

# GM Card Terms and Conditions

## Your GM Card Rates

Interest Rates and Interest Charges	
<b>Annual Percentage Rate (APR) for Purchases</b>	<b>0%</b> introductory APR for 12 months from the date of account opening. After that, your APR will be <b>15.74% to 25.74%</b> , based on your creditworthiness. This APR will vary with the market based on the Prime Rate.
<b>APR for Balance Transfers</b>	<b>15.74% to 25.74%</b> , based on your creditworthiness. This APR will vary with the market based on the Prime Rate.
<b>APR for Cash Advances</b>	<b>27.74%</b> This APR will vary with the market based on the Prime Rate.
<b>How to Avoid Paying Interest on Purchases</b>	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.
<b>For Credit Card Tips from the Consumer Financial Protection Bureau</b>	<b>To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at <a href="https://www.consumerfinance.gov/learnmore">https://www.consumerfinance.gov/learnmore</a></b>

Fees	
<b>Transaction Fees</b> <ul style="list-style-type: none"><li>• Balance Transfer</li><li>• Cash Advance</li></ul>	<b>None</b> <b>None</b>
<b>Penalty Fees</b> <ul style="list-style-type: none"><li>• Late Payment</li></ul>	Up to <b>\$40.</b>

### HOW WE WILL CALCULATE YOUR BALANCE:

We use the daily balance method (including new Transactions).

### PRIME RATE:

Variable APRs are based on the 4.00% Prime Rate as of 05/31/2022.

### FOR NEW YORK RESIDENTS:

For more information, call Issuer at 877-255-5923. New York residents may contact the New York state department of financial services by telephone or visit its website for free information on comparative credit card rates, fees and grace periods. Contact the New York state department of financial services at 1-800-342-3736 or <http://www.dfs.ny.gov>.



## Welcome to the GM Consumer Card!

Your GM Consumer Card Account is issued by Goldman Sachs Bank USA, Salt Lake City Branch ("**Bank**," "**we**," "**us**," or "**our**") and this is a legal agreement between you and us. By using or permitting others to use your Account, you are agreeing to be bound by this "**Agreement**," which includes this GM Consumer Card Customer Agreement and your Rates and Fees Table. Please read it carefully and keep a copy for your records.

**THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION WHICH PERMITS YOU OR US TO REQUIRE CLAIMS TO BE ARBITRATED AND FORBIDS CLASS ACTIONS UNLESS YOU (1) ARE SUBJECT TO THE PROTECTIONS OF THE MILITARY LENDING ACT OR (2) TIMELY EXERCISE YOUR RIGHT TO REJECT ARBITRATION AS PROVIDED IN THE ARBITRATION PROVISION, WHICH IS SET FORTH AT THE END OF THIS AGREEMENT.**

You can request a current version of this Agreement by contacting us.

### CONTACTING US

Except as explicitly set forth in this Agreement, you can contact us with questions or other matters about your Account by:

- Calling us toll-free at 1-833-773-0988; or
- Writing to us at P.O. Box 70321, Philadelphia, PA 19176-0321.

If you attempt to contact us by other means, we may not receive your message and may not be able to respond in a timely manner, or at all.

### CHANGES TO THIS AGREEMENT

Subject to applicable law, we may change any term of this Agreement, or add new provisions, at any time in our sole discretion, and these changes may be effective immediately. Subject to applicable law, continued access to or use of your Account following any notice shall be deemed to be your acceptance of such modified version of this Agreement. In some cases, you have the right under applicable law to advance notice and to reject a change. In cases where you have a right to reject a change and you reject the change, we will not apply that change to your Account; however, we may require you to close your Account. In all other instances, the revised version of this Agreement will apply to your Account whether or not you choose to close your Account.

## Important Definitions

*This section defines some important terms used in this Agreement.*

**"Account"** means the GM Consumer Card Account opened for you under this Agreement.

**"Authorized User"** means a person who you and we authorize to make Transactions on your Account, but who is not responsible for repaying any amounts due on the Account.

**"Balance Transfer"** means a transfer of a balance that you owe to a different creditor, to your Account.

**"Business Day"** means Monday through Friday, excluding all U.S. federal holidays.

**"Card"** means any physical, digital or virtual card, or other number or device that may be used to access the Account.

**"Cash Advance"** means any cash advance and, to the extent permitted, any other cash-like transaction, including purchases of cash equivalents such as traveler's checks, foreign currency or cryptocurrency; money orders; peer to peer transfers, wire transfers or similar cash-like transactions; lottery tickets, casino gaming chips (whether physical or digital) or race track wagers or similar betting transactions.

**"Cash Advance Limit"** means the maximum dollar amount of any Cash Advances we allow on your Account at any point in time. A portion of your Credit Limit is your Cash Advance Limit.

**"Credit Limit"** means the maximum amount of credit you may access from your Account at any point in time.

**"Minimum Payment Due"** means the minimum amount that you must pay to us by the Payment Due Date in order to keep your Account current.

**"Payment Due Date"** means the date shown on your Statement by which you must pay us at least the Minimum Payment Due.

**"Purchase"** means a purchase or lease of goods or services using your Account.

**"Statement"** means the document that we generally provide to you each Statement Period that shows Account activity and amounts you owe. Each Statement reflects a single Statement Period.

**"Statement Balance"** means the total amount owing on your Account at the end of a Statement Period. It will be shown on each Statement.

**"Statement Period"** means the period reflected on your Statement, or that your Statement would reflect if there were activity that requires us to provide you with a statement. You will have a Statement Period even if a Statement is not provided. A Statement Period may also be referred to as a billing cycle.

**"Transaction"** means a Purchase, Balance Transfer or Cash Advance, as applicable.

**"Transaction Category"** means the balances owing on your Account that correspond to a specific type of Transaction. Transaction Categories, and balances within Transaction Categories, may be subject to different APRs or terms. For example, certain balances within the Balance Transfer Transaction Category may be subject to promotional terms.

**"You," "your," and "yours"** mean the person(s) who opened the Account and/or who are liable for amounts owing under the Account. These terms include Co-Owners (as defined in the Joint Accounts section) of the Account.

## **Your Account**

*This section explains how you may use the Account, limitations on your use of the Account and your obligation to pay us amounts billed to your Account.*

### **PROMISE TO PAY**

You promise to pay us all amounts charged to your Account under this Agreement, including all Transactions, interest, fees and other amounts billed to you.

### **RESPONSIBILITY FOR USE OF THE ACCOUNT**

You are liable for all Transactions made on your Account, including any interest and fees, by you or anyone you authorize to use your Account or Card. This includes any Transaction made by (i) an Authorized User; (ii) a person to whom you or an Authorized User has provided a Card, the Account or any other Account access device, including providing a person Credentials (as defined below) or with access to a mobile device on which a Card is provisioned; or (iii) a person acting in any way by which you or an Authorized User would be deemed to have allowed or authorized their use of your Account.

### **JOINT ACCOUNTS**

If multiple people are liable on your Account (each a “**Co-Owner**”), your Account is a joint account and the following provisions apply:

- Each Co-Owner is individually and jointly responsible for paying us all amounts due on the Account, even if one Co-Owner is unable or unwilling to pay.
- Unless otherwise required by law, we may contact any Co-Owner individually about the Account and any notice or communication from us will be effective for the Account when provided to any Co-Owner.
- Any Co-Owner's requests and instructions will apply to the Account. Any instruction or consent provided by a Co-Owner may be applied to the Account, and will be applicable to all Co-Owners and may affect any Authorized Users. For example, we will honor a Co-Owner's requests to increase the Credit Limit (if the Account is eligible), add an Authorized User, request Account information, update information provided to us, receive a credit balance refund and exercise any other rights under this Agreement. If we receive different or inconsistent requests or instructions from Co-Owners, we may accept or reject any request or instruction from any Co-Owner in our sole discretion. We may also choose to not obtain consent from all Co-Owners.
- Co-Owners may have access to information about each other's use of the Account. If you used the Account as an individual before sharing it as a joint account, that information will also be available to any Co-Owner. For example, Co-Owners may receive information about your Transaction history, payment activity, disputes, participation in relief opportunities provided by us and what we have reported to credit bureaus. Co-Owners may also access any Statement or other document relating to the Account.
- Each Co-Owner agrees that the other Co-Owner on the Account is their agent. Each Co-Owner also agrees to be the agent of the other Co-Owner on the Account.
- A Co-Owner may not remove themselves or any Co-Owner from a joint account. However, a Co-Owner may request to close the joint account and then request a new individual account, subject to our eligibility criteria in effect at the time. Co-Owners will remain responsible for any balances owed on the closed joint account.
- The information about the Account that we report to credit bureaus will be reported for each Co-Owner.

### **AUTHORIZED USERS**

You may request that we add Authorized Users to your Account. We will evaluate and approve or deny your request (for example, we will deny a request to add an Authorized User who is under 13 years of age). You understand that any Authorized User's use of the Account is subject to the terms of this Agreement. You agree to share this Agreement with your Authorized Users and explain that their use is subject to its terms. By permitting someone to be an Authorized User, you are allowing them to use your Account in all respects, including for Transactions. You are liable for their use of the Account, including any Transactions that are made by others if the Authorized User permitted them to use the Account.

Authorized Users may have the same access to information about the Account and its users as you. You agree that we may discuss the Account with an Authorized User, although we have no obligation to do so. An Authorized User cannot add other Authorized Users, adjust the Credit Limit or close the Account. We may report information about the Account to credit bureaus, including information in any Authorized User's name. This information may appear on their credit report.

You represent that (i) any person that you have requested to be added to your Account as an Authorized User has given you permission to be added to the Account; (ii) that you have made a copy of this Agreement available to them; (iii) you have informed them that we may report Account information in their name; and (iv) you are not requesting that a person be added to your Account as an Authorized User for your own commercial purposes (such as credit report tradeline renting).

You may remove an Authorized User from the Account by contacting us and requesting that they be removed. Authorized Users may also remove themselves from the Account. We have the right to remove any Authorized User in our sole discretion. In some cases, when an Authorized User is removed, we may need to close your Account, open a new account and issue a new Card to you.

## USING YOUR ACCOUNT

You may use your Account for lawful personal, family or household purposes only, and not for business purposes. However, if the Account is used for business purposes or for unlawful Transactions, you must still pay us for those Transactions and any resulting interest and fees. If your Account is used for any Transaction not permitted by this Agreement, we may deny the Transaction or treat the Transaction as a Cash Advance.

You may not use or permit your Account to be used for:

- Any illegal purpose, including in connection with unlawful domestic or international gambling websites or to purchase illegal goods or services;
- Any purpose in any country or territory that is subject to economic sanctions administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) or with any person or entity subject to these sanctions; or
- Paying any debts to us.

## YOUR CREDIT LIMIT

We assign a Credit Limit and a Cash Advance Limit to your Account. We may increase or decrease these limits from time to time, with or without prior notice, subject to applicable law. If you attempt a Transaction that will cause your Account balance (including any pending authorizations) to exceed the applicable limit, we may, in our sole discretion and subject to applicable law:

- Permit the Transaction but not raise your Credit Limit or Cash Advance Limit and treat the Transaction as payable over time in accordance with this Agreement; or
- Refuse the Transaction.

If we permit the Transaction, you will be responsible for paying that amount, including any related interest and fees, and a balance in excess of your Credit Limit may be reported to the credit bureaus.

## USE OF MOBILE PHONES AND SIMILAR DEVICES

Certain mobile devices such as tablets, mobile or smart phones or other electronic devices can store and/or access Account data or information (for example, through a mobile wallet), which can be used to make Transactions using the Account. Services that enable your mobile devices to act or function in this manner may have separate terms and conditions that govern their use. We are not responsible or liable should you violate any such terms or conditions or for any consequences of such violation. You will be liable for Transactions made through use of those services.

## DECLINED TRANSACTIONS

We may decline Transactions for any reason, including suspected or actual fraud, violation of applicable law, your default under this Agreement, or if you exceed your Credit Limit or Cash Advance Limit. We are not liable to you or anyone else if we do not authorize a Transaction, even if the charge is within your Credit Limit or Cash Advance Limit or you are not in default. If we decline a Transaction, we may advise the person who attempted the Transaction that it was declined. We may also limit the number or dollar amount of Transactions we approve for your Account over a specific time period, such as a single day. We are not responsible if anyone refuses to accept a Card.

## PROTECTING YOUR ACCOUNT INFORMATION, CREDENTIALS AND CARDS

You are solely responsible for maintaining the security of any Cards and any other authentication credentials used in connection with your Account (collectively, "**Credentials**"). If you authorize or allow anyone else to use your Account (e.g., by providing your Card or otherwise providing any of your Credentials to a third party), the person may be able to make Transactions using your Account, and you will be liable for all such Transactions.

## YOUR LIABILITY FOR UNAUTHORIZED TRANSACTIONS

You agree to contact us immediately if you believe any Card has been lost or stolen, any Credentials have been compromised or your Account has been accessed without your permission. You will not be liable for any unauthorized transactions made on your Account.

## TRANSACTIONS MADE IN FOREIGN CURRENCIES

Transactions, returns and credits made in a currency other than U.S. dollars will be converted into U.S. dollars. We do not add any foreign exchange rate fee to these Transactions. The conversion will be performed by Mastercard International, the payment network associated with your Account (the "**Network**"). The Network follows its own methods for conversions that are subject to change. The conversion will occur on the day the applicable Transaction, return or credit is processed by the Network. This date may be different than the date of the Transaction, return or credit. As a result, the conversion rate may differ from the rate on the date of the Transaction, return or credit, or the rate on the date the Transaction, return or credit posted on your Account.

## NETWORK BENEFITS

The Network may make benefits available to you that are not part of this Agreement and are subject to change or cancellation. Details about Network benefits can be found at [www.marcus.com](http://www.marcus.com).

## REWARDS

You may be offered rewards, benefits, features and/or services in association with your Account ("**Rewards**"). Rewards will be subject to separate terms and conditions provided to you by us, our partners or our service providers. Rewards may be changed or discontinued at any time for any reason and without notice. We are not liable for Rewards, including the discontinuation or modification of any Rewards, or for the actions or omissions of any third parties.

## Annual Percentage Rate, Interest Charges, Fees & Minimum Payment Due

*This section explains how we determine your APR and DPR, how we calculate the interest you might owe each Statement Period, how you can avoid interest in a given Statement Period, the fees that may be charged and how we calculate the Minimum Payment Due each Statement Period.*

"**Annual Percentage Rate**" or "**APR**" means a percentage, shown as a yearly rate, that is used in calculating periodic interest on your Account.

"**Daily Periodic Interest Rate**" or "**DPR**" means the rate that is applied to the Daily Balance to calculate interest.

"**Margin**" means a percentage rate that we add to the Prime Rate to calculate the APR. Your Account will only have a Margin if you have a variable APR.

**See your Rates and Fees Table for your Account's APRs and DPRs, to see if your APRs are variable and, if so, the Margins that apply to your Account.**

## HOW WE DETERMINE INTEREST RATE(S)

Your APRs and the Transaction Categories to which the APRs apply, are set forth in your Rates and Fees Table. Your APRs may be variable. Your Rates and Fees Table indicates if your APRs are variable. APRs will never exceed the maximum rates permitted by applicable law.

### How We Determine Variable APRs

For each variable APR applicable to your Account, the APR equals the Prime Rate plus the Margin that applies to that Transaction Category. Variable APRs may increase or decrease each Statement Period if the Prime Rate changes, as described below. If the Prime Rate changes, the new variable APRs will take effect as of the first day of the Statement Period following the change and apply to existing and new balances. Any increase in the Prime Rate may result in an increase to the interest and Minimum Payment Due that you are required to pay to us.

The "**Prime Rate**" in effect for a given Statement Period is the highest U.S. Prime Rate published in the print edition of *The Wall Street Journal* (WSJ) on the last day of the calendar month preceding the first day of the Statement Period. If the WSJ does not publish the Prime Rate on that day, then we will look to the last day before then that such rate was published. If the WSJ temporarily or permanently discontinues publishing the Prime Rate or if the WSJ changes its definition of the Prime Rate, we may substitute another publicly available index not within our control and adjust the Margin, in our sole discretion, subject to applicable law.

#### **Example:**

On May 31 (which falls on a Business Day), the Prime Rate reported in the WSJ is 4.75%.

Assume the Margin for your Account is 13.25%.

To determine your APR for the Statement Period that begins in June, we add the Prime Rate to the Margin, which would be 18%.

### How We Determine the Applicable DPR

The DPR for each balance subject to interest within each Transaction Category equals the applicable APR divided by 365 (366 in a leap year).

## PROMOTIONAL OR INTRODUCTORY OFFERS

We may from time to time offer you promotional or introductory offers. These offers may include temporary APRs and/or different terms that will apply to specified Transactions, Transaction Categories or balances on your Account. For example, we might offer a reduced APR for certain Purchases, Balance Transfers or Cash Advances during a specified period of time. And, while we will generally treat peer to peer transfers as Cash Advances, we may from time to time treat peer to peer transfers as Purchases. Details will be provided at the time these offers are provided to you, including in your Rates and Fees Table if they are offered in association with the opening of your Account.

## HOW WE DETERMINE YOUR DAILY BALANCES SUBJECT TO INTEREST

We determine the “**Daily Balance**” for each balance subject to interest within each Transaction Category as follows:

- We begin with the balance at the end of the prior day (excluding interest for that day); then
- We add the prior day's interest; then
- We add any new Transactions, including any fees we charge, from that day (unless the Transaction is a Purchase that qualifies for a Grace Period, as described below); and, then
- We subtract any new payments or credits posted to your Account that day (and not already deducted from your Account).

If any Daily Balance is less than zero, we treat it as zero. We repeat this process for each balance subject to interest within each Transaction Category.

Assuming no Grace Period applies (for example, you do not pay your Statement Balance in full), then:

$$\text{Daily Balance} = \text{Prior day's closing balance} + \text{Prior day's interest} + \text{New Transactions} - \text{New payments and credits}$$

## HOW WE CALCULATE YOUR INTEREST

We use the Daily Balance method (which includes new Transactions) to calculate interest owed on each balance subject to interest within each Transaction Category each Statement Period. Under this method, we first calculate the daily interest for each day in the month. We do this by multiplying the applicable DPR by the Daily Balance of each balance subject to interest within each Transaction Category for each day in the Statement Period. Different Transaction Categories, and different balances within each Transaction Category, may have different APRs and DPRs. The APRs and DPRs currently applicable to each balance subject to interest within each Transaction Category are set forth in the Rates and Fees Table. Then, to determine the total interest for a Statement Period, we add the daily interest and round to the nearest cent.

Daily Balances that are subject to a promotional or introductory offer that provides a reduced APR (for example, a balance within either the Purchase or Balance Transfer Transaction Category that is subject to a promotional APR) will be multiplied by the applicable DPR each day the balance is outstanding and for which the promotional or introductory offer applies. Promotional APRs and DPRs will be shown on your Statement.

$$\text{Interest} = \text{Sum of daily interest for each day in the month}$$
$$\text{Daily interest} = \text{daily balance} \times \text{DPR}$$

## WHEN DOES INTEREST BEGIN TO ACCRUE

Interest will accrue on Transactions beginning on the date that they occur. However, you can avoid interest on Purchases while a Grace Period applies to your Account. A “**Grace Period**” is a period of time when you are not charged interest on Purchases. Grace Periods do not apply to Balance Transfers or Cash Advances. This means you will pay interest on Balance Transfers and Cash Advances from the date they occur.

## HOW TO AVOID INTEREST ON PURCHASES

Below we explain how you can maintain, lose and regain the Grace Period.

- **Initial Grace Period:** Your Account starts with a Grace Period, which you can retain by always paying your Statement Balance by its corresponding Payment Due Date.
- **Losing a Grace Period:** You will lose your Grace Period if you pay less than the Statement Balance by its corresponding Payment Due Date. You will not pay interest on the portion of the balances within your Purchases Transaction Category that you paid during the Statement Period that you lost your Grace Period.
- **Regaining a Grace Period:** If your Account has lost its Grace Period, you will pay interest on Purchases from the date they occur. A Grace Period can be regained by paying the Statement Balance by its corresponding Payment Due Date. You can then maintain the Grace Period in subsequent Statement Periods so long as you pay the Statement Balance by its corresponding Payment Due Date. After you re-enter a Grace Period, interest may appear on your next Statement. This reflects interest charged from the beginning of that Statement Period through the date we received payment for the prior Statement Period.

## Impact of Reversed Payments or Credits

If your Account had a Grace Period because of a payment you made and we posted to your Account but then that payment is reversed, you will lose the benefit of that Grace Period. As a result, we may charge you the interest you saved or would have saved because of the reversed payment. If you want to regain a Grace Period during a Statement Period when a payment is reversed, you must pay before that Statement Period's Payment Due Date the entire Statement Balance (which will include the amount of the reversed payment plus any additional interest charged due to the reversed payment).

## LATE FEE

Subject to applicable law, we may assess a late fee if we do not receive at least the Minimum Payment Due shown on your Statement by: (i) for mailed payments, 5:00 p.m. local time at the address shown on the remittance portion of your Statement (the **"Payment Address"**) on your Payment Due Date; or (ii) for electronic funds transfer (**"EFT"**) payments, by 11:59 p.m. ET on your Payment Due Date. See the Making Payments Section below for more details. The maximum amount of the late fee is found in your Rates and Fees Table. The late fee will never exceed the Minimum Payment Due. Late fees are treated as Purchase Transactions on your Account.

## HOW WE CALCULATE YOUR MINIMUM PAYMENT DUE

Your Minimum Payment Due equals any past due amount plus the greater of:

- \$29; or
- The sum of (i) 1% of the Statement Balance plus (ii) any interest billed to your Account during that Statement Period. The sum of these amounts is rounded up to the nearest dollar and then any late fees are added.

However, if the Statement Balance is less than the amount calculated above, then the Minimum Payment Due equals the Statement Balance.

## Making Payments

*This section explains when you must pay us each Statement Period, how to pay us and how we apply those payments to your Account.*

## WHEN TO PAY

Each Statement Period during which your Account has a balance, or as otherwise required by applicable law, we will send or provide a Statement reflecting activity on your Account that occurred since the previous Statement Period, such as new Transactions, interest and fees. It will also identify your Statement Balance, the Minimum Payment Due and the Payment Due Date. We may send only one Statement per Statement Period for your Account, even if your Account is a joint account.

You must pay at least your Minimum Payment Due by the Payment Due Date each Statement Period. If you do not pay at least the Minimum Payment Due by the Payment Due Date, we may charge a late fee to your Account. You may pay all or part of the outstanding balance on your Account at any time without penalty.

## HOW TO PAY

You agree to make each payment by check drawn on a financial institution located in the U.S., a U.S. dollar money order or through an EFT, as described below. All payments must be in U.S. dollars. All checks and money orders must be mailed or delivered to us at the Payment Address reflected on your Statement. Mailed payments received by 5:00 p.m. local time at the Payment Address and EFT payments received by 11:59 p.m. ET will generally be credited as of the date received. If your Payment Due Date falls on a day when we do not receive mail (for example, a Sunday), but we receive a mailed check or money order payment from you on the next day when mail is delivered, we will credit your Account as if we had received that payment on your Payment Due Date. We may, at our option, adjust the available credit on your Account to reflect a payment, or a portion of the payment, immediately after a payment is received. If we do this, and the payment is later rejected, your available credit will be decreased as a result of the payment failing, and you will be responsible for repaying the amount of the payment that was reversed. (It is possible in these instances that a payment reversal could cause you to exceed your Credit Limit.) We may also delay increasing the available credit on the Account for a period of time following a payment. You can check the status of your available credit online at [www.marcus.com](http://www.marcus.com) or by contacting us.

We may reject a payment if your Account has a credit balance when we receive the payment or if the payment would cause your Account to have a credit balance. Making a payment in a Statement Period that is more than the Minimum Payment Due for that Statement Period, does not reduce or eliminate any obligation to make Minimum Payments Due in subsequent Statement Periods. We do not pay interest on overpayments or on credit balances on your Account. Credits to your Account from sources such as merchants are not considered payments on the Account and generally do not reduce your Minimum Payment Due.

## ELECTRONIC FUNDS TRANSFER (EFT) PAYMENTS

We offer you the option to make payments by EFT. Our EFT services involve us initiating one or more electronic debits from a deposit account that you specify. While you are not required to use EFT services that we provide, you agree that the Payment Authorization below applies to any EFT service that you use.

## ELECTRONIC CHECK CONVERSION OF PAYMENTS

When you pay us by check, you authorize us to use the information on your check to either create a one-time EFT to your Account or to process the payment as a check transaction. When we use the check information to make the EFT, funds may be withdrawn from your deposit account as soon as the same day we receive your payment. You also authorize us to reinitiate any such declined or dishonored EFT up to two additional times (or any greater number of times permitted by applicable network rules). You will not receive your cancelled check from your financial institution because we may destroy it.

## NON-CONFORMING PAYMENTS

We may reject any payments that do not comply with our payment instructions set forth in this Agreement or on your Statement (each a **"Non-conforming Payment"**) in our discretion. If we accept a Non-conforming Payment, crediting your Account for the payment may be delayed. Delayed crediting may cause you to incur additional interest and fees, subject to applicable law.



We may accept any Non-conforming Payments, late payments, partial payments or payments with restrictive endorsements, without losing any of our rights, including our right to close your Account. We may deposit any payment you send us for less than the total outstanding balance of your Account that you mark "paid in full" or with any similar language or otherwise seek to provide as full satisfaction of a disputed amount. If we do, this payment will not fully satisfy the disputed amount or otherwise affect our rights to payment in full. You may not use a postdated check to make a payment, but if you do, we may, before the date on the check, either: (i) cash it or (ii) return it to you without applying it to your Account. We are not liable to you for any loss or expense arising out of the action we elect to take in connection with a postdated check.

## **PAYMENT AUTHORIZATION**

Each time you authorize us to take an EFT payment from your deposit account, you represent and warrant that you are legally authorized to use such deposit account. By providing us with your deposit account information, you authorize us to:

- Retain this information for the purpose of initiating EFT payments based on your instructions;
- Periodically make credits to any such deposit account;
- Reinitiate any declined or dishonored EFT payment up to two additional times (or any greater number of times permitted by applicable network rules); and
- Correct any payment, credit or account errors by initiating a credit or debit to your deposit account.

Any authorization will continue until it is cancelled as described below, or when your Account is closed with a zero balance.

## **Payment Dates**

If you authorize a payment, we will credit your payment on the scheduled payment date. We may pull the payment on or after the date on which you schedule a payment.

If you authorize a payment for the 29th, 30th or 31st of a month, and the month does not have that many days, we will credit the payment as of the last day of that month. You authorize us to take that payment on or after the last day of that month.

## **Payment Amounts and Adjustments**

You can choose to make one-time or recurring payments. We may adjust the amount of your payment before processing it in the following ways:

- To avoid creating a credit balance on your Account;
- If you have scheduled a recurring payment for the amount of your Minimum Payment Due or Statement Balance, your payment amount may be reduced automatically based on payments, returns and other credits to your Account that are posted by 11:59 p.m. ET on the day prior to the date of your scheduled payment. If an earlier payment is rejected, we may automatically add that amount to your scheduled payment, but not in excess of the amount you authorized;
- If you have scheduled a recurring payment for a fixed dollar amount, your payment amount will not be reduced automatically based on payments, returns or other credits to your Account. A recurring payment for a fixed dollar amount will always be processed if you have a balance, even if it creates a credit balance;
- If any recurring payment is declined because of insufficient funds or otherwise dishonored, you authorize us to automatically turn off future recurring payments. If we turn off future recurring payments, you will have to make one-time payments or set up a new recurring payment plan; and/or
- In all instances, if your Account balance on the scheduled payment date is \$0 or less, then we will automatically cancel your payment scheduled for that date. In the case of a recurring payment, your payment will automatically restart on the next scheduled payment date on which your Account balance is greater than \$0.

We will not adjust your payment to an amount greater than what you authorize.

## **Payment Cancellations**

You can cancel a scheduled payment and/or cancel recurring payments by contacting us. We must receive your cancellation request no later than 11:59 p.m. ET on the day prior to the date of your scheduled payment. We may cancel your payment(s) if any prior payment from the associated deposit account is returned, or for any other reason we deem appropriate. We will provide you with notice of such cancellation.

## **WHEN WE CREDIT YOUR PAYMENTS**

### **EFT Payments**

If you make an EFT payment in accordance with the payment instructions detailed in this Agreement and in your Statement, we will credit your payment as follows:

- If you initiate a one-time EFT payment using a deposit account by 11:59 p.m. ET, we will credit the payment as of that calendar day. Otherwise, we will credit your payment as of the next day.
- If you set up recurring EFT payments, we will credit each payment as of its scheduled payment date.

## HOW WE APPLY PAYMENTS, CREDITS AND REFUNDS

Subject to applicable law, when we receive a payment for your Account we will apply:

- Amounts up to your Minimum Payment Due in any manner we choose; and
- Any amounts exceeding the Minimum Payment Due first to the balance with the highest APR, and then to balances with lower APRs (in descending order based on the applicable APR).

Refunds and other credits may be applied to your Account in any manner and to any balance that we choose, and generally do not reduce your obligation to pay your Minimum Payment Due.

## FEES FROM YOUR DEPOSITORY INSTITUTION

You are solely responsible for any fees that may be charged to you by your depository institution, including any fees for payments that we attempt and the depository institution rejects.

### Account Default

*This section explains when your Account will be in default and what may happen when your Account is in default.*

## WHAT TRIGGERS A DEFAULT

Your Account will be in default of this Agreement, to the extent permitted under applicable law, if:

- You fail to pay any Minimum Payment Due on or before the applicable Payment Due Date, or your Minimum Payment Due is returned unpaid or cannot be processed;
- You breach any term of this Agreement or any other agreement with us;
- An Authorized User breaches any term of this Agreement;
- You file or become the subject of a bankruptcy or insolvency proceeding;
- You give us any false, incomplete or misleading information; or
- You die or become legally incapacitated.

## WHAT IS THE EFFECT OF BEING IN DEFAULT

If your Account is in default, we may take any of the following actions to the extent permitted under applicable law:

- Continue to charge you interest as long as you have an outstanding Account balance;
- Lower your Credit Limit and/or Cash Advance Limit;
- Decline or otherwise limit your ability to make Transactions;
- Report information about your Account to credit bureaus;
- Begin collections activities;
- Suspend or close your Account;
- Remove any Authorized Users from your Account;
- Require you to immediately pay all or any portion of your total outstanding balance;
- Require you to pay our collection costs, attorneys' fees, court costs and all other expenses of enforcing our rights under this Agreement; and/or
- Take any other action permitted by law.

### Suspending or Closing Your Account

*This section explains when you may close your Account, when we may suspend or close your Account and what happens when your Account is closed.*

## BY YOU

You can, at any time, close your Account by contacting us.

## BY US

We may suspend or close your Account, or suspend or cancel any feature on your Account, at any time and for any reason permitted under applicable law.

## EFFECT OF CLOSING YOUR ACCOUNT

When your Account is closed, you must:

- Return or destroy all physical Cards;
- Stop using your Account to make payments to others and cancel any such payments that may be automatic or recurring; and
- Continue to pay at least the Minimum Payment Due each Statement Period until the total outstanding balance of your Account, including any amounts which post after the Account's closure, is paid in full.

We are not liable for any refusal to honor your Card or Account or for any retention of your Card by any person or entity.

## **Credit Information & Credit Reporting**

*This section describes how we use information about you that we obtain from credit bureaus, what information we may provide about you to credit bureaus and how to dispute items on your credit bureau report.*

### **OBTAINING YOUR CREDIT BUREAU REPORTS**

You authorize us to obtain your consumer report(s) and other information from consumer reporting agencies and/or other third party sources now and on an ongoing basis for use in: (i) servicing, monitoring, collecting or enforcing this Agreement or any other agreement between you and us; (ii) providing your credit data to you; (iii) evaluating you for and offering you other financial products and services; and/or (iv) other related purposes.

### **REPORTING INFORMATION TO CREDIT BUREAUS**

YOU AGREE THAT WE MAY REPORT INFORMATION ABOUT YOUR ACCOUNT TO CREDIT BUREAUS. LATE PAYMENTS, MISSED PAYMENTS OR OTHER DEFAULTS ON YOUR ACCOUNT MAY BE REFLECTED IN YOUR CREDIT BUREAU REPORT.

We may report information about the Account to credit bureaus in any Authorized User's name. This information may appear on their credit report.

If you believe that we have reported incorrect information about your Account to a credit bureau, you should write us at P.O. Box 70321, Philadelphia, PA 19176-0321. Please include your name, address associated with your Account, the email address associated with your Account, telephone number and a description of the information you believe is incorrect and why. If available, please include a copy of the credit bureau report in question.

## **Communications**

*This section explains how we may contact you about matters relating to your Account and what you should do to update us with your current contact information.*

### **CONTACTING YOU**

You understand and agree that we (which for purposes of this section, along with the word "us," also includes our agents and service providers) may always communicate with you using any technology or methods that are permitted by law and that do not require your prior consent. You also agree that we may communicate with you using an automatic telephone dialing system and through the delivery of artificial and/or prerecorded voice messages. Some of the ways we may contact you include calls, emails, text messages, device-level notifications and other electronic notification methods. These communications may relate to upcoming due dates, missed or returned payments, other matters relating to the servicing or collection of amounts due under this Agreement or any other agreement with us and your relationship with us more generally. We may communicate with you using any telephone numbers (including wireless, landline and voice over IP numbers) or email addresses that you give or have given to us. You understand and agree that anyone with access to your telephone or email account may listen to or read the messages that we leave or send you. You agree that we will not be liable for any charges that you incur in connection with any communications that we send to you.

You agree to notify us immediately if you change telephone numbers or are no longer the subscriber or usual user of a telephone number that you have given to us. You agree that we may monitor, record, retain and reproduce your telephone calls and other communications with us. To the extent you have a right under applicable law, you can withdraw your consent to receive text messages through a telephone network (e.g., SMS) or calls, that are made with an automatic telephone dialing system or that deliver a prerecorded and/or artificial voice message. To withdraw your consent, you must contact us in accordance with this Agreement.

### **NOTICES**

Any written or electronic notice or communication we send to you will be effective when sent to you electronically, or when mailed to the address associated with your Account. We may also in certain instances mail notices to the address associated with your Account.

### **CHANGES TO ACCOUNT INFORMATION**

You must promptly notify us of any change to your name, mailing address, email address or phone number by contacting us. We may rely on your phone number, email address or mailing address as it appears on our records for any and all Account communications we send to you unless and until you notify us of any changes. We may also, in our sole discretion, update your mailing address if we receive a notification of change from the U.S. Postal Service. You authorize us to share updates to your contact information with General Motors LLC ("GM"), for GM to use in accordance with its privacy policy, available at <https://www.gm.com/privacy-statement.html>.

## **Other Important Information**

*This section provides additional information that is important to understanding your rights and obligations for your Account.*

### **GOVERNING LAW**

This Agreement is entered into between you and us in the State of Utah and we extend credit to you from Utah. This Agreement and your Account will be governed by and construed in accordance with federal law and any applicable laws of the State of Utah without regard to rules concerning conflicts of law or choice of law.

### **BANKRUPTCY FILING**

All bankruptcy notices and related correspondence to us must be sent to the following address: P.O. Box 70321, Philadelphia PA 19176-0321, Attn: Bankruptcy Notice. You promise us that you are not contemplating making a bankruptcy filing at the time of your application for an Account and have not consulted an attorney within the past six (6) months about making any such filing.

### **CORRESPONDENCE**

To the extent permitted under applicable law, any written or electronic correspondence you send to us will not be effective until we receive and have had a reasonable opportunity to act on such correspondence. However, any written or electronic correspondence we send to you will be effective and deemed delivered when mailed to you at your mail address (or your email address if you have authorized electronic communications) as it appears on our records. If your Account is a joint account, we may send Account materials (Cards, Statements and notices) to any Co-Owner of the Account, and that person will be responsible for delivering those materials to the other Co-Owner of the Account and, to the extent applicable, to Authorized Users. Notice to any of you will be considered notice to all of you.

### **DELAY IN ENFORCING OUR RIGHTS**

The failure by us to enforce at any time any of the provisions of this Agreement, to exercise any election or option provided in this Agreement, to require at any time your performance of any of the provisions of this Agreement or to enforce our rights under applicable law will not in any way be construed as a waiver of such provisions, election, option, performance or rights.

### **WAIVER OF RIGHTS**

Subject to applicable law, you waive any right you may have for us to (a) act promptly in bringing any action(s) against you (known as diligence); (b) demand payments of amounts due (known as presentment); (c) obtain an official certification of non-payment (known as protest); and (d) give notice that amounts due have not been paid (known as notice of dishonor or notice of default and non-payment).

### **ENTIRE AGREEMENT; SEVERABILITY**

This Agreement is the complete and final expression of the agreement between us and you with respect to your Account, and this Agreement may not be contradicted by any alleged oral agreement. Subject to the special rule in the Arbitration section, if any provision of this Agreement is found to be invalid or otherwise unenforceable, or declared invalid or otherwise unenforceable by order of court, change in applicable law or regulatory authority, that provision will continue to be enforceable to the extent permitted by that court, law or agency, and the remainder of that provision will no longer be considered part of this Agreement. All other provisions of this Agreement will remain in full force and effect.

### **LANGUAGE; SECTION HEADINGS**

You agree that you can understand English-language communications and agree that the English-language version of all communications will be binding. As used in this Agreement, the term "including" means "including, but not limited to." The section headings and descriptions in this Agreement are for convenience only and do not in any way limit or define your or our rights or obligations in this Agreement.

### **ASSIGNMENT**

You may not sell, assign or transfer any of your rights or obligations under this Agreement. However, we may sell, assign or transfer your Account or any of our rights and obligations under this Agreement, without restriction and without your prior consent. Any attempted sale, transfer or assignment by you without our prior written consent will be null and void.

### **SERVICE PROVIDERS**

We may also use service providers and agents in connection with providing your Account or services related to the Account. In doing so, we may permit one or more of our service providers or agents to exercise any of our rights, rely on any consents or permissions that you have granted to us and enforce any of your obligations on our behalf.

## MILITARY LENDING ACT

The provisions of this section apply to members of the Armed Forces and their dependents pursuant to the Military Lending Act:

### Statement of Military APR

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 specific credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account).

### Oral Disclosures

Members of the Armed Forces and their dependents may hear important disclosures and payment information about this Agreement and additional information about whether these protections apply to them by calling 1-833-773-0988.

## ADDITIONAL DISCLOSURES

**California Residents:** You may apply for an account in your name alone, regardless of your marital status.

**Ohio Residents:** The Ohio rules 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.

**Vermont, Rhode Island and New York Residents:** A credit bureau report may be requested in connection with your application. At your request, we will tell you whether or not a credit bureau report was obtained and, if so, the name and address of the credit bureau that furnished the report. We may also request credit bureau reports from time to time in connection with any update, renewal or extension of the credit account, whenever we believe that such action is appropriate.

**Married Wisconsin Residents:** If you are married: (i) you confirm that this Account is being incurred in the interest of your marriage or family; (ii) no provision of any marital property agreement, unilateral agreement or court decree under the Wisconsin Marital Property Act will adversely affect a creditor's interest unless, before the time credit is granted, the creditor is furnished a copy of that agreement or decree or is given complete information about the agreement or decree; (iii) you understand and agree that we will provide a copy of this Agreement to your spouse for their information. If the Account for which you are applying is granted, you will notify us if you have a spouse by sending your name and your spouse's name and address to us at P.O. Box 70321, Philadelphia, PA 19176-0321.

**Maryland Residents:** If you are a Maryland resident as of the date you accept this Agreement, as evidenced by your billing address, to the extent, if any, that Maryland law applies to this Agreement and your Account and is not preempted by federal law, we elect to offer your credit account under Subtitle 9 (Credit Grantor Open End Credit Provisions) of Title 12 of the Maryland Commercial Law Article.

**New Jersey Residents:** None of the terms in this Agreement are unenforceable under New Jersey law.

**New York Residents:** For more information, call us at 1-833-773-0988. New York residents may contact the New York State Department of Financial Services by telephone or visit its website for free information on comparative credit card rates, fees and grace periods. Contact the New York State Department of Financial Services at 1-800-342-3736 or <http://www.dfs.ny.gov>.

**All Residents:** You promise us that you are not planning to file bankruptcy at the time of your application for your Account or when you seek to share your Account.

## Billing Rights Summary

*The notice below describes the minimum rights you have under the Fair Credit Billing Act.*

### YOUR BILLING RIGHTS: KEEP THIS DOCUMENT FOR FUTURE USE

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

### WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

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

Goldman Sachs Bank USA, Salt Lake City Branch  
P.O. Box 70321, Philadelphia, PA 19176-0321

In your letter, give us the following information:

- *Account information:* Your name and your 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.
- No later than 11:59 p.m. ET on the day prior to the date 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*. 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*:

Goldman Sachs Bank USA, Salt Lake City Branch  
P.O. Box 70321, Philadelphia, PA 19176-0321

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.

## Arbitration Provision

*This section is an arbitration provision and contains important information that affects your legal rights. PLEASE READ IT CAREFULLY.*

This arbitration provision does not apply to service members and their dependents who are entitled to protection under the Military Lending Act (10 U.S.C. § 987). If you would like more information about whether you are entitled to protection under the Military Lending Act and whether this section applies to you, please call us toll-free at 1-833-773-0988.

### ACKNOWLEDGMENT OF ARBITRATION

Credit is being extended to you and you are being provided access to and use of your Account on the basis of the inclusion of the following arbitration provision. By accepting this Agreement or using your Account, unless you reject arbitration as provided below, you acknowledge that **YOU ARE GIVING UP THE RIGHT TO LITIGATE CLAIMS (AS DEFINED BELOW) AND THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION.** You hereby knowingly and voluntarily **WAIVE THE RIGHT TO BE HEARD IN COURT OR HAVE A JURY TRIAL** on all Claims subject to this Agreement. You further acknowledge that you have read this arbitration provision carefully, agree to its terms and are entering into this Agreement voluntarily and not in reliance on any promises or representations whatsoever except those contained in this Agreement.

### HOW TO REJECT THIS ARBITRATION PROVISION

YOU MAY REJECT THIS ARBITRATION PROVISION BY CALLING US, OR WRITING TO US, AND STATING THE FOLLOWING: (I) YOUR NAME; (II) YOUR ACCOUNT NUMBER; (III) THE ADDRESS ASSOCIATED WITH YOUR ACCOUNT; AND (IV) THAT YOU ARE EXERCISING YOUR RIGHT TO REJECT THIS ARBITRATION PROVISION (A **"REJECTION NOTICE"**). **YOUR REJECTION NOTICE MUST BE RECEIVED WITHIN 90 DAYS AFTER THE OPENING OF YOUR ACCOUNT.** IF YOUR REJECTION NOTICE COMPLIES WITH THESE REQUIREMENTS, THIS ARBITRATION PROVISION WILL NOT APPLY TO YOU, EXCEPT FOR ANY CLAIMS SUBJECT TO PENDING LITIGATION OR ARBITRATION AT THE TIME YOU SEND YOUR REJECTION NOTICE. (IF OTHER PERSONS ARE OBLIGATED ON OR PERMITTED TO USE YOUR ACCOUNT, A REJECTION NOTICE IS LIMITED TO ONLY THE PERSON SUBMITTING THE REJECTION NOTICE. ANY OTHER PERSONS MUST SEND THEIR OWN REJECTION NOTICE.) REJECTION OF THE ARBITRATION PROVISION WILL NOT AFFECT YOUR OTHER RIGHTS OR RESPONSIBILITIES UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT YOU MAY HAVE WITH US.

### DEFINITIONS

For purposes of this arbitration provision, the following definitions apply:

- **"Claim"** means any claim, dispute or controversy (whether based upon contract; tort, intentional or otherwise; constitution; statute; common law; or equity and whether pre-existing, present or future), including initial claims, counter-claims, cross-claims and third-party claims, arising from or relating to: (i) this Agreement, your Account or your relationship with us; (ii) any servicing of your Account by our agents or service providers; (iii) advertisements, promotions or statements related to this Agreement or your Account; (iv) your application for credit; and (v) credit bureau reporting or debt collection on or related to your Account.
- **"You"** and **"your"** mean each and every person who is granted, accepts or uses your Account (including any Authorized User), except as otherwise provided in this arbitration provision.

### ARBITRATION

You or we may elect, without the other's consent, to resolve any Claim by individual binding arbitration unless the Claim has been filed in court and trial has begun or final judgment has been entered. Even if a Claim is litigated in court, you or we may elect arbitration of any Claim made by a new party or any Claim later asserted by a party in that or any related or unrelated lawsuit. You or we may also elect arbitration of a Claim that the parties initially opted to litigate in court if that Claim is later modified (including to be asserted on a class, representative or multi-party basis or to seek different or additional relief).

Notwithstanding the foregoing, only a court and not an arbitrator may decide any dispute or controversy about the validity, enforceability, coverage or scope of this arbitration provision, all of which are for a court and not an arbitrator to decide. However, disputes or controversies about the validity or enforceability of this Agreement as a whole are for the arbitrator and not a court to decide.

JAMS (1-800-352-5267, [jamsadr.com](http://jamsadr.com)) will serve as the default arbitration administrator. Claims may also be referred to the American Arbitration Association (**"AAA"**) (1-800-778-7879, [adr.org](http://adr.org)). You may obtain copies of the current rules, forms and instructions for initiating an arbitration directly from JAMS or the AAA. Claims may also be referred to another arbitration administrator, if you and we agree in writing, or to an arbitrator appointed pursuant to Section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the **"FAA"**). You and we agree that any arbitration proceedings initiated hereunder shall be kept confidential.

### OTHER CLAIMS SUBJECT TO ARBITRATION

In addition to Claims made by or against either you or us, Claims made by or against anyone connected with you or us or claiming through you or us (including any employee, agent, representative, affiliated company, predecessor or successor, heir, assignee or trustee in bankruptcy) are subject to arbitration as described herein.

### EXCEPTIONS

We agree not to invoke our right to arbitrate any individual Claim you bring in small claims court or an equivalent court with jurisdiction so long as the Claim is pending only in that court.



### **INDIVIDUAL CLAIMS ONLY**

Claims may be submitted to arbitration on an individual basis only. **Claims subject to this arbitration provision may not be joined or consolidated in arbitration with any Claim of any other person or be arbitrated on a class basis, in a representative capacity on behalf of the general public, or on behalf of any other person, unless otherwise agreed to by the parties in writing.** Claims by or against corporate affiliates will be considered a single claim. The arbitrator has no authority to award any relief not available in an individual action in court or award any declaratory, injunctive or other relief primarily for the benefit of the general public. Further, unless you and we both otherwise agree in writing, the arbitrator may award relief only in favor of your individual Claim. The arbitrator may not award relief for or against any other person, whether directly or indirectly.

### **PROCEDURE**

A single arbitrator will resolve the Claims. The arbitrator will be a lawyer with at least ten years of experience who is a former or retired judge and will be selected by the parties; provided, however, that if the parties are unable to agree upon an arbitrator within seven (7) days after delivery of the Demand for Arbitration, then the arbitrator will be appointed by the arbitration administrator. The arbitration shall comply with the arbitration administrator's rules (the Streamlined Arbitration Rules for JAMS and the Consumer Arbitration Rules for AAA) in effect on the date the arbitration is filed, except where there is a conflict or inconsistency between the arbitration administrator's rules and procedures and this arbitration provision, in which case this arbitration provision will govern. The arbitration will be conducted in English unless the parties otherwise agree in writing. Any in-person arbitration hearing for a Claim will take place within the federal judicial district in which you live or at such other reasonably convenient location as agreed by the parties. The arbitrator will apply applicable substantive law consistent with the FAA and will honor all claims of privilege and confidentiality recognized at law. All statutes of limitations that would otherwise be applicable will apply to any arbitration proceeding. The arbitrator will not apply any federal or state rules of civil procedure or evidence in matters relating to evidence or discovery. Except as otherwise provided in this arbitration provision, the arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any appropriate court may enter judgment upon the arbitrator's award. This arbitration provision is made pursuant to a transaction involving interstate commerce and is governed by the FAA.

### **ADDITIONAL ARBITRATION AWARD; ATTORNEYS' FEES**

If we make a final written settlement offer before the arbitrator is selected and the arbitrator rules in your favor for an amount greater than that final offer, or if we do not make a final written settlement offer before the arbitrator is selected and the arbitrator rules in your favor on the merits of your Claim, the arbitrator's award will include: (1) any money to which you are entitled, but in no case less than \$10,000; (2) twice the amount of your reasonable attorneys' fees, or the amount of attorneys' fees to which you are entitled under applicable law, whichever is greater; and (3) your costs and expert and other witness fees. If we prevail in arbitration, we will not be entitled to recover our attorneys' fees even when permitted to do so under applicable law.

### **ARBITRATION FEES**

We will pay any arbitration fees (including the arbitrator's fees and any filing, administrative, hearing or other fees charged by the arbitration administrator) in connection with any Claims. You will be responsible for any other costs that you incur in connection with any Claim unless applicable law provides otherwise. Any arbitration award will apply only to the specific case and cannot be used in any other case except to enforce the award.

### **SURVIVAL**

This arbitration provision shall survive payment of all amounts due pursuant to this Agreement, termination of your Account, any legal proceeding to collect amounts due, any bankruptcy and any assignment or sale of this Agreement, your Account or any and all rights thereunder. In the case of an assignment or sale of this Agreement, your Account or any and all rights thereunder, the buyer will be bound by and may enforce the terms of this arbitration provision. If any portion of this arbitration provision is deemed invalid or unenforceable, it will not invalidate the remaining provisions of this arbitration provision or this Agreement, except that if any part of the "Individual Claims Only" provision is found in a court proceeding to be invalid or otherwise unenforceable with respect to a Claim (and that determination becomes final after all appeals have been exhausted), then this arbitration provision (except for this sentence) will not apply to that Claim.