



## PREMIER ACCESS Mastercard® Prepaid Card Cardholder Agreement

This Cardholder Agreement (“Agreement”) outlines the terms and conditions under which the PREMIER ACCESS Mastercard® Prepaid Card has been issued to you.

**IMPORTANT –**

- **THIS AGREEMENT REQUIRES ALL DISPUTES TO BE RESOLVED BY WAY OF BINDING ARBITRATION UNLESS YOU OPT OUT IN ACCORDANCE WITH THE INSTRUCTIONS IN THE ARBITRATION SECTION BELOW.**
- By activating, accepting and/or using the PREMIER ACCESS Prepaid Card (“Card”), you agree to be bound by the terms and conditions of this Agreement.
- Always keep track of the exact dollar amount available in your Card Account.
- PLEASE READ CAREFULLY AND KEEP THIS AGREEMENT FOR FUTURE REFERENCE.

**1. List of all Fees for PREMIER ACCESS Prepaid Card**

All fees	Amount	Details
<b>Monthly Usage</b>		
Monthly fee	\$0.00	There is no monthly fee.
<b>Add money</b>		
Direct deposit	\$0.00	There is no fee to load your card through an Automated Clearing House (“ACH” or “direct deposit”) transfer.
<b>Get cash</b>		
ATM withdrawal	\$0.00	We do not charge a fee for ATM withdrawals. You may be charged a fee by the ATM operator, even if you do not complete a transaction.
Teller cash withdrawal	\$0.00	There is no fee for withdrawing cash at a participating bank.
<b>Information</b>		
Customer Service	\$0.00	There is no fee for calling a live agent or our automated customer service line.
ATM balance inquiry	\$0.00	This is our fee. You may be charged a fee by the ATM operator, even if you do not complete a transaction.
<b>Other</b>		
Reissuance of Lost/Stolen Card Fee	\$5.95	This fee applies when a Card is re-issued at your request. It does not apply when a new card is mailed to you due to expiration.
Account Close Administrative Fee	\$5.95	This fee is assessed if you request to close your Card Account and have a check issued for the amount remaining on your Card or if your Card Account is closed after 12 months of inactivity and we mail you a check for the remaining balance.

Your funds are eligible for FDIC insurance and will be held at or transferred to First PREMIER Bank, a FDIC-insured institution. Once there, your funds are insured up to \$250,000 by the FDIC in the event First PREMIER Bank fails. See [fdic.gov/deposit/deposits/prepaid.html](http://fdic.gov/deposit/deposits/prepaid.html) for details.

No overdraft/credit feature.

Contact First PREMIER Bank by calling 1-800-845-4889, by mail at P.O. Box 2059, Omaha, NE 68103, or visit [www.premieraccesscard.com](http://www.premieraccesscard.com).

For general information about prepaid accounts, visit [cfpb.gov/prepaid](http://cfpb.gov/prepaid).

If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit [cfpb.gov/complaint](http://cfpb.gov/complaint).

In this Agreement, "Card" means the PREMIER ACCESS Mastercard Prepaid Card issued to you by First PREMIER Bank, Member FDIC. "You" and "your" mean the person or persons who have received the Card and are authorized to use the Card as provided for in this Agreement. "We," "us," and "our" mean First PREMIER Bank, our successors, affiliates or assignees. "Funder" means the organization approved to load or add funds to the Card Account for you to access using your Card. "Card Account" means the records that we maintain to account for the value associated with the Card(s). Our business days are Monday through Friday, excluding Federal holidays, even if we are open. Any reference to "days" found in the Agreement are calendar days unless indicated as Business Days. Our business days are Monday through Friday, excluding Federal holidays, even if we are open.

## **2. ABOUT YOUR CARD**

Your Card is a prepaid debit card. You acknowledge and agree that the value available in your Card Account is limited to the funds that have been loaded to your Card Account by the Funder of the Card. The Card is not a credit card. Neither the Card nor the Card Account constitutes a checking or savings account. You will not receive any interest on the funds associated with your Card. The funds are insured by the Federal Deposit Insurance Corporation ("FDIC") up to the maximum allowed by law. The Card will remain the property of First PREMIER Bank and must be surrendered upon demand. The Card is nontransferable, and it may be canceled, repossessed, or revoked at any time without prior notice subject to applicable law. You agree to sign the back of the Card immediately upon receipt.

## **3. USING YOUR CARD**

### **A. Activation and PIN**

You can activate your Card by calling us at the number shown on the back of your Card. During the activation process, you will be provided with a Personal Identification Number (PIN), which you may use to make ATM withdrawals and point of sale transactions (as permitted by the merchant) in the United States. You should not write your PIN on your Card or keep your PIN with your Card. If you believe that anyone has gained unauthorized access to your PIN, contact us immediately as 1-800-845-4889. You may change your PIN by contacting us at 1-800-845-4889.

### **B. Card Value/Loads**

Your Card may only be loaded by your Funder or by direct deposit. Your Funder may add funds to your Card Account at any time. You acknowledge and agree that the value available using your Card is limited to the funds that have been loaded on your behalf into the Card Account. If funds are added to your Card Account and the transfer is reversed for any reason, we may subtract the funds from your Card Account.

### **C. Card Account Access**

You may use your Card to:

- Withdraw cash from your Card Account at ATMs and participating banks.
- Pay for purchases at places that have agreed to accept the Card.

Some of these services may not be available at all terminals.

Each time you use your Card, you authorize us to reduce the value available in your Card Account by the amount of the transaction plus any applicable fees. You may use your Card to pay for purchases at places that have agreed to accept the Card and perform transactions at automated teller machines ("ATMs") in the United States as long as you do not exceed the daily transactional limit on your Card. You may not use your Card for foreign transactions. When you use an ATM not owned by us, you may be charged a fee by the ATM operator (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer). If you use your Card number without presenting your Card, such as for a telephone or Internet purchase, the legal effect will be the same as if you used the Card itself.

You may not use your Card for online gambling or any illegal transaction.

### **D. Transfer Types and Limitations**

The following limitations apply to your Card Account:

- The maximum balance in your Card Account at any time is \$10,000.
- The minimum amount of each initial load is \$0.00.
- The minimum value of your Card Account is \$0.00.

- The maximum amount that may be loaded to your Card by your Funder in a single ACH load transaction is \$2,500.
- You may not load your Card Account by sending cash or checks to us or through any ATM.
- The maximum amount that can be withdrawn or spent from your Card Account in a single transaction or a series of multiple transactions per day is \$2,500.
- Your Card cannot be used to conduct foreign transactions.

In addition, to prevent fraud and maintain the security of your Card Account, we may impose additional limits at any time and without notice, on the amount, number, and type of transactions that you can perform with your Card and on any funding or load of your Card.

#### **E. Split Tender Transactions**

If you do not have enough funds available in your Card Account to complete a purchase, you may instruct the merchant to use the remaining funds in your Card Account and pay the remainder of the transaction amount by another means ("split tender transaction"). However, some merchants do not permit split tender transactions or will only allow you to do a split tender transaction if you pay the remainder in cash.

#### **F. Holds Upon Authorization**

Certain types of merchants (for example, restaurants, car rental agencies, hotels, salons, mail-order companies, pay-at-the-pump gas stations) will authorize an amount greater than the amount of your purchase. These funds will not be available for other purchases until the final transaction amount settles to your Card Account.

#### **G. No Authorized Users**

You are responsible for all authorized transactions initiated by use of your Card. You may not permit another person to have access to your Card or Card number. If you permit someone else to use your Card or Card number, we will treat this as if you have authorized such use and you will be responsible for any transactions made by that person. You may not request a secondary card for another person. You may not attempt to load your Card with direct deposits designated to another person and no one but you may authorize direct deposit loads to the Card.

#### **H. Returns/Refunds**

If you are entitled to a refund for any reason for goods or services obtained with your Card, you agree to accept credits to your Card Account for such refunds. All disputes regarding purchased goods or services must be addressed and handled directly with the merchant from whom those goods or services were obtained. Please be aware that we have no control over when a merchant sends a credit transaction and even though merchants typically post refunds as soon as they are received, the refund may not be available for a number of days after the date the refund transaction occurred. Therefore, the amounts credited to your Card Account for refunds may not be immediately available.

#### **I. Expired and Inactive Cards**

The expiration date of your Card is identified on the front of your Card. If a balance remains in your Card Account after expiration, we may either close your Card Account and mail a check less the Account Close Administrative Fee or issue a new Card with access to the remaining balance in the Card Account. If the balance in the Card Account is not used or the check is not negotiated, the funds may be turned over to the appropriate state government authority after the expiration of the appropriate abandoned property period. After twelve (12) months without activity, we will close your Card Account, apply the Account Close Administrative Fee, and mail a check to you for the balance remaining to the address that we have on file for you.

### **4. OBTAINING ACCOUNT INFORMATION**

#### **A. Statements/Transaction History**

You may obtain information about the amount of money you have remaining in your Card Account by calling 1-800-845-4889. This information, along with a 12-month history of account transactions, is also available by logging into your account online at [www.premieraccesscard.com](http://www.premieraccesscard.com).

You also have the right to obtain at least 24 months of written history of account transactions by calling 1-800-845-4889, or by writing us at P.O. Box 2059, Omaha, NE 68103. You will not be charged a fee for this information.

### **B. Preauthorized credits**

If you have arranged to have direct deposits made to your Card Account at least once every 60 days from the same person or company, you can call us at 1-800-845-4889 to find out whether or not the transfer has been made.

### **C. Receipts**

You may be able to get a receipt at the time you make any transaction using your Card for a purchase or at an ATM. You may need a receipt in order to verify a transaction with us or the merchant.

## **5. LOSS OR UNAUTHORIZED USE**

### **A. Contact**

If you believe your Card has been lost, stolen, or used without your permission, contact us IMMEDIATELY by calling us at 1-800-845-4889 or writing to us at P.O. Box 2059, Omaha, NE 68103.

You should also call the number or write to the address listed above if you believe a transfer has been made from your Card Account without your permission.

### **B. In Case of Errors or Questions About Your Prepaid Account**

Telephone us at 1-800-845-4889 or Write us at P.O. Box 2059, Omaha, NE 68103 as soon as you can, if you think an error has occurred in your Card Account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at 1-800-845-4889 or writing us at P.O. Box 2059, Omaha, NE 68103. You will need to tell us:

Your name and Card number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days. We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at 1-800-845-4889.

### **C. Your Liability**

Tell us AT ONCE if you believe your Card or PIN has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account. If you tell us within 2 business days after you learn of the loss or theft of your Card, you can lose no more than \$50 if someone used your Card without your permission. If you do NOT tell us within 2 business days after you learn of the loss or theft of your Card, and we can prove we could have stopped someone from using your Card without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

#### **D. Preauthorized Debits**

- (1) If you have regular recurring payments out of your Card Account and wish to stop them, please contact the merchant with whom you have set up this payment arrangement and request these payments to stop. Recurring payments must be set up using your Card number only. You may not provide your Card Account number and routing and transit number for any debits to your Card Account. If the merchant is not responsive to your request, call us at 1-800-845-4889 or write to us at PREMIER ACCESS Card Services, P.O. Box 2059, Omaha, NE 68103 in time for us to receive your request three business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call.
- (2) If these regular payments may vary in amount, the person you are going to pay shall tell you 10 days before each payment when it will be made and how much it will be.
- (3) If you order us to stop one of these payments three business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.
- (4) If you intend to use funds in your Card Account for recurring transactions or preauthorized payments, you should be certain to provide only your Prepaid Card number for the set up and monitor the Card Account balance to make sure it is sufficient to cover the transactions. Because your Card is a prepaid card and does not carry a credit line, a merchant that you have authorized to submit recurring transactions may suspend or cancel your service if the Card Account does not have enough value when the recurring transaction is submitted. We are not responsible for any authorized, recurring transaction that we receive from a merchant, and we are not responsible for the cancellation of any merchant services or any fees that you incur as a result of a preauthorized or recurring transaction for which the Card has an insufficient balance to pay for the transaction when it is scheduled to occur.

### **6. OTHER**

#### **A. Confidentiality**

We may disclose information to third parties about your Card Account and the transactions you make:

- (1) Where it is necessary for completing transactions;
- (2) In order to verify the existence and condition of your Card Account for a third party, such as a merchant;
- (3) In order to comply with government agency or court orders or other legal reporting requirements;
- (4) If you give us your written permission;
- (5) To our employees, auditors, affiliates, service providers, and attorneys, as needed;
- (6) In order to identify, prevent, investigate, or report possible suspicious or illegal activity;
- (7) As otherwise necessary to fulfill our obligations under this Agreement; and
- (8) As permitted by our Privacy Policy.

#### **B. Role of your Funder**

Your Funder is responsible for transferring funds to us to load your Card. We have no obligation to you in the event your Funder delays in providing or fails to provide funds to load your Card. Your Funder may retain the right to deduct funds from the Card Account to correct a previous error or overpayment to you or for other reasons. You authorize us to accept instructions from your Funder to add or deduct funds from your Card Account and in the case of a deduction to return those funds to your Funder. If you have a dispute with your Funder about the amount of your wages, salary or other compensation, or the amount that your Funder loads or deducts from your Card Account, you agree to resolve that dispute solely with your Funder.

### **C. Our Liability**

If we do not complete a transaction to or from your Card Account on time or in the correct amount according to this Agreement, we will be liable for your losses and damages proximately caused by us. However, there are some exceptions. We will not be liable, for instance:

- (1) If, through no fault of ours, you do not have enough funds available in your Card Account to complete the transaction;
- (2) If a merchant refuses to accept your Card;
- (3) If an ATM where you are making a cash withdrawal does not have enough cash;
- (4) If an electronic terminal where you are making a transaction does not operate properly and you knew about the problem when you initiated the transaction;
- (5) If access to your Card Account has been blocked after you reported your Card or PIN lost or stolen;
- (6) If there is a hold or your funds are subject to legal process or other encumbrance restricting their use;
- (7) If we have reason to believe the requested transaction is unauthorized;
- (8) If circumstances beyond our control (such as fire, flood, computer or communication failure) prevent the completion of a transaction, despite reasonable precautions that we have taken; or
- (9) For any other exception stated in this Agreement.

### **D. Amendment and Cancellation**

We may amend or change the terms and conditions of this Agreement at any time in accordance with applicable law. We will notify you at the address or through other contact information that we have for you in our records if required by applicable law. If the change is made for security purposes, we may implement such change without prior notice. We may cancel or suspend your Card or this Agreement at any time. You may cancel the Card and close the Card Account by notifying the Funder and returning the Card to us. Your closure of the Card Account will not affect any of our rights or your obligations arising under this Agreement prior to such cancellation. You agree that the Arbitration Agreement will remain in force and effect even after cancellation, unless you opt out through the process described below. If your Card Account is canceled, closed, or terminated for any reason, the unused balance will be returned to you via a check to the mailing address we have in our records.

### **E. Communications and Contact Information**

You agree that we may monitor and record any calls or other communications between you and us. You also agree that we and our service providers may contact you with any contact information you provide to us, including cellular and wireless phone numbers, landline numbers, and email addresses. You also agree that we and our service providers may contact you by using an automated dialing or email system, by text, or artificial or recorded voice. You agree to pay any service charges assessed by your plan provider for communications we send or make to you and you send or make to us.

Translations of this Agreement that may have been provided are for your convenience only and may not accurately reflect the original English meaning. The meanings of terms, conditions, and representations herein are subject to definitions and interpretations in the English language.

You agree to notify us at 1-800-845-4889 or P.O. Box 2059, Omaha, NE 68103 and provide current contact information for you in the event that your contact information changes after the Card is issued to you.

### **F. Other**

This Agreement will be governed by the laws of the state of South Dakota, except to the extent governed by federal law. Should your Card have a remaining balance after a certain period of inactivity, we may be required to remit the remaining funds to the appropriate state agency. If any provision of this Agreement is determined to be invalid or unenforceable under any rule, law, or regulation by any local, state, or federal governmental agency, the validity or enforceability of any other provision of this Agreement will not be affected.

### **G. Arbitration**

This Arbitration Provision ("Provision" or "Arbitration Provision") facilitates the prompt and efficient resolution of any disputes that may arise between you and us. Arbitration is a form of private dispute-resolution in which persons with a dispute waive their rights to file a lawsuit, to proceed in court and to a jury trial, and instead submit their disputes to a neutral third person (an arbitrator) for a binding decision. You have the right to opt out of this Arbitration Provision if you follow the instructions set out in the paragraph titled "Right to Opt Out" below.

**PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ALL DISPUTES ARISING OUT OF OR RELATED TO THIS CARDHOLDER AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO BRING CLAIMS IN A COURT, BEFORE A JUDGE OR JURY AND/OR TO PARTICIPATE IN OR BE REPRESENTED IN A CASE FILED IN COURT BY OTHERS (INCLUDING, BUT NOT LIMITED TO, CLASS ACTIONS). EXCEPT AS OTHERWISE PROVIDED, ENTERING INTO THIS AGREEMENT CONSTITUTES A WAIVER OF YOUR RIGHT TO LITIGATE CLAIMS IN COURT BEFORE A JUDGE OR JURY.**

**RIGHT TO OPT OUT:** To opt out of this Arbitration Provision, you must mail a written notice to us so that it is postmarked no later than 60 days after we mail your first Card to you. Your right to opt out will not apply when we send you a copy of your Cardholder Agreement or this Provision, or when we send you an updated version of your Cardholder Agreement or this Provision, or when we send any replacement Card. If you opt out of this Arbitration Provision, you will retain your right to litigate your dispute in a court, either before a judge or jury. The opt out notice must include your name and Card number, must be signed by you (or all of you if you have authorized another user) and must be mailed to us at: PREMIER ACCESS Cardholder Services, P.O. Box 2059, Omaha, NE 68103 P.O. Box 2059, Omaha, NE 68103. If your written notice is not postmarked within 60 days from the date we mail your first Card to you, your right to opt out will terminate, and you agree that the terms of this Provision will apply. Your decision to opt out of this Provision will not affect your other rights or responsibilities under this Cardholder Agreement.

If we later amend this Provision, we will let you know if you can opt out of that amendment and, if so, how you can do so.

**Parties and Matters Subject to Arbitration:** For purposes of this Provision, “we” and “us” include our employees, parent companies, subsidiaries, affiliates, beneficiaries, agents and assigns and other persons and entities you assert a Claim against in connection with a Claim you assert against us. For purposes of this Provision, “Claim” means any claim, dispute or controversy by either you or us, arising out of or relating in any way to this Cardholder Agreement, your Card, any transaction on your Card and our relationship. “Claim” also refers to any interaction or communication between you and us that occurred prior to or concurrent with entering into this Cardholder Agreement, including those now in existence, regardless of present knowledge. “Claim” shall refer to claims of every kind and nature, including, but not limited to, initial claims, counterclaims, cross-claims and third-party claims. All Claims are subject to arbitration, regardless of legal theory and remedy sought, including, but not limited to, claims based in contract, tort (including negligence, intentional tort, fraud and fraud in the inducement), agency, statutory law (federal and state), administrative regulations or any other source of law (including equity). Notwithstanding the foregoing, the word “Claim” does not include any dispute or controversy about the validity, enforceability, coverage or scope of this Arbitration Provision or any part thereof; all such disputes or controversies are for a court and not an arbitrator to decide. However, any dispute or controversy that concerns the validity or enforceability of the Cardholder Agreement as a whole is for the arbitrator, not a court, to decide.

**Agreement to Arbitrate:** Any Claim shall be resolved and settled exclusively and finally by binding arbitration, in accordance with this Provision. Both you and we retain the right to pursue in a small claims court (or your state's equivalent court) any Claim that is within that court's jurisdiction, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. For any Claims covered by this Provision, a party who asserted a Claim in a lawsuit in court may elect arbitration with respect to any Claim subsequently asserted in that or any related or unrelated lawsuit by any other party.

**Class Action Waiver:** If a Claim is arbitrated, neither you nor we will have the right: (a) to participate in a class action, private attorney general action or other representative action in court or in arbitration, either as a class representative or class member; or (b) to join or consolidate Claims with Claims of any other persons. An award in arbitration shall determine the rights and obligations of the named parties only, and only with respect to the Claim(s) in arbitration, and shall not (i) determine the rights, obligations, or interests of anyone other than a named party, or resolve any Claim of anyone other than a named party; nor (ii) make an award for the benefit of, or against, anyone other than a named party. No arbitration administrator or arbitrator shall have the power or authority to waive, modify, or fail to enforce this section, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable. Any challenge to the validity of this Class Action Waiver shall be determined exclusively by a court and

not by the administrator or any arbitrator. Thus, you agree that **UNDER THIS ARBITRATION PROVISION THERE IS NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE LITIGATED IN COURT OR ARBITRATED ON A CLASS BASIS.** Arbitration will only be conducted on an individual Claim basis and there is no right or authority to consolidate or join any of your Claims with any other Claims. **YOU AGREE THAT YOU ARE VOLUNTARILY AND KNOWINGLY WAIVING ANY RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION UNDER THIS PROVISION.**

**Voluntary Waiver of the Right to a Jury Trial:** As a result of this Provision, neither you nor we have the right to litigate any Claim in court or the right to a jury trial on any Claim, except as provided above. **YOU AGREE THAT YOU ARE VOLUNTARILY AND KNOWINGLY WAIVING ANY RIGHT YOU MAY HAVE TO GO TO COURT OR TO HAVE A JURY TRIAL.**

**Governing Law:** This agreement to arbitrate is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, as it may be amended. If for any reason the Federal Arbitration Act does not apply, the substantive law of the State of South Dakota shall govern this Provision.

**Arbitration Location and Procedure:** Any arbitration hearing at which you wish to appear will take place at a location within the federal judicial district that includes your billing address at the time the Claim is filed. The party bringing the Claim may file its Claim at the American Arbitration Association (“AAA”), or an arbitration organization mutually agreed upon by the parties. The arbitration organization that is selected will administer the arbitration pursuant to its procedures in effect at the time of filing, subject to this Provision. If you do not agree to file your claim with AAA, and the parties cannot agree on an alternative arbitration organization, an arbitrator will be appointed by a court pursuant to the Federal Arbitration Act. In the event of a conflict or inconsistency between the respective organization’s rules and this Provision or the Cardholder Agreement, this Provision shall govern. The arbitration will be conducted before a single arbitrator, whose authority is limited solely to individual Claims between you and us. The arbitration will not be consolidated with any other arbitration proceeding. Any decision rendered in such arbitration proceeding will be final and binding on the parties, except for any appeal rights under the FAA, and judgment may be entered in a court of competent jurisdiction. The rules and forms of AAA may be obtained as follows: American Arbitration Association, (1-800-778-7879), 120 Broadway, Floor 21, New York, N.Y. 10271, website at [www.adr.org](http://www.adr.org).

**Arbitrator’s Authority:** The arbitrator shall apply the applicable substantive law, consistent with the Federal Arbitration Act; shall apply statutes of limitation; and shall honor claims of privilege recognized at law. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. **THE RULES AND PROCEDURES OF THE AAA OR OTHER ARBITRATION ORGANIZATION WILL GOVERN THE RIGHT TO ENGAGE IN PRE-ARBITRATION DISCOVERY.** Either party may, however, request to expand the scope of discovery. If a request is made, within 15 days of the requesting party’s notice, the objecting party may submit objections to the arbitrator with a copy of the objections provided to the party requesting expansion. The grant or denial of a party’s request will be in the sole discretion of the arbitrator, who shall notify the parties of the final decision within 20 days of the objecting party’s submission.

**The Arbitrator’s Award:** The arbitrator may award any damages or other relief or remedies that would apply under applicable law to an individual action brought in court, including, without limitation, punitive damages (which shall be governed by the Constitutional standards employed by the courts), attorneys’ fees and costs and injunctive, equitable and declaratory relief (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim). At the timely request of either party, the arbitrator shall write a brief explanation of the grounds for the decision. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. No arbitration award between you and us will have any impact on any dispute involving anyone who is not a party to the arbitration, nor will an arbitration award between us and any other person have any impact to an arbitration between you and us.

**Expenses:** Regardless of who demands arbitration, we will pay all expenses of arbitration, including the filing, administrative, hearing and arbitrator’s fees (“Arbitration Fees”), to the extent that the Arbitration Fees exceed the amounts you would be required to pay for filing a lawsuit in state or federal court, whichever is less. If you have already paid a court filing fee, you will not be required to pay it again. Throughout the arbitration, each party shall bear his or her own attorney fees and expenses, such as witness and expert witness fees. If you prevail in the arbitration of any Claim against us, we will reimburse you for any fees you paid to the arbitration organization in connection with the arbitration. The arbitrator will have the authority to award fees and costs of attorneys, witnesses and experts to the



extent permitted by this Cardholder Agreement, the administrator's rules or applicable law. With respect to Claim(s) asserted by you in an individual arbitration, we will pay your reasonable attorney, witness and expert fees and costs if and to the extent you prevail, if applicable law requires us to or if we must bear such fees and costs in order for this Arbitration Provision to be enforced.

**Binding Effect and Survival:** You and we agree that, except as specifically provided for above, the arbitrator's decision will be final and binding on all parties subject to this Provision. This Provision is binding upon you, us, and the heirs, successors, assigns and related third parties of you and us. This Provision shall survive termination of your Card account.

**Severability:** If any part of this Provision is deemed or found to be unenforceable for any reason, the remainder shall be enforceable, except as follows:

A. The parties to this Provision acknowledge that the provision titled "Class Action Waiver" is material and essential to the arbitration of any disputes between the parties and is non-severable from this Provision. If the Class Action Waiver is limited, voided or found unenforceable, then this Provision (except for this sentence) shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.

B. If a Claim is brought seeking public injunctive relief and a court determines that the restrictions in the Class Action Waiver and/or elsewhere in this Provision prohibiting the arbitrator from awarding relief on behalf of third parties are unenforceable with respect to such Claim (and that determination becomes final after all appeals have been exhausted), the Claim for public injunctive relief will be determined in court and any individual Claims seeking monetary relief will be arbitrated. In such a case the parties will request that the court stay the Claim for public injunctive relief until the arbitration award pertaining to individual relief has been entered in court. In no event will a Claim for public injunctive relief be arbitrated.

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