



BANK OF THE WEST
BNP PARIBAS

SECURED CREDIT CARD AGREEMENT

(Personal Accounts)

By requesting or accepting a Secured Mastercard® Credit Card account ("Credit Card account" or "Account") with Bank of the West, you agree to be bound by all the terms of this Agreement. In this Agreement, the words "you" or "your" mean everyone who has requested or accepted a Credit Card account with us. The words "we," "us," "our," or "Bank" mean Bank of the West. If you do not accept this Agreement, you must notify us in writing within 5 days after receipt. Use of your card or any feature (including a balance transfer) of your Credit Card Agreement shall constitute acceptance of this Agreement.

1. Use. Your Credit Card account card ("Card") may be used as a credit card for purchases of goods or services from participating merchants ("Purchases") or to get Cash Advances from us or any other financial institution displaying the "Mastercard" logo, or to purchase certain items such as traveler's cheques, foreign currency, money orders, wire transfers, lottery tickets, and (except as noted below) funds to be used for wagers or gambling (all of which are collectively referred to as "Cash Advances") up to your Credit Limit; provided, however, you may not use your Card (i) to make Purchases or obtain Cash Advances for any illegal transaction, or (ii) for any internet or online gambling transactions. Transactions for online or internet gambling will not be approved. If you use your Card for any illegal or prohibited transaction, this Agreement also applies to such transaction and you agree to pay any and all amounts related to such transaction pursuant to the terms of this Agreement. We may, in our sole discretion, restrict the use of or terminate your Card if we notice excessive use of your Card or other suspicious activities or if we reasonably believe the Card is or has been used for one or more illegal or prohibited transactions. You can also obtain a Cash Advance by writing a special Mastercard check ("Convenience Check"). The Cash Advance will be posted to your Credit Card account when the Convenience Check reaches us. If you stop payment on a Convenience Check, your Credit Card account will be charged \$16.00 (or as permitted by law) for each stop payment. We may designate that only a portion of your Credit Limit is available for Cash Advances. In addition, you may request that we pay other creditors on your behalf and transfer approved amounts to your Account ("Balance Transfers").

Your Card may also be used in certain automated terminals to gain access to your Credit Card accounts. We have no responsibility for the failure of any machine, merchant, financial institution, or any other party to honor your Card. Your Card and Credit Card account may be used only for valid and lawful purposes. If you use or allow someone else to use the Card or Credit Card account for any other purpose, you will be responsible for such use and may be required to reimburse us for all amounts or expenses we pay as a result of such use.

2. Credit Limit. Your Credit Limit for the Credit Card account you have with us will be based on the amount described in paragraph 21. You agree that your total charges, including Purchases, Cash Advances, Balance Transfers, INTEREST CHARGES, and fees that may be due will not exceed your Credit Limit. If you do go over your Credit Limit, you must repay the excess amount immediately, and we may reduce the available Credit Limit of any other Credit Card account you have with us until such time the excess amount is repaid. You may apply to increase your Credit Limit at any time but we are not obligated to increase your Credit Limit at any time. Furthermore, we reserve the right to lower your Credit Limit at any time. For security reasons, we may limit the number or amount of transactions that may be accomplished with your Card or Credit Card account, and we have the right to limit authorizations to make transactions if we consider it necessary to verify Payments received on your Credit Card account. If we accept a payment from you in excess of your

outstanding balance, your available Credit Limit will not be increased by the amount of the overpayment nor will we be required to authorize transactions for an amount in excess of your Credit Limit.

3. Temporary Reduction of Credit Limit. Merchants, such as car rental companies and hotels, may request prior credit approval from us for an estimated amount of your Purchases, even if you ultimately do not pay by credit. If our approval is granted, your available Credit Limit will temporarily be reduced by the amount authorized by us. If you do not ultimately use your Credit Card account to pay for your Purchases or if the actual amount of Purchases posted to your Credit Card account varies from the estimated amount approved by us, it is the responsibility of the merchant, not us, to cancel the prior credit approval based on the estimated amount. The failure of the merchant to cancel a prior credit approval may result in a temporary reduction of your available Credit Limit, but will not increase the amount you owe us under this Agreement.

4. Agreement to Pay. When you use your Card or Credit Card account, or when you permit anyone to use it, you agree to pay the amount of any and all transactions (including any which may have been made in violation of this Agreement), and the INTEREST CHARGES, and fees that may become due as shown on the periodic statement. You agree that we may change or cancel your Credit Card account at any time without affecting your obligation to pay the amounts that you owe under this Agreement.

5. Periodic Statement. Each month we will send you a periodic statement for each Credit Card account you have with us covering the previous billing period. We may not send you a statement if your balance is less than \$1 and there were no transactions during the billing period. The statement will have a "Statement Period Date", "Statement Closing Date" and a "Payment Due Date," and will show, among other things, your "Previous Balance," your "New Balance," and your minimum monthly payment, which will be shown as "Minimum Payment Due."

6. Payment. You must make a payment by the "Payment Due Date." You have two choices: You may pay the entire "New Balance" or you may pay in installments by paying at least the "Minimum Payment Due." When your payment is properly received, we will allocate your payment in a manner we determine except as otherwise required by law. The Minimum Payment is applied first to fees, then to INTEREST CHARGES and finally to principal. We apply the Minimum Payment to balances with lower APRs, including introductory APRs, before balances with higher APRs. Payments made in excess of the Minimum Payment will be applied first to balances with the highest ANNUAL PERCENTAGE RATE (APR) and then to each successive balance bearing the next highest ANNUAL PERCENTAGE RATE.

Payments must be mailed to the BankCard Center address specified in your periodic statement and reach the BankCard Center during our regular business day by 5:00 p.m. Pacific Time for the payment to be credited the same business day. Payments made in person at one of our branches, or made by telephone, or made through our website or another website controlled by a third party on our behalf must be received by 5:00 p.m. Pacific Time to be credited the same business day. Payments received after the cutoff time of 5:00 p.m. Pacific Time are credited as of the following business day. If you fail to properly make payments, crediting of such payments may be delayed and you may incur late charges and additional interest as a result of the delay. Even when your payment is credited to your account, we may delay the availability of part or all of your payment amount as credit for up to 15 days.

If a payment is returned to us for any reason, we may apply a Returned Payment Fee of \$27 for the first violation and \$38 for each subsequent violation within the next six billing cycles. The Returned Payment Fee for Iowa residents

is \$27 for the first violation and \$30 for each subsequent violation within the next six billing cycles. If the Returned Payment Fee is greater than the Minimum Payment Due, the fee will be equal to the Minimum Payment Due.

From time to time, we may let you skip or reduce one or more monthly payments during a year and/or we may temporarily reduce or eliminate certain INTEREST CHARGES on all or a portion of your Credit Card account balance or offer you other special terms. If we do, we will advise you of the scope and duration of the applicable skip or promotional feature. When the skip or promotional feature ends, your regular rates and all the terms of the Agreement will resume.

7. Minimum Payment - Late Payment Fee. At least the amount of the "Minimum Payment Due" must be received by us by the "Payment Due Date." If it is not, we may apply a Late Payment fee of \$27 for the first violation and \$38 for each subsequent violation within the next six billing cycles. The Late Payment fee for Iowa residents is \$27 for the first violation and \$30 for each subsequent violation within the next six billing cycles. If the Late Payment fee is greater than the Minimum Payment Due, the fee will be equal to the Minimum Payment Due. If such charge would result in an INTEREST CHARGE greater than the maximum allowed by law, we will only charge the maximum allowable rate. Your Minimum Payment Due will be 3% of the New Balance plus any Late Payment fee (with a minimum of the lesser of \$27 or your New Balance) and any amount over your credit limit and past due amount.

8. How to Avoid Paying Interest on Purchases. There may be different treatment of INTEREST CHARGES for Purchases, Balance Transfers, and Cash Advances, even though they are computed the same way. You may avoid paying an INTEREST CHARGE on Purchases if we receive the entire New Balance by the Payment Due Date. If we do not receive the entire New Balance by the Payment Due Date, the INTEREST CHARGE will be charged on the Purchases from the date of the transaction. INTEREST CHARGES on all other balances, including Cash Advances and Balance Transfers, begin on the transaction date and will be assessed even if your entire New Balance is paid by the Payment Due Date.

9. Computing Your INTEREST CHARGE. We figure the INTEREST CHARGE on each Credit Card account by applying the periodic rate to the "Average Daily Balance" of each Balance Category on the Credit Card account, including current transactions. Balance Categories include Purchases, Balance Transfers, Cash Advances, Introductory Rates and any special rate offers we may make available from time to time. If you are charged interest, the charge will be no less than \$1.00 (the minimum interest charge will appear as "Minimum Charge" in the fees section of your statement).

a. **Average Daily Balance.** To obtain the daily balance for each Balance Category we take the beginning balance each day and add new transactions applicable to each category, and subtract any payments, credits, and refunds applied to the category. To figure your Average Daily Balance for each Balance Category, we add all your daily balances and divide by the number of days in the billing period.

b. **Figuring the INTEREST CHARGE.** We compute the INTEREST CHARGE for each Balance Category by multiplying the Average Daily Balances by the applicable Daily Periodic Rate, and then we multiply the result by the number of days in the billing period. To determine the Daily Periodic Rate for each Balance Category, we divide the applicable ANNUAL PERCENTAGE RATE in effect for the billing period by 365 (366 for leap year). The way we get the ANNUAL PERCENTAGE RATE for each Balance Category described below under "Variable Rate."

c. **Variable Rate.** The current ANNUAL PERCENTAGE RATE for all variable rates is shown on the Account Opening Disclosure which has been provided to you with this Agreement. The Daily Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE may change each month on the first day of each of your billing cycles. Each date on which the rate of interest could change is called a "Change Date." Changes will be based on changes

in the "Index." The Index is the Prime Rate published in the "Money Rates" table of The Wall Street Journal on the business day immediately preceding the day your billing cycle ends. If the Index is no longer available, we will choose a new index which is based upon comparable information and will give you notice of our choice. The ANNUAL PERCENTAGE RATE may increase or decrease each month if the Index changes. Any new rate will be applied as of the first day of your billing cycle during which the Index has changed. If the ANNUAL PERCENTAGE RATE increases, you will pay a higher INTEREST CHARGE, which may result in a higher minimum payment.

Your interest rate for Purchases and Balance Transfers on your Credit Card account is based on a variable rate equal to the sum of the Index plus a "Rate Spread" of 18.74 percentage points. The interest rate for Cash Advances on your Account is based on a variable rate equal to the sum of the Index plus a "Rate Spread" of 21.74 percentage points. Immediately before each Change Date we will determine the new interest rate by adding the Rate Spread to the Index. The new interest rate will become effective at the start of your first billing cycle after the Change Date. Only one ANNUAL PERCENTAGE RATE and Daily Periodic Rate will be in effect for each Balance Category during the billing period. The ANNUAL PERCENTAGE RATE will not exceed the maximum rate permitted by law. The effect of any increase in the ANNUAL PERCENTAGE RATE and the Daily Periodic Rate would be to increase the amount of INTEREST CHARGE or interest you must pay and thus increase your monthly payments.

10. Transaction Fees. You also agree to pay us the appropriate fees listed below (as permitted by applicable law) which may be amended from time to time by us. You authorize us to charge your Credit Card account for the following fees due to us. Balance Transfer fee: 4.00% of each balance transferred, \$10 minimum. Cash Advance fee: 4.00% of each Cash Advance, \$10 minimum.

11. Foreign Transaction Fee. Transactions that you make in a foreign currency or that you make outside of the United States of America even if it is made in U.S. dollars are considered foreign transactions. If you make a transaction in a foreign currency it will be billed to you in U.S. Dollars. The conversion rate to U.S. Dollars will be determined by Visa International or Mastercard International in accordance with their operating regulations or conversion procedures in effect at the time the transaction is processed. Currently, their regulations and procedures provide that the currency conversion rate they use is either (1) a government-mandated rate or (2) a wholesale market rate, whichever is applicable, in effect one day prior to the processing date. We do not determine the currency conversion rate which is used. You agree to pay the converted amount in U.S. funds. In addition, Visa or Mastercard will charge us (the Bank) an international transaction fee, currently equal to one percent (1.00%) of the transaction amount. We will charge you the international transaction fee imposed on us plus an additional two percent (2.00%) of the transaction amount whether that transaction was originally made in U.S. dollars or was made in another currency and converted to U.S. dollars. These two fees will be aggregated and shown as one Foreign Transaction Fee on your statement.

12. Annual Fee. We will assess an Annual Cardholder Fee of \$25 for each year your Account is open, whether or not you use your Account and regardless of the number of cards issued on your Account. You can avoid the Annual Cardholder Fee if you terminate your Account within 30 days after the date of the periodic statement in which the Annual cardholder fee is posted. Otherwise, the Annual Cardholder fee will not be refunded in whole or in part and shall be owed to us by you even if your Account is subsequently changed, suspended, closed or terminated for any reason.

13. Other Fees. As allowed by law, we may charge, and you agree to pay, fees for certain services or requests made by you, such as but not limited to: Automated Teller Machine ("ATM") transactions conducted at machines not operated by us, requests for copies of billing statements, sales drafts, or other records of your Account, or if you request a replacement card(s). However, we will not charge fees for

copies of documents requested for a billing dispute. These fees may change from time to time. We will inform you of the fee(s) that you will incur prior to when the applicable service(s) is(are) provided or when you make the request(s), as applicable. You authorize us to charge your Credit Card account for any such fees that you incur. We reserve the right to waive a fee from time to time but a waiver does not mean we will continue to waive such fee in the future.

14. Interest Charges for Covered Members of the Armed Forces and Their Dependents: Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an ANNUAL PERCENTAGE RATE of 36%. This rate must include, as applicable to the credit transaction or account: the costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account).

If you are a covered member of the armed forces or a dependent, you will not be charged annual fees, transaction fees, or penalty fees so that your cost may not exceed the Military Lending Act ANNUAL PERCENTAGE RATE cap. Armed Forces members and their dependents can hear about the protections provided to them by calling 1-866-761-2689 (TTY users call 1-800-659-5495).

15. Default. We may declare the entire balance for the Credit Card accounts due and payable at once with or without notice or demand if any of these events (a "Default") happens:

- a. If you miss a payment under this Agreement or any other obligation you owe us; or
- b. If you violate any terms of this Agreement.

If you are in Default, we may terminate your Credit Card account, make no more additional loans, and require you to immediately repay the entire unpaid balance of all amounts due on your Credit Card account, including but not limited to all loan amounts, late charges and other charges assessed but not paid, and all of the INTEREST CHARGES accrued but not paid. If we terminate your Credit Card account, your obligation to repay the amounts you already owe us would continue.

At our option, we may also take action short of terminating your Credit Card account. If we take such lesser action initially, we reserve the right to terminate your Credit Card account and accelerate all amounts due under this Agreement regardless of whether any additional events have occurred which would permit termination and acceleration.

16. Automated Terminal Services

a. **Automated Terminals.** You may use your Card in the following automated terminals:

- (1) Any Bank of the West automated teller machines.
- (2) Any other automated teller machine that is participating in a network and accepts our Card ("Network ATM") and
- (3) Any point-of-sale terminal that accepts our Card ("POS terminal").

b. **Services Available at an Automated Terminal**

(1) You may use your Card at a Bank of the West or any Network ATM to:

(a) Get a Cash Advance from your Credit Card account.

(b) Get your Credit Card account balances. These balances may not include some transactions recently made in your Credit Card account. Some of the services described in subparagraphs (a) and (b) may not be available at all Network ATMs.

(c) You may use your Card at a POS terminal to purchase certain merchandise. The amount of your purchase will automatically be charged to your Credit Card account as a Purchase.

c. **Limits of Automated Terminal Services - Cash Advances.** You may get a Cash Advance from a Bank of the West Automated Terminal up to an aggregate amount of \$500 each calendar day, provided that this amount does not

exceed your Credit Limit. This amount may be less for Cash Advances from Network ATMs.

d. **Card and Secret Code (PIN) Use.** You are responsible for all transactions in which you use your Card in an automated terminal, or the use of the Card by anyone else who uses it with your permission. Security in use of the Card is provided by the secret code, which we will provide you, and the magnetically encoded stripe on the Card. Please keep the Card safe and also protect the secret code. Use the Card and the secret code as instructed at all times. Please notify us of any mechanical or operating failure in connection with the use of your Card. Do not permit anyone else to use your Card and do not disclose your secret code or record it on the Card. The Card remains the property of the Bank and can be revoked and repossessed at any time. You must return it to us when asked.

e. **Fees for Using Automated Terminal Services.** Fees may be charged for transactions made at automated teller machines not operated by us as described in paragraph 13-Other Fees.

17. Lost or Stolen Card; Your Liability for Unauthorized Use. Tell us AT ONCE if you believe your Card has been lost or stolen. Telephoning is the best way of keeping your possible losses down.

You may be liable for the unauthorized use of your Card as a credit card. You will not be liable for unauthorized use of your Card as a credit card which occurs after you notify us at the telephone number or address stated in paragraph 18, orally or in writing, of loss, theft, or possible unauthorized use. In any case, your liability for unauthorized use of your Card as a credit card will not exceed \$50.00.

18. Where to Call or Write. If you believe your Card has been lost or stolen or that someone is using your Card or Credit Card account without your permission, call: 1-800-996-2638 (for TTY call 1-800-659-5495) or write to: Bank of the West, BankCard Security Department, PO Box 2078 Omaha, NE 68103-2078

19. Our Business Days. Our business days are Monday through Friday, except for bank holidays.

20. Credit Investigation and Disclosure. You authorize us, both now and in the future, to check your credit and employment history and to release information about our credit experience with you in response to legitimate credit inquiries. If you believe that we have incorrect information or have reported inaccurate information about you to a credit bureau, please call us at 1-800-996-2638 (for TTY call 1-800-659-5495). As required by law, you are hereby notified that a negative credit report reflecting on your credit history may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

21. Security Interest. This Credit Card account is secured by a deposit account ("Deposit Account") in your name only with Bank of the West. The amount you deposited in the Deposit Account (subject to the minimum amount required and maximum amount allowed by the Bank) is your credit limit. The Deposit Account will be used as collateral to secure the obligations you incur in connection with your Credit Card account. You grant the Bank a security interest in, and assign to the Bank, all funds in your Deposit Account. You agree that you will be bound by the agreement ("Deposit Account Agreement") for your Deposit Account and that your Deposit Account is subject to this Agreement. You grant the Bank exclusive control over the Deposit Account, the right to redeem, collect and withdraw any part or the full amount of the Deposit Account upon any default under this Agreement or if your Credit Card account is closed for any reason. The Bank may apply funds in the Deposit Account to pay off any balance on the Credit Card account if the Credit Card account is closed for any reason. You may not make or otherwise arrange for any deposits to or withdrawals from the Deposit Account while the Deposit Account secures your Credit Card account. The Deposit Account will not be eligible for Auto-Save or Savings Overdraft Protection while the Deposit Account secures your Credit Card Account. You provide the security interest and assignment as security for any and all amounts you may owe (including but not limited to interest, fees and charges which may accrue under your Credit Card account). The balance of your Deposit Account is only refundable after

your Credit Card account is closed and all amounts owed to the Bank are paid (any remaining amount you request to be refunded may take up to 30 days to be returned to you). You agree to pay all charges and follow all practices set forth in the Deposit Account Agreement for the Deposit Account that secures your Credit Card account and abide by all future changes to the terms and charges for the Deposit Account.

22. Collection. You promise to pay all collection costs, including, without limitation, mailgram charges, reasonable lawyers' fees and court costs, as permitted by law.

23. If There are More Than One of You. Each of you individually, or all of you together, will be liable under this Agreement. We may collect from or sue any one of you, or make any settlements or extensions with any one of you, without giving up our rights against the other. You understand that any one of you can make Purchases, get Cash Advances, or perform Balance Transfers under this Agreement which will be binding upon all of you.

24. Compliance with Law/Sanctions. You agree to comply with all applicable laws and regulations, including those relating to anti-bribery, anti-money laundering, the fight against terrorism, and sanctions ("Sanctions"), that apply to the Bank or BNP Paribas S.A. You represent that you are not the target of Sanctions. You agree to hold the Bank harmless from liability for any actions taken by the Bank to comply with applicable laws and regulations, including Sanctions.

25. No Waiver of Rights. If we choose to waive any of the terms or conditions of this Agreement on a case-by-case basis, such as by not declaring the entire balance due when the minimum monthly payment has not been made on time, it does not mean that we have waived, or given up, our right to exercise any of our rights or remedies under this Agreement in the future. We are not required to use any particular kind of demand or notice in order to collect amounts due to us under this Agreement. No indulgence or acceptance by us of delinquent or partial payments constitutes a waiver of our rights or of any provision of this Agreement. No waiver of any existing default shall be deemed to waive any subsequent default.

26. Changing Terms. We can change, add to, delete or otherwise modify the terms of this Agreement at any time in any way permitted by law. We will send you a notice of change at least 45 days (or as required by applicable law) before the effective date of the change. We do not have to send you an advance notice of the change if it favors you, such as by reducing rates, or increasing the maximum credit limit. Except in cases where we are changing terms due to the Minimum Payment Due not being received within 60 days of the Payment Due Date, you agree that the change may cover all transactions made 15 days after we mail the notice. If you do not agree to the change, a method for rejecting the change and closing the Account will be provided in the Change of Terms Notice. You agree that if you use your card after the effective date of the change, this will constitute your agreement with the change.

27. Canceling this Agreement. We have the right to cancel this Agreement at any time by sending a notice to any one of you in writing. You also have the same right to cancel this Agreement at any time by sending us a notice in writing. If this Agreement is canceled by you or us, your obligation is to repay amounts you already owe under this Agreement, and you must return your Card to us or destroy the card. In either case, the Account will be closed and you will no longer have access to the Account.

28. Governing Law. This Agreement will be governed by the laws of the State of Nebraska, and, as applicable, federal law, regardless of where the transactions are made.

29. Monitoring/Recording Telephone Calls. Our supervisory personnel may listen to and record your telephone calls to us for the purpose of monitoring and improving the quality of service you receive.

30. Severability. All other provisions of this Agreement shall remain in full force even if one or more provisions of this Agreement are held invalid, illegal, void or unenforceable by any rule or law, administrative order or judicial decision.

31. Authorized User. If you elect to have an authorized user, you will be liable for all transactions made by that user on your Account. Any authorized user is not a contractually liable party.

32. Our Communications with You. You agree that we, any of our affiliates, agents, independent contractors or service providers may monitor and record telephone calls regarding your banking services to assure the quality of our service or for other reasons. You expressly consent that we, any of our affiliates, agents, independent contractors or service providers may use written, electronic, or verbal means, or any other medium, as permitted by law and including, but not limited to, mail and facsimile, to contact you. Your consent includes, but is not limited to, contact by manual calling methods, prerecorded or artificial voice messages, text messages, e-mails and/or automatic telephone dialing systems. You agree that we, any of our affiliates, agents, independent contractors or service providers may contact you by using any e-mail or any telephone number you provide, including a telephone number for a cellular phone or other wireless device, regardless of whether you incur any charges as a result.

33. RESOLUTION OF DISPUTES BY ARBITRATION. PLEASE READ THIS ARBITRATION PROVISION CAREFULLY. EXCEPT AS OTHERWISE PROVIDED, YOU WAIVE YOUR RIGHTS TO TRY ANY CLAIM IN COURT BEFORE A JUDGE OR JURY AND TO BRING OR PARTICIPATE IN ANY CLASS OR OTHER REPRESENTATIVE ACTION.

a. **Agreement to Arbitrate Disputes.** Except as otherwise provided, if you are unable to resolve a dispute with us informally, you and we agree that the dispute will be resolved through the binding arbitration process set forth in this arbitration provision upon demand by either you or us.

b. **Disputes Covered By Arbitration.** Except as otherwise provided, any dispute relating to or arising out of your Account or this Agreement, including any aspect of any agreement governed by this Agreement, or prior or later versions of this Agreement, and any changes to the terms of this Agreement will be subject to arbitration. Except as expressly provided, all disputes are subject to arbitration no matter the legal theory or remedy (damages, or injunctive or declaratory relief) sought. Disputes include (1) any unresolved claims concerning any services relating to your Account, including, without limitation, Purchases, Balance Transfers, Cash Advances, INTEREST CHARGES, your use of any of our banking locations or facilities, or any means you use to access your Account; (2) any claims that arose before you and we entered into this Agreement (such as disputes related to advertising) and after the termination of this Agreement; (3) not only claims made directly by you, but also made by anyone connected with you or claiming through you, such as an authorized user, a beneficiary, employee, representative, agent, predecessor or successor, heir, assignee, or trustee in bankruptcy; (4) not only claims that relate directly to us, but also our parent, affiliates, successors, assignees, employees, and agents and claims for which we may be directly or indirectly liable, even if we are not properly named at the time the claim is made; (5) claims based on any theory of law, contract, statute, regulation, tort (including fraud or any intentional tort), or any other legal or equitable ground, and include claims made as counterclaims, cross-claims, third party claims, interpleaders or otherwise; (6) claims made as part of a class action or other representative action, being expressly understood and agreed that arbitration of such claims must proceed on an individual (non-class, non-representative) basis; and (7) claims relating to the enforceability or interpretation of this arbitration provision. A party who initiates a proceeding in court may elect arbitration with respect to any dispute advanced in that proceeding by any other party. This arbitration provision shall survive any termination of this Agreement or your Account.

c. **Disputes Not Covered By Arbitration.** Disputes filed by you or by us individually in a small claims court are not subject to arbitration if the disputes remain in such court and advance only as an individual claim for relief.

d. **Opt Out.** You have the right to opt out of arbitration by sending a signed written notice stating your decision to

opt out of arbitration to BANK OF THE WEST at Loan Servicing, P.O. Box 3631, Omaha, NE 68103 within 30 days after the date you opened your Account ("Account Open Date").

e. **Commencing an Arbitration.** The party initiating arbitration must choose one of the following arbitration forums to administer arbitration under the forum's rules (except as modified by this Agreement): (i) the American Arbitration Association ("AAA") under AAA's Consumer Arbitration Rules available at www.adr.org or 1-800-778-7879; (ii) JAMS under JAMS' Comprehensive Arbitration Rules & Procedures or Streamlined Arbitration Rules & Procedures, including JAMS' Consumer Minimum Standards (but not JAMS' Class Action Procedures), available at www.jamsadr.com or 1-800-352-5267.

f. **Arbitration Procedure.** Arbitration shall be decided by a single neutral arbitrator selected in accordance with AAA's or JAMS' rules, as applicable. The arbitrator will decide the dispute in accordance with the terms of our agreements and applicable substantive law, including the Federal Arbitration Act and applicable statutes of limitation. The arbitrator shall honor claims of privilege recognized at law. Except as otherwise provided, the arbitrator may award damages or other relief (including injunctive relief) available to the individual claimant under applicable law. The arbitrator will not have the authority to award relief to, or against, any person or entity who is not a party to the arbitration. An award in arbitration shall determine the rights and obligations between the named parties only, and only with respect to the dispute in arbitration and shall not have any bearing on the rights and obligations of any other persons, or on the resolution of any other dispute. The arbitrator will take reasonable steps to protect your Account information and other proprietary or confidential information. Any arbitration hearing shall take place in the same city as the U.S. District Court closest to your home address, unless the parties agree in writing to a different location or the arbitrator so orders. If you seek a total recovery of \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing in accordance with AAA's or JAMS' rules. At your or our request, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The arbitrator's award shall be final and binding, subject to judicial review only to the extent allowed under the Federal Arbitration Act. You or we may seek to have the award vacated or confirmed and entered as a judgment in any court with jurisdiction.

g. **No Class Action or Joinder of Parties.** You and we agree that no class action, private attorney general or other representative claims may be pursued in arbitration and no such action may be pursued in court if either you or we elect arbitration. Unless mutually agreed to by you and us, claims of two or more persons may not be joined, consolidated, or otherwise brought together in the same arbitration (unless those persons are joint account holders or beneficiaries on your Account or related accounts, or parties to a single transaction or related transaction).

h. **Public Injunctive Relief Waiver.** If either you or we elect to arbitrate a dispute, neither you nor we will have the right to seek a public injunction in arbitration or in court, if such a waiver is permitted by the FAA. If any waiver of public injunctive relief in this arbitration provision (as set forth in any part of this arbitration provision) is found to be invalid or unenforceable, and that decision is not reversed on appeal, any claim for a public injunction will be decided in court after all other disputes to be decided in arbitration under this arbitration provision are arbitrated and the arbitration award regarding individual relief has been entered in court. In no event will a claim for public injunctive relief be arbitrated. As set forth in "Severability" below, the invalidity or unenforceability of this paragraph will not affect the validity or enforceability of the remainder of this arbitration provision.

i. **Arbitration Costs.** We will pay the filing, administrative and/or arbitrator's fees or compensation ("Arbitration Fees") that we are required to pay pursuant to the arbitration forums' rules or the law. In addition, with respect to Arbitration Fees that you are required to pay under the arbitration forum's rules in connection with an individual arbitration you have commenced against us, if you would like us to consider paying them because you are unable to do so, you must first request a waiver or reduction of the Arbitration Fees from the arbitration forum. If the request is denied or you remain unable to pay the reduced Arbitration Fees, we will consider paying them if we receive a written request by you sent to Bank of the West Legal Department, 180 Montgomery Street, San Francisco, California 94104.

j. **Applicable Law.** You and we are participating in transactions that involve interstate commerce and this arbitration provision and any resulting arbitration are governed by the Federal Arbitration Act. To the extent state law applies, the laws of the state governing your Account relationship apply. No state statute pertaining to arbitration shall apply.

k. **Severability.** Except as provided in "Public Injunctive Relief Waiver," if any part of this arbitration provision regarding joinder, consolidation, class actions, class arbitrations, general public or private attorney general actions is found to be illegal or unenforceable, that invalid part shall not be severable and this entire agreement to arbitrate disputes shall be unenforceable. If any other part of this arbitration provision, including "Public Injunctive Relief Waiver," is deemed to be invalid or unenforceable, that invalid part will be severed from the remainder of this arbitration provision and the remainder of this arbitration provision will be enforced.

Your Billing Rights

Keep This Notice for Future Use

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

What To Do If You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at:

Bank of the West
BankCard Customer Service Department
PO Box 2319
Omaha, NE 68172-9793

In your letter, give us the following information:

- *Account information:* Your name and Credit Card account number.
- *Dollar amount:* The dollar amount of the suspected error.

- *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not

required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Letter

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct. **While we investigate whether or not there has been an error:**

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.
- *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your Credit Card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* at:

Bank of the West
BankCard Customer Service Department
PO Box 2319
Omaha, NE 68172-9793

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

NOTICE FOR WISCONSIN RESIDENTS: Any holder of this Credit Card Agreement is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.