

## IMPORTANT NOTICE ABOUT YOUR EXPRESS NEXT CREDIT CARD ACCOUNT

Please read this important notice about changes to your EXPRESS NEXT credit card account ("Account"). This notice amends the Credit Card Agreement ("Agreement") for your Account. Keep a copy for your records.

### Important Changes to Your Account Terms

The following is a summary of changes being made to your Account terms. These changes will take effect on 01/01/2019. For more information, see below.

Revised Terms, as of 01/01/2019	
<b>Late Payment Fee</b>	Up to \$39
<b>Returned Payment Fee</b>	Up to \$39

**Minimum Payment:** We are changing the way we calculate your minimum payment. Generally, your Total Minimum Payment each billing period will be the total of minimum payments for Regular Revolving and promotional Credit Plans plus any past due amount. The Total Minimum Payment on your Account won't be less than \$28 unless your Account balance is less than \$28, in which case you must pay that balance in full.

### OTHER IMPORTANT INFORMATION

Exceptions to Effectiveness of Changes: If your Account is currently subject to special terms because you are enrolled in a Servicemembers Civil Relief Act (SCRA), Credit Counseling Services, Hardship, or other similar program offered or recognized by us, changes described in this notice that are inconsistent with the special terms will not apply to your Account until you are no longer enrolled in such program.

Late and Returned Payment Fees: As indicated in the table above, we are increasing the Late Payment Fee and Returned Payment Fee to up to \$39. These fees generally will be \$28 for the first occurrence and \$39 for any subsequent occurrence within six billing periods.

Dispute Resolution Provision: We are replacing any existing dispute resolution provisions, including a jury trial waiver and arbitration provision, or adding new dispute resolution provisions. Please note:

- **You have a right to reject the Arbitration Provision.**
- **If you do not reject the Arbitration Provision, it will be part of the Agreement and will:**
  - **Eliminate your right to a trial by jury; and**
  - **Substantially affect your rights, including your right to bring, join in or participate in class proceedings.**

The following language replaces any corresponding language in your Agreement. If you do not have corresponding language, insert the following at the end of your Agreement:

#### **Arbitration and jury trial waiver**

##### **For Covered Borrowers under the MLA**

The MLA prohibits us from requiring you to submit to arbitration as a condition of extending credit.

##### **A. Jury trial waiver**

**TO THE EXTENT PERMITTED BY LAW, YOU AND WE WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF A LAWSUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS JURY TRIAL WAIVER SHALL NOT AFFECT THE ARBITRATION PROVISION BELOW (INCLUDING THE JURY TRIAL WAIVER CONTAINED THEREIN). YOU AND WE EACH REPRESENT THAT THIS WAIVER IS GIVEN KNOWINGLY, WILLINGLY AND VOLUNTARILY.**

##### **B. Notice and cure**

Prior to bringing a lawsuit or initiating an arbitration that asserts a claim arising out of or related to this Agreement (as further defined below, "Claim"), the party asserting the Claim ("Claimant") shall give the other party ("Defendant") written notice of the Claim ("Claim Notice") and a reasonable opportunity, not less than 30 days, to resolve the Claim.

Any Claim Notice to you shall be sent to the address we have in our records (or any updated address you subsequently provide to us). Any Claim Notice to us shall be sent by mail to Comenity Bank, PO Box 182436, Columbus, Ohio 43218-2436 (or any updated address we subsequently provide). Any Claim Notice you send must provide your name, address and Account number and explain the nature of the Claim and relief demanded. You may only submit a Claim Notice on your own behalf and not on behalf of any other party. No third party, other than a lawyer you have personally retained, may submit a Claim Notice on your behalf. The Claimant must reasonably cooperate in providing any information about the Claim that the Defendant reasonably requests.

### **C. Arbitration provision**

**READ THIS PROVISION CAREFULLY. IF YOU DO NOT REJECT IT IN ACCORDANCE WITH PARAGRAPH C.1 BELOW, IT WILL BE PART OF THIS AGREEMENT AND WILL HAVE A SUBSTANTIAL IMPACT ON THE WAY YOU OR WE WILL RESOLVE ANY CLAIM YOU OR WE HAVE AGAINST EACH OTHER NOW OR IN THE FUTURE.**

1. **Right to Reject:** If you don't want this Arbitration Provision (and any prior arbitration agreement between you and us ("Prior Arbitration Agreement")) to apply, you may reject it by mailing us a written rejection notice which gives your name and contains a statement that you (both of you, if more than one) reject the Arbitration Provision of this Agreement. The rejection notice must be sent to us at Comenity Bank, PO Box 182422, Columbus, Ohio 43218-2422. A rejection notice is only effective if it is signed by you (all of you, if more than one) and if we receive it within 30 calendar days after the date we first provide you with a credit card agreement or written notice providing you a right to reject this Arbitration Provision. Your rejection of this Arbitration Provision will not affect any other provision of this Agreement or your ability to obtain credit.
2. **Parties:** Solely as used in this Arbitration Provision (and not elsewhere in this Agreement), the terms "we," "us" and "our" mean (a) Comenity Bank, any parent, subsidiary or affiliate of the Bank and the employees, officers and directors of such companies (the "Bank Parties"); and (b) any other person or company that provides any services in connection with this Agreement if you assert a Claim against such other person or company at the same time you assert a Claim against any Bank Party.
3. **Covered Claims:** "Claim" means any claim, dispute or controversy between you and us that in any way arises from or relates to this Agreement, the Account, the issuance of any Card, any rewards program, and/or any prior agreement or account. "Claim" includes disputes arising from actions or omissions prior to the date any Card was issued to you, including the advertising related to, application for or approval of the Account. "Claim" has the broadest possible meaning, and includes initial claims, counterclaims, cross-claims and third-party claims. It includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity (including any claim for injunctive or declaratory relief). "Claim" does not include disputes about the validity, enforceability, coverage or scope of this Arbitration Provision or any part thereof (including, without limitation, the prohibition against class proceedings, private attorney general proceedings and/or multiple party proceedings described in Paragraph C.7 ("Class Action Waiver"), Paragraph C.13 and/or this sentence); all such disputes are for a court and not an arbitrator to decide. However, any dispute or argument that concerns the validity or enforceability of the Agreement as a whole is for the arbitrator, not a court, to decide.
4. **Starting an Arbitration:** Arbitration may be elected by any party with respect to any Claim, even if that party has already initiated a lawsuit with respect to a different Claim. Arbitration is started by giving a written demand for arbitration to the other party. We will not demand to arbitrate an individual Claim that you bring against us in small claims court or your state's equivalent court, if any. But if that Claim is transferred, removed or appealed to a different court, we then have the right to demand arbitration.

5. **Choosing the Administrator:** "Administrator" means the American Arbitration Association ("AAA"), 120 Broadway, 21st Floor, New York, NY 10271, [www.adr.org](http://www.adr.org); JAMS, 620 Eighth Avenue, 34th Floor, New York, NY 10018, [www.jamsadr.com](http://www.jamsadr.com); or any other company selected by mutual agreement of the parties. If both AAA and JAMS cannot or will not serve and the parties are unable to select an Administrator by mutual consent, the Administrator will be selected by a court. The arbitrator will be appointed by the Administrator in accordance with the rules of the Administrator. However, the arbitrator must be a retired or former judge or a lawyer with at least 10 years of experience. You get to select the Administrator if you give us written notice of your selection with your notice that you are electing to arbitrate any Claim or within 20 days after we give you notice that we are electing to arbitrate any Claim (or, if you dispute our right to require arbitration of the Claim, within 20 days after that dispute is finally resolved). If you do not select the Administrator on time, we may do it. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any Administrator that has in place a formal or informal policy that is inconsistent with the Class Action Waiver.
6. **Court and Jury Trials Prohibited; Other Limitations on Legal Rights: IF YOU OR WE ELECT TO ARBITRATE A CLAIM, YOU WILL NOT HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM. ALSO, YOUR ABILITY TO OBTAIN INFORMATION FROM US IS MORE LIMITED IN ARBITRATION THAN IN A LAWSUIT. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION.**
7. **Prohibition Against Certain Proceedings (Class Action Waiver): IF YOU OR WE ELECT TO ARBITRATE A CLAIM: (1) NEITHER YOU NOR WE MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION, EITHER AS A PLAINTIFF, DEFENDANT OR CLASS MEMBER; (2) NEITHER YOU NOR WE MAY ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; (3) CLAIMS BROUGHT BY OR AGAINST YOU MAY NOT BE JOINED OR CONSOLIDATED WITH CLAIMS BROUGHT BY OR AGAINST ANY OTHER PERSON; AND (4) THE ARBITRATOR SHALL HAVE NO POWER OR AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY GENERAL ARBITRATION OR MULTIPLE-PARTY ARBITRATION.**
8. **Location and Costs:** Any arbitration hearing that you attend must take place at a location reasonably convenient to you. We will pay any and all fees of the Administrator and/or the arbitrator if applicable law requires us to, if you prevail in the arbitration or if we must bear such fees in order for this Arbitration Provision to be enforced. If you demand an arbitration, we will pay your reasonable attorneys' and experts' fees if you prevail or if we must bear such fees in order for this Arbitration Provision to be enforced. Also, we will bear any fees if applicable law requires us to.
9. **Governing Law:** This Arbitration Provision involves interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), and not by any state arbitration law. The arbitrator must apply applicable substantive law consistent with the FAA and applicable statutes of limitations and claims of privilege recognized at law. The arbitrator may award any remedy provided by the substantive law that would apply if the action were pending in court (including, without limitation, punitive damages, which shall be governed by the Constitutional standards employed by the courts). At the timely request of either party, the arbitrator must provide a brief written explanation of the basis for the award.
10. **Discovery:** In addition to the parties' rights to obtain discovery pursuant to the arbitration rules of the Administrator, either party may submit a written request to the arbitrator to expand the scope of discovery normally allowable under the arbitration rules of the Administrator. The arbitrator shall have discretion to grant or deny that request.
11. **Result and Appeals:** Judgment upon the arbitrator's award may be entered by any court having jurisdiction. The arbitrator's decision is final and binding, except for any right of appeal provided by the FAA and/or the rules of the Administrator. Any finding, award or judgment from an arbitration of any Claim shall apply only to that arbitration. No finding, award or judgment from any other arbitration shall impact the arbitration of any Claim.
12. **Interpretation:** This Arbitration Provision shall survive the repayment of all amounts owed under this Agreement, the closing of the Account, any legal proceeding and any bankruptcy

to the extent consistent with applicable bankruptcy law. In the event of a conflict or inconsistency between this Arbitration Provision and the applicable arbitration rules or the other provisions of this Agreement, this Arbitration Provision shall govern. This Arbitration Provision replaces any Prior Arbitration Agreement.

13. **Severability:** If any portion of this Arbitration Provision is held to be invalid or unenforceable, the remaining portions shall nevertheless remain in force, subject to two exceptions. First, if a determination is made that the Class Action Waiver is unenforceable, and that determination is not reversed on appeal, then the Arbitration Provision shall be void in its entirety. Second, if a court determines that a public injunctive relief Claim may proceed notwithstanding the Class Action Waiver, and that determination is not reversed on appeal, then the public injunctive relief Claim will be decided by a court, any individual Claims will be arbitrated and the parties will ask the court to stay the public injunctive relief Claim until the other Claims have been finally concluded.
14. **Special Payment:** If (1) you submit a Claim Notice in accordance with Paragraph B above on your own behalf (and not on behalf of any other party); (2) we refuse to provide you with the relief you request before an arbitrator is appointed; and (3) an arbitrator subsequently determines that you were entitled to such relief (or greater relief), the arbitrator shall award you at least \$5,100 (plus any fees and costs to which you are entitled).

**Questions?** If you have questions about this notice, or about your Account, please call the Customer Service number located in the Contact Us section within the Help menu on Account Center.