practicing in the areas of banking and/or information technology law. The arbitration shall be held in New York in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.), notwithstanding any choice of law

provision in this Agreement, and under the auspices and the Commercial Arbitration Rules of the American Arbitration Association.

- (c) Severability and Waiver. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired thereby.
 - (d) Waiver. No delay, failure or waiver of either Party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. Any waiver by either Party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision of this Agreement.
 - (e) No Assignment. Neither Party may assign this Agreement or any of the rights hereunder or delegate any of its obligations hereunder, without the prior written consent of the other Party, and any such attempted assignment shall be void, except that Bank of America or any permitted Bank of America assignee may assign any of its rights and obligations under this Agreement (including, without limitation, any individual Order) to any Bank of America affiliate, the surviving corporation with or into which Bank of America or such assignee may merge or consolidate or an entity to which Bank of America or such assignee transfers all, or substantially all, of its business and assets or all or substantially all of the business and assets of any affiliate, subsidiary or division.
 - (f) Government Rights. If Company (or any person or entity to whom you provide the Software Extension or Documentation) is an agency or instrumentality of the United States Government, the Software Extension and Documentation are "commercial computer software" and "commercial computer software documentation," and pursuant to FAR 12.212 or DFARS 227.7202, and Company's successors, as applicable, use, reproduction and disclosure of the Software Extension and Documentation are governed by the terms of this Agreement.
 - (g) Export Administration. You shall comply fully with all relevant export laws and regulations of the United States, including, without limitation, the U.S. Export Administration Regulations (collectively "Export Controls"). Without limiting the generality of the foregoing, You shall not, and You shall require Your representatives not to, export, direct or transfer the Software Extension or the Documentation, or any direct product thereof, to any destination, person or entity restricted or prohibited by the Export Controls.
 - (h) Privacy. In order to continually innovate and improve the Software Extension, You understand and agree that Bank of America may collect certain usage statistics including but not limited to a unique identifier, associated IP address, version number of the Software Extension, and information on which tools and/or services in the Software Extension are being used and how they are being used. Bank of America complies with the privacy policy available at <https://www.bankofamerica.com/security-center/privacy-overview/>.
 - (i) Headings. Section headings are included for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement and should not be used to construe or interpret this Agreement.
15. Entire Agreement; Amendments. This Agreement and other documents incorporated herein by reference, is the final, full and exclusive expression of the agreement of the Parties and supersedes all prior agreements, understandings, writings, proposals, representations and communications, oral or written, of either Party with respect to the subject matter hereof and the transactions contemplated hereby. Bank of America may make changes to this Agreement, the Software Extension or Documentation in its sole discretion. When these changes are made, (i) Bank of America will make a new version of the Agreement, Software Extension or Documentation available on the website where the Software Extension is available; and (ii) Company agrees to be bound to the latest version of the Agreement immediately upon receipt of notice of such latest version. This Agreement may not be modified or amended by Company except in a writing signed by a duly authorized representative of each of Bank of America and Company. You acknowledge and agree that Bank of America has not made any representations, warranties or agreements of any kind, except as expressly set forth herein.