

## AVIATION CARD TERMS AND CONDITIONS

### *Please read and retain for your records and future reference.*

The creditor and issuer of the Phillips 66 Card is U.S. Bank National Association dba Multi Service Aviation ("U.S. Bank" or "MSA"). The Phillips 66 Card Terms and Conditions (the "Agreement") is entered into, by and between U. S. Bank National Association ("U.S. Bank") and the entity that signed the Application as "Company" for the establishment of a Program. This Agreement supersedes any previous and like agreements with Company. Any references in this Agreement to MSA refer to Multi Service Aviation.

1. **EFFECTIVE DATE.** The terms and conditions of this Agreement shall not become effective until U.S. Bank has 1) approved the credit worthiness of Company and 2) approved this Application and Agreement. The "Effective Date" of this Agreement shall be the date signed by Company.
2. **SCOPE OF PHILLIPS 66 CARD PROGRAM.** Upon approval as indicated above, MSA will issue Phillips 66 Cards ("Card(s)") and establish related Accounts for Company and any affiliated entity as Company may designate in writing to Phillips 66 while this Agreement is in effect ("Participant") pursuant to the Phillips 66 Card Program policies and procedures. The Phillips 66 Card Program (the "Program") includes: transaction processing, reporting, billing, and payment systems with respect to purchases of aviation fuels and other products and services by corporate, commercial, and government aircraft operations ("Services"). Company shall furnish a list, in writing, to Phillips 66 designating such Participant(s) and business names, if business activities are conducted under a name other than that of Company. Company shall have the right to exclude any Participant from the Program upon written notice to Phillips 66. Company shall also provide aircraft identification information (if applicable). Unless Phillips 66 notifies Company to the contrary, or a Card has been terminated as provided herein, all Cards will expire upon the expiration or termination of this Agreement. All Accounts established and Cards issued hereunder shall be used solely for business purposes and shall be governed by this Agreement. "Account" means any Account established by Phillips 66 pursuant to this Agreement in the name of Company, its Participants and/or Cardholders, to which Debt is charged, regardless of whether or not a Card is issued.
3. **LIABILITY.** Company, and if applicable, Authorized Officer, shall be liable for all Debt incurred or arising by virtue of the use of a Card and/or Account of Company, Participant or any Cardholder. "Debt" means all amounts charged to an Account including without limitation all purchases, fees, Late Charges, and other charges or amounts due that are owed to U.S. Bank by Company, its Authorized Officer(s), affiliates, Participants, and/or Cardholders.
  - a. Joint and Several Liability. Company and the Authorized Officer are jointly and severally liable to U.S. Bank for all Debt. This liability structure applies to any PCL (as defined below) when Section 2 of the Application has been completed.
  - b. Corporate Liability. Company is solely liable to U.S. Bank for all Debt. This liability structure applies to any PCL (as defined below) when Section 2 of the Application has not been completed.
4. **BILLING PROCEDURE.** Phillips 66 will send to Company a weekly billing statement (the "Statement"), which will itemize all charges for the billing period. The amount shown on the Statement as "Bill Total" shall be due and payable upon receipt of the Statement by the Company. Payment is due within fourteen (14) days after the date on the Statement ("Week Ending Date").
5. **DELINQUENCY.** An Account will become delinquent unless U.S. Bank receives the amount shown on the Statement as Bill Total, less any disputed amounts, within fourteen (14) days after the Week Ending Date, unless otherwise agreed upon by Phillips 66 and Company. Any unpaid portion of the Bill Total will be shown on subsequent Statements under the "Account Summary" section and noted as outstanding. In the event of Company's delinquency, U.S. Bank may elect to terminate this Agreement immediately upon notice to Company. Whether or not U.S. Bank has elected to terminate this Agreement, if any part of the amount under Account Summary shown on any Statement remains unpaid at fourteen (14) days past the Week Ending Date or any succeeding Week Ending Date, Company also shall pay to U.S. Bank a "Late Charge" in an amount equal to 3/8 of 1% per week (19.5% APR) of such amount. Court costs plus reasonable attorney fees (as allowed by law) may be added to any delinquent balance referred to an attorney for collection.

In the event Company fails to make full payment when due, Company acknowledges and agrees that U.S. Bank may, in addition to all other rights and remedies, invoke any and all statutory or equitable lien rights or those of any participating aviation merchants in connection with the enforcement of U.S. Bank's right to payment under this Agreement, and authorizes U.S. Bank to file a lien for the unpaid Debt, plus Late Charges from the date of the oldest unpaid Debt, aircraft title search fees, filing fees and attorney fees, against any aircraft for which Debt was incurred and made to Card(s). If the Debt remains unpaid, U.S. Bank may institute a suit against the Company to enforce the lien and collect the Debt.

If a lien is filed, it will be based on the aircraft lien laws of the State of Texas (regardless of the domicile of the Company or where it does business, or the state of registration of the aircraft or where the aircraft owner resides or does business, or where any of the Services were furnished, or where jurisdiction may otherwise be proper regardless of where the aircraft was at the time such Debt were incurred). Venue for enforcement of this Agreement and any lien shall be in the state courts of the Commonwealth of Virginia, USA, regardless of diversity issues or amounts owed, and by using this Card, the Company waives objections to U.S. Bank's choice of law or forum. Service of process by certified mail, return receipt requested, postage prepaid, and mailed to the Company at the address on the Application shall be sufficient to confer jurisdiction regardless of where the Company is geographically located or does business. The Company will be liable to U.S. Bank for all costs and expenses of liens and litigation including, but not limited to, Late Charges, attorney's fees, court and discovery costs and/or other costs incurred by U.S. Bank in enforcing its rights hereunder.

6. **DISPUTED BILLINGS.** Company may notify Phillips 66 of any disputes regarding charges or billings hereunder in writing, by telephone or by electronic means. Written communications relating to billing disputes must be sent to Phillips 66 at PO Box 13050, Overland Park, Kansas 66282-3050 or by fax to 866-977-1505. Communications should include the Company's and, if applicable, the Participant's name(s) and Account number(s), the dollar amount of any dispute or suspected error and a description of the dispute or error. Any communication regarding a dispute or suspected error must be received in written form by Phillips 66 within thirty (30) days from the last day of the billing cycle in which the disputed invoice was posted to the Account. If the disputed invoice is found to be an accurate billing transaction, then payment will be due as set forth in this Agreement.
7. **LOST OR STOLEN CARD(S) OR COMPROMISED ACCOUNT(S).** Company shall immediately, upon receipt of such information, notify Phillips 66 by either: 1) telephone at 877-672-6888; 2) in writing addressed to Phillips 66 at PO Box 13050 Overland Park, KS 66282-3050 OR; 3) via facsimile at 866-977-1505; or 4) by an agreed upon electronic means as to any lost or stolen Card(s) or information associated with the Account. Company shall also immediately notify Phillips 66 by either: 1) telephone at 877-672-6888; 2) in writing addressed to Phillips 66 at PO Box 13050 Overland Park, KS 66282-3050; 3) via facsimile at 866-977-1505; or 4) by an agreed upon electronic means to cancel a Card or other Account access. After notification has been made to Phillips 66 to cancel such Card(s) and/or Account access, use of such Card(s) and/or Account access are expressly prohibited, and the cancelled Card(s) must be immediately destroyed. Company and/or Authorized Officer is/are liable for the unauthorized use of the Card until Phillips 66 receives notification of the lost or stolen Card or to cancel the Account access. Neither Company nor Authorized Officer shall be liable for any Debt incurred or arising by virtue of the use of a Card following receipt by Phillips 66 of notice of such loss, theft, or request to cancel Account access. If fewer than ten (10) Cards are issued to Company, liability will not exceed fifty U.S. Dollars (\$50.00) per Card once Phillips 66 has been notified

## AVIATION CARD TERMS AND CONDITIONS

of the lost or stolen Card(s) and confirms that such transactions were, in fact, unauthorized. If ten (10) or more Card(s) are issued to Company, Company and/or Authorized Officer shall be liable for all unauthorized use as provided above, that is, until Phillips 66 has been notified of the lost or stolen Card(s) and confirms that such transactions were, in fact, unauthorized. In such cases, liability is not limited to fifty U.S. Dollars (\$50.00) per Card. Company agrees to assist Phillips 66 in determining the facts, circumstances, and other pertinent information related to any loss, theft, or possible unauthorized use of the Card and/or Account and to comply with such procedures as may be required by Phillips 66 in connection with Phillips 66's investigation. Phillips 66 is not responsible for controlling the use of any Card(s), other than as specifically provided herein.

- 8. PRICING.** The fees listed below may apply to this Agreement. Failure of U.S. Bank to apply any fee or charge outlined in this Agreement at any time does not preclude U.S. Bank from ever applying such fee or charge. U.S. Bank reserves the right to change pricing upon thirty (30) days prior notice to Company.
- If any payment on an Account is returned unpaid or the bank fails to honor any payment to U.S. Bank, Company agrees to pay the returned funds fee of thirty U.S. Dollars (\$30.00) or the amount allowed by law.
  - Late Charges as detailed in the "DELINQUENCY" section above.
  - An administration fee of seven point five percent (7.5%) is assessed on all non-fuel and some fuel transactions that occur outside of the United States and Canada. In some instances, the seven point five percent (7.5%) administration fee may be applied in Canada. Specific information can be obtained from International Operations at 913-725-6800.

**CONFIDENTIALITY.** U.S. Bank considers the Program to be a unique service involving proprietary information of U.S. Bank. Company agrees that the Program reports, manuals, documentation, systems, processes and related materials (whether or not in writing) are confidential and will be circulated only to employees and agents of Company, and only to the extent necessary for Company to participate in the Program. U.S. Bank agrees that it will maintain all non-public data relative to Company's Account(s) under the Program as confidential information and U.S. Bank agrees to use such data regarding Company exclusively for the providing of services to Company hereunder and not to release such information to any other party except its agents; provided, however, that U.S. Bank must disclose transaction information to merchants and third party processors. If Company participates in the Card Program through a third party, Company consents to U.S. Bank sharing certain customer, transaction, and volume information with such third party. U.S. Bank may collect, maintain and, at its option, disseminate information and data concerning charge activity which does not contain any direct or indirect identification of Company. The parties agree to take all reasonable steps to safeguard such proprietary information and not to release such information to any party, or agent not essential to participation in the Program.

**10. TERM, TERMINATION AND SUSPENSION.**

- This Agreement shall remain in full force and effect for an initial term of three (3) years from the Effective Date of this Agreement, and shall continue thereafter until terminated by Company, U.S. Bank or Phillips 66 upon thirty (30) days prior written notice to the other party. The effective date of termination shall be stated in such written notice of termination. All Cards and related Accounts shall be deemed canceled effective upon termination of this Agreement.
- Notwithstanding the foregoing, a party shall have the right to terminate this Agreement immediately, by written notice of such termination to the other party, upon any one (1) or more of the following events: (i) dissolution or liquidation of the other Party, or Parent thereof, if applicable; (ii) insolvency of the other party, or Parent thereof, if applicable, or the filing of a bankruptcy or insolvency proceeding by the other party, the appointment of a receiver or trustee for benefit of creditors of the other party or the other party enters into an arrangement with its creditors; (iii) any material and adverse change in the financial condition of the other party; or (iv) any failure by the other party to perform a material obligation of this Agreement.
- Upon termination of this Agreement for any reason, Company shall ensure destruction of all Cards and return all confidential information of U.S. Bank to U.S. Bank. Company, and Authorized Officer if applicable, shall remain liable for all Debt incurred or arising by virtue of the use of a Card and/or Account prior to the termination date.
- U.S. Bank shall have the right to suspend any and all services and Debt to Company under this Agreement in the event that: (i) Company has breached any term of this Agreement; (ii) Debt due from Company, in the aggregate, exceeds the ACL or PCL as these terms are defined in Section 15 of this Agreement; or (iii) an Account becomes delinquent. Court costs plus reasonable attorney fees (as allowed by law) may be added to any delinquent balance referred to an attorney for collection.
- Rights, Debt or liabilities that arise prior to the suspension or termination of this Agreement shall survive the suspension or termination of this Agreement.

**11. INDEMNIFICATION.**

- Except to the extent that any injury is due to Company's or a Participant's negligent acts or omissions, U.S. Bank shall indemnify and hold Company and Participants harmless against all losses, damages, costs, expenses and liability which may result in any way from any negligent or wrongful act or omission of U.S. Bank, its agents, employees and subcontractors. U.S. Bank shall indemnify and hold Company and Participants harmless against demands, claims, suits, or proceedings alleging infringement of any patent of the United States, or any trademark, service mark, copyright or other proprietary right arising out of or incident to this Agreement.
- Except to the extent that any injury is due to U.S. Bank's negligent acts or omissions, Company shall indemnify and hold U.S. Bank harmless against all losses, damages, costs, expenses and liability which may result in anyway from any negligent or wrongful act or omission of Company, Participants, its agents, employees and subcontractors. Company and Participants shall indemnify and hold U.S. Bank harmless against demands, claims, suits, or proceedings alleging infringement of any patent of the United States, or any trademark, service mark, copyright or other proprietary right arising out of or incident to this Agreement.

**12. LIMITATION OF LIABILITY. IN NO EVENT SHALL COMPANY, PARTICIPANT(S), U.S. BANK, MSA, OR ANY AFFILIATE OF U.S. BANK BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES OF ANY NATURE.**

- 13. WARRANTIES.** Company warrants the truth, completeness and accuracy of the following in connection with this Agreement: (i) The financial information and all other information provided to U.S. Bank; (ii) This Agreement is a valid, binding and enforceable agreement; (iii) The execution of this Agreement and the performance of its obligations are within Company's power, has been authorized by all necessary action and does not constitute a breach of any agreement of Company with any party; (iv) Company has and continues to comply with all applicable state and federal statutes, ordinances, rules, regulations and requirements of governmental authorities as they relate to the use of the Card and/or participation in the Program; (v) the execution of this Agreement and the performance of its obligations under this Agreement will not cause a breach by it of any duty arising in law or equity; and (vi) Company possesses the financial capacity to perform all of its obligations under this Agreement. The parties agree that the failure of any of the above representations and warranties to be true during the term of this Agreement shall constitute a material breach of this Agreement and U.S. Bank will have the right, upon notice to Company, to immediately terminate this Agreement and all amounts outstanding hereunder shall be immediately due and payable.

**U.S. Bank hereby disclaims any and all warranties with respect to goods and services purchased with its Cards and/or Accounts, including, without limitation, the implied warranty of merchantability or fitness for a particular purpose.** This warranty and damages disclaimer shall apply whether U.S. Bank acts as card issuer, arranger of third party credit, or otherwise.

## AVIATION CARD TERMS AND CONDITIONS

- 14. FINANCIAL INFORMATION.** Since this Agreement is for an extension of credit with a financial institution and not a vendor services agreement, Company shall provide information as requested by U.S. Bank to perform periodic credit reviews. Unless such information is publicly available or available through U.S. Bancorp (the parent Company of U.S. Bank) or any of its subsidiaries, Company shall either provide: (i) if Company anticipates monthly charge volume of equal to or less than \$25,000.00, information about an authorized officer whom U.S. Bank may underwrite on behalf of Company within Section 2 of the Application, or (ii) if Company anticipates monthly charge volume of greater than \$25,000.00 but less than \$50,000.00, the last annual financial statements, or (iii) if Company anticipates monthly charge volume of greater than \$50,000.00 but less than \$250,000.00, the last two (2) years of annual financial statements, or (iv) if Company anticipates monthly charge volume of greater than \$250,000.00, the last three (3) years of annual financial statements. If the initial set of financial statements is older than five (5) months when provided, Company must also provide interim financial statements. Annually thereafter, as soon as available and in any event not later than one hundred twenty (120) days after the end of each fiscal year of Company, Company must provide the previous years financial statements. U.S. Bank prefers audited financial statements that have been prepared by Company's independent certified public accountant. In the event U.S. Bank requires additional information to conduct its review of Company, or if Company's monthly charge volume increases such that the information it provided as described in 14.(i) above is no longer sufficient for underwriting Company, Company agrees to provide to U.S. Bank the information set forth in 14.(ii), (iii) or (iv) above, as the case may dictate, and if requested, such other information regarding the business, operations, affairs, and financial condition of Company as U.S. Bank may reasonably request. Such information may include, but is not limited to, quarterly financial statements, organizational charts, executive biographies and other formal documentation.
- 15. AGGREGATE PRODUCT CREDIT LIMIT AND ACCOUNT CREDIT LIMITS.** Subject to credit approval by U.S. Bank, an Account credit limit (an "ACL") for each Account and an aggregate product credit limit (the "PCL") for all Accounts shall be established by U.S. Bank pursuant to this Agreement.
- a. **Revising the PCL.** U.S. Bank, at its sole discretion, shall have the right to revise the PCL. U.S. Bank shall provide notice to Company of any decrease in the PCL which results in a revised PCL that is lower than the aggregate current amount outstanding on all Accounts. Upon such event, Company shall have ten (10) days to make a payment to U.S. Bank that is sufficient to reduce the aggregate current amount outstanding to an amount that is equal to or less than the revised PCL.
- b. **Revising ACLs.** U.S. Bank, at its sole discretion, shall have the right to revise any ACL. (1) *Company Accounts.* U.S. Bank shall provide notice to Company of any decrease in an ACL which results in a revised ACL that is lower than the aggregate current amount outstanding on the Account. Upon such event, Company shall have ten (10) days to make a payment to U.S. Bank on the Account that is sufficient to reduce the aggregate current amount outstanding for such Account to an amount that is equal to or less than the revised ACL. (2) *Fraudulent Activity.* U.S. Bank may revise any ACL and/or limit spending activity on any Account for which fraudulent activity is suspected.
- 16. CHANGE IN TERMS OF THE AGREEMENT.** U.S. Bank may change the APRs, fees and other Account terms in the future based on your experience with U.S. Bank National Association and its affiliates as provided under the agreement and applicable laws at any time by giving Company notice. If permitted by applicable law, such changes will apply to existing Account balances as well as future purchases. If Company does not accept the changes, Company must notify U.S. Bank in writing within twenty-five (25) days after the date of the notice that Company refuses to accept the changes and elects to terminate this Agreement. Should Company elect to terminate this Agreement pursuant to this Section, all outstanding Debt shall become due and payable by Company to U.S. Bank and/or MSA, according to the terms of the existing Agreement. Company will also be responsible for ensuring the destruction of all Cards.
- 17. REGISTERED MARKS AND TRADEMARKS.** Company has no right, title or interest, proprietary or otherwise, in or to the name or any logo, copyright, service mark or trademark owned or licensed by U.S. Bank.
- 18. NOTICES.** Except with respect to notices relating to the status of individual Cards which may be established in writing between U.S. Bank and Company or a Participant, all notices, requests and other communication provided for hereunder must be directed to Company at the address on the Application and to Phillips 66 at PO Box 13050, Overland Park, KS 66282-3050. Unless otherwise specified herein, requests and other communication provided for hereunder must be in writing, postage prepaid, hand delivered or by any means approved by U.S. Bank. Either party may, by written notice to the other, change its notification address.
- 19. GOVERNING LAW.** The validity, interpretation and performance of this Agreement will be controlled by and construed under the laws of the State of Minnesota (without giving effect to the conflict of law principles thereof) and applicable federal laws.
- 20. COMPANY CONTACT.** The Company Contact(s) listed on the Application is/are authorized to provide U.S. Bank and/or Phillips 66 with the information necessary to establish the Account records and Cards, including, but not limited to, passwords, aircraft information, and other Account-related information. U.S. Bank and/or Phillips 66 is/are authorized to send all Account information and Cards produced to the attention of Company Contact(s). Company may, at any time, by written notice to Phillips 66, change its Company Contact(s) or designate different Company Contact(s) than is listed on the Application.
- 21. ASSIGNMENT.** This Agreement and any and all rights and Debt associated with the same may be assigned without prior notice to Company. All of U.S. Bank's rights under this Agreement shall also apply to any assignee of this Agreement. Company may not assign or transfer this Agreement or any rights or Debt hereunder, by merger, of law, or otherwise, without the prior written consent of U.S. Bank.
- 22. CUSTOMER SERVICE.** Company may contact Phillips 66's customer service center at 877-672-6888 for Program customer service.
- 23. SEVERABILITY.** Should any provision of this Agreement be declared invalid for any reason, such decision shall not affect the validity of any other provisions, which other provisions shall remain in full force and effect as if this Agreement had been executed with the invalid provision(s) eliminated. The parties shall use their best efforts to agree upon a valid substitute provision in accordance with the purpose of this Agreement and the intent of the parties.
- 24. ACCOUNT SECURITY.** The Program may enable Company to access Account and certain purchase information via Phillips 66's website, including on-line billing and payment mechanisms and other media such as an automated telephone service. Company agrees to follow Phillips 66 security procedures and to keep any passwords confidential. Company is responsible for any losses or unauthorized access to Account data that results from failure of Company or that of Participants, employees, or other agents to fully comply with Phillips 66 security procedures. **IMPORTANT NOTICE. THIS AGREEMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS COMPANY MAY HAVE AS A DEBTOR, AND ALLOWS U.S. BANK TO OBTAIN A JUDGMENT AGAINST COMPANY WITHOUT ANY FURTHER NOTICE IN THE EVENT OF COMPANY'S DEFAULT.**
- 25. CONFESSION OF JUDGMENT.** If Company fails or refuses to honor any of its Debt set forth in this Agreement when they become due, it shall be in default, in which case Company appoints without any further action on its part, Aviation Law Center as its attorney-in-fact acting under and by virtue of a power of attorney hereby duly executed and acknowledged by Company for the purpose of confessing judgment against Company in favor of U.S. Bank or their assignee for the unpaid balance of Company's indebtedness to U.S. Bank, plus post judgment interest at the rate of two percent (2%) per month of the outstanding balance as set forth in the judgment until paid in full, and the actual costs of collection, including filing fees, expenses, and attorney fees.
- 26. NOTICE TO OHIO RESIDENTS:** The Ohio laws against discrimination require that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.