Loan Agreement and Promissory Note

Loan No. «applicationNumber»

**Borrower:**

«borrower1FirstName» «borrower1LastName»

«borrower1StreetAddress1» «borrower1StreetAddress2»

«borrower1City», «borrower1State» «borrower1Zipcode»

Date of Loan: «contractDate»

**Lender/Creditor:**

Guaranteed Rate, Inc.

3940 N. Ravenswood Ave.

Chicago, IL 60613

**FEDERAL TRUTH IN LENDING ACT (“TILA”) DISCLOSURES**

|  |  |  |  |
| --- | --- | --- | --- |
| **ANNUAL PERCENTAGE RATE\***  The cost of your credit as a yearly rate.  **«tilaSpr»%** | **FINANCE CHARGE\***  The dollar amount the credit will cost you.  **«totalInterestAndFees»** | **Amount Financed**  The amount of credit provided to you or on your behalf.  **«amountFinanced»** | **Total of Payments\***  The amount you will have paid after you made all payments as scheduled.  **«totalOfPayments»** |

**Your Payment Schedule will be as follows:**

|  |  |  |
| --- | --- | --- |
| **Number of Payments** | **Amount of Payments\*** | **When Payments Are Due\*** |
| «termWithoutLastPayment» | «firstPaymentAmount» | Monthly Beginning «firstPaymentDate» |
| 1 | «lastPaymentAmount» | Final Payment Date «lastPaymentDate» |

**Prepayment:** If you pay off early, either in full or partially, you will not have to pay a prepayment penalty.

See the remainder of this Note for any additional information about how the total finance charge is calculated, nonpayment, default, and any required repayment in full before the scheduled date.

**\* Indicates an estimate. The total finance charge and resulting payments may vary based on the actual disbursement date of your funds and dates payments are actually received.**

**Itemization of Amount Financed of «amountFinanced» is calculated as follows:**

«disbursementAmount» Amount given to you directly

«originationFee» Origination Fee

$0 Amount paid on your account

**ADDITIONAL PROVISIONS**

**1.** **Parties.**

Guaranteed Rate, Inc. is the lender of this Loan (the “Loan” or ‘Debt”). In this Loan Agreement and Promissory Note (“Note”, “Agreement”, or “Contract”), the words “you”, “your”, and “Borrower(s)” mean the Borrower(s) identified above. The words “we”, “us”, and “our” mean Guaranteed Rate, Inc. and any person who obtains Guaranteed Rate, Inc. rights in this Note. We have not yet committed to make the Loan. We will only be committed to make the Loan if and when we initiate a transfer of funds. Our service provider may perform any of our obligations under this Note. Our service provider may exercise any of the rights under this Note.

**2.** **Loan Terms.**

For value received, you promise to pay us the principal Loan amount of «amountFinanced» (“Amount Financed”). You also promise to pay us interest. You also promise to pay us other amounts that become due under this Note. The Amount Financed, interest, and other amounts due under this Note are collectively known as the “Debt”.

The Note bears daily interest at a fixed rate of «interestRateDisplay»% per year. Interest will begin to accrue on the date we disburse funds. Depending on the day and time your contract is signed, actual disbursement may occur within one (1) to three (3) business days following signing of the contract. Interest will continue to accrue until the Debt is paid in full. If you have not paid the Debt in full as of the Maturity Date, as defined below, interest on the unpaid principal balance may continue to accrue at the same fixed rate, unless state law requires us to use a different rate.

Interest is calculated using the daily simple interest method. Interest is calculated daily on the outstanding balance of the Amount Financed based on the actual number of days between payments.

**3.** **Origination Fee.**

You will be assessed an origination fee of «originationFee», which equates to «fee»%of the  amount financed, calculated according to state law. The origination fee is deducted from the loan proceeds and paid to the Lender. If you pay your loan in full before the maturity date, you will not be entitled to a refund of a portion of the Origination Fee. Borrower acknowledges that the origination fee is included in the finance charge shown above, is considered part of the principal of Borrower’s loan, and is subject to the accrual of interest.

**4. Disbursement.**

If all Loan funding conditions are met, we will disburse the Amount Financed into: (1) the designated deposit account for your benefit (“Borrower Account”); (2) to any designated accounts of your creditors (“Creditor Account”); or (3) to other parties on your behalf. Page 1 of this Note sets forth the disbursement amounts. You must confirm that information needed to disburse payment (“Payment Information”) is complete and accurate to ensure proper disbursement. We are not responsible for confirming the accuracy of any Payment Information provided by you. You agree to hold us harmless for any actual or alleged damage caused by or resulting from inaccuracy or incompleteness of the Payment Information provided by you. You agree to hold us harmless for any actual or alleged damage caused for an inability to disburse the Amount Financed.

**Right to Cancel in Case of Inability to Disburse:** If we are not able to disburse any of the Amount Financed within 5 days of the first disbursement attempt, we reserve the right to cancel the Loan. If we cancel the Loan prior to the disbursement of any funds, you will not owe any interest. If the Creditor Account rejects the Amount Financed, we may deliver the rejected Amount Financed to the Borrower Account. If the Borrower Account rejects the Amount Financed, we may deliver to another account that you identify within 5 business days of being provided updated account information.

If we are only able to disburse a portion of the Amount Financed within 5 days of the first disbursement attempt, we will apply the undisbursed amounts to the repayment of your Loan. We will apply the undisbursed amounts using the payment application procedures set forth in this Note. We will only charge interest on the portions of the Amount Financed that were actually disbursed.

**5. Payments and Payment Application.**

You agree to make monthly payments of principal and interest in the amount «firstPaymentAmount» (“Monthly Payment”). You agree to make the Monthly Payment throughout a «term»month period. Your first payment is due on «firstPaymentDate»Additional payments are due on the same day of each month (“Monthly Due Date”). Your final payment is due on «lastPaymentDate» (“Maturity Date”).

Your final Monthly Payment may be a different amount than your Monthly Payment. Your final Monthly Payment could be higher than your Monthly Payment. On the Maturity Date, any unpaid Debt is due and payable in full.

You may ask to change your Monthly Due Date. We, at our sole discretion, may agree to change your Monthly Due Date. A change to your Monthly Due Date is not effective until you receive a billing statement from us confirming the new Monthly Due Date. Changing your Monthly Due Date may increase the total amount of interest you pay.

**You may prepay the Debt in whole or in part at any time. We will not assess a prepayment penalty**. If you prepay a portion of the Debt, you must continue to make your Monthly Payments. Prepayments and late payments will not change your Monthly Payments, unless otherwise permitted by the investor.

You must make payments using United States dollars. You must make payments using a paper check, cashier’s check, money order, or electronic debit. Any check, money order, or electronic debit must be drawn on and honored by a bank or credit union in the United States. You may not send cash payments via the mail. Payments that we receive by 6 p.m. eastern time will be credited to your Loan as of that day. If you choose to pay by check, you authorize us to use the check information to create a one-time electronic fund transfer from your account. If a payment via electronic debit is dishonored, we will attempt to electronically debit your account on your next two due dates. If we cannot successfully debit your account for three consecutive months, you must make payments using one of the other methods set forth in this Agreement. If you choose to pay using a paper instrument, you must send payments to Guaranteed Rate, P.O. Box 2595 Omaha, NE 68103-2595. We may change the payment address by sending you notice of the new payment address.

We will not accept payments marked “paid in full” unless the payment fully pays off the Debt. We will not accept payments marked with language similar to “paid in full” unless the payment fully pays off the Debt.

Your payments will be applied in the following order: (1) interest; (2) fees; (3) principal; and (4) other amounts owed under this Note. Excess amounts will be applied to principal.

If you enroll in our automatic payments program, we will provide a rate discount (“ACH Discount”) after the loan is consummated. The initial ACH Discount will be 0.25% off the rate set forth in Section 2. When enrolled, a larger portion of your Monthly Payment will be applied to your Loan principal and less interest will accrue. We may change or cancel the ACH Discount at any time. We may change or cancel the ACH Discount for any reason. This includes situations where we are not able to withdraw your Monthly Payment via ACH. If we cancel the ACH Discount, we will return to using the full rate set forth in Section 2 of this Note. You may unenroll from the automatic payments program at any time. You may also enroll in the automatic payments program at any time and receive the ACH Discount shown above.

**6. Use of Amount Financed**.

You promise to use your Loan for consumer purposes. You promise not to use your Loan to fund any educational expenses. Educational expenses include tuition, fees, supplies, and room and board. You promise not to use your Loan to purchase or carry securities. You promise not to use your Loan to invest or trade in any currencies. Currencies include cryptocurrencies and digital currencies. You promise not to use your Loan for any illegal purpose.

**7. Breach/Remedies**.

You are in breach of this Note, if: (1) you do not make a Monthly Payment by the Monthly Due Date; (2) you start a bankruptcy, receivership, or insolvency proceeding; (3) a bankruptcy, receivership, or insolvency proceeding is started against you; (4) you die; (5) you do not keep any promise or meet any obligation under this Note; or (6) we find that you made a material misrepresentation. If you breach this Note, we may declare all amounts owed immediately due and payable. If the Debt is referred to an attorney for collection, we may charge you reasonable attorneys' fees to the extent permitted by applicable law.

**8. Limitation of Liability.**

You will not be liable to us for any: (1) special damages; (2) exemplary damages; (3) consequential damages; or (4) punitive damages. We will not be liable to you for any: (1) special damages; (2) exemplary damages; (3) consequential damages; or (4) punitive damages. This will be true even if you or we are aware of the possibility of such damages.

**9. Waivers**.

We may accept: (1) late payments; or (2) partial payments. By accepting these payments, we do not lose any of our rights under this Note. We may delay enforcing our rights under this Note. By delaying our enforcement of our rights, we do not lose any of our rights under this Note. We do not have to give notice that amounts due have not been paid (*e.g.* “notice of dishonor”). We do not have to demand payment of the amount due (*e.g. “*presentment”). We do not have to obtain an official certification of nonpayment (*e.g. “*protest”). You waive notice of dishonor, presentment, and protest. Alterations to or waiver of any provision of this Note will not alter or affect your unconditional liability.

**10.** **Excess Interest**.

If a court finally interprets an applicable law in a way that makes the interest, charges, or fees under this Note exceed the legal limit, then: (1) we will reduce the interest, charges, or fees by the amount needed to comply with the legal limit; and (2) we will refund any collected amounts that exceed the legal limit to you. We may make the refund by: (1) applying the excess amounts to your outstanding Debt; (2) reducing the Debt; or (3) by making a direct payment to you.

**11. Severability**.

This Note is severable. If a provision of this note is deemed unenforceable or invalid, the other provisions of this Note will remain enforceable and valid.

**12. Notices**.

You must send notices to us at this address: Guaranteed Rate, P.O. Box 82546 Lincoln, NE 68501-2546. We may provide a different notice address in writing. If we provide a different notice address, you must send any notices to that address. We may send notices to you at any address that we have for you in our records. This includes email addresses or other electronic addresses. You agree to promptly notify us of any change to any address, including email addresses, you have provided to us.

**13.** **Assignment**.

You may not assign this Note or your obligations under this Note without our permission. We do not have to give permission. We may assign this Note or our rights under this Note without your permission. We may assign this Note or our rights under this Note without telling you. A third-party assignee may assign this Note or its rights under this Note without your permission. A third-party assignee may assign this Note without telling you. Your obligations under this Note apply to all of your heirs, successors, and permitted assigns. Our rights under this Note apply to us and each of our successors and assigns.

You agree that we or a third-party assignee may delegate servicing of the Note to another entity without providing notice to you. You agree that we or a third-party assignee may share your information with a servicer or sub-servicer of the Note.

**14. Governing Law.**

This Note and all rights, obligations, and claims relating to this Note will be governed by and construed in accordance with federal law and the laws of the state of Alaska, without regard to principles of conflicts of law.

**15. Entire Agreement and Amendment**.

This Note is the entire agreement between you and us. This note supersedes all other communications or promises with respect to your Loan. Except for the changes to the Monthly Due Date described in Section 4, this Note may only be altered by a written agreement.

**16. Phone Numbers and Emails**.

In connection with this Loan, you authorize us to contact you using any phone number or email address you provided to us. Your authorization includes any mobile or cell phone numbers. You authorize us to contact you via: (1) manual calling; (2) automatic dialing systems; (3) pre-recorded or artificial voice messages; (4) SMS messages (including text messages); (5) email.

Anyone with access to your phone or email accounts could listen to or read our messages. Communications from us may contain confidential and sensitive information. Communications from us may include information related to the collection of your Debt. You agree that we will not be liable if another person listens to or reads our messages. You may incur a charge from your communications provider. You agree that we will not have any liability for these charges. You authorize us to monitor and record phone calls between you and us. You agree to notify us if you change a phone number or email address that you have provided to us. You may stop certain commercial messages by using the opt-out option accompanying those messages.

**17. Credit Reporting and Monitoring**.

WE MAY REPORT INFORMATION ABOUT YOUR LOAN TO CREDIT BUREAUS. LATE PAYMENTS, MISSED PAYMENTS, OR OTHER DEFAULTS ON YOUR LOAN MAY APPEAR IN YOUR CREDIT REPORT. LATE PAYMENTS, MISSED PAYMENTS, OR OTHER DEFAULTS ON YOUR LOAN MAY NEGATIVELY IMPACT YOUR CREDIT SCORE.

If you believe we have inaccurately reported information to a credit bureau, contact us by calling 833-531-1306 or sending an email to support@guaranteedrate.myloanmanager.com.

**18. Bankruptcy**.

You promise that you are not a debtor in any bankruptcy action. You promise that you have not met with a bankruptcy attorney in the past six months. You promise that you do not currently plan to seek bankruptcy relief. If you file for bankruptcy, you must send a written notice to Guaranteed Rate, P.O. Box 82546 Lincoln, NE 68501-2546. The notice must include your Loan number.

**19. Notice to Military Lending Act Covered Borrowers.**

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 dependents may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: (1) The costs associated with credit insurance premiums; (2) fees for ancillary products sold in connection with the credit transaction; (3) any application fee charged (other than certain application fees for specified credit transactions or accounts); and (4) any participation fee charged (other than certain participation fees for a credit card account).

The Military Lending Act requires that we provide certain disclosures to you orally. Please contact us at 833-531-1306 to hear important information about this Note, the Military Lending Act, and protections under the Military Lending Act.

**20. Arbitration Provision**.

**PLEASE READ THIS SECTION CLOSELY. IT AFFECTS YOUR RIGHTS. IT WILL IMPACT HOW LEGAL CLAIMS RELATED TO THIS NOTE ARE RESOLVED. THIS ARBITRATION PROVISION (“SECTION 20”) 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 20 APPLIES TO YOU, PLEASE CONTACT US AT 833-531-1306.**

**YOU AND WE UNDERSTAND THAT WE AND YOU HAVE A RIGHT TO LITIGATE CLAIMS IN COURT BEFORE A JUDGE OR JURY. YOU AND WE UNDERSTAND THAT YOU AND WE WILL NOT HAVE THAT RIGHT IF EITHER YOU OR WE ELECTS TO HAVE A DISPUTE RESOLVED USING THIS SECTION 20. YOU AND WE KNOWINGLY AND VOLUNTARILY WAIVE OUR RIGHTS TO LITIGATE IN A COURT BEFORE A JUDGE OR JURY IF ARBITRATION IS ELECTED BY EITHER YOU OR US. ADDITIONALLY, IF EITHER YOU OR WE ELECT TO HAVE A DISPUTE RESOLVED PURSUANT TO THIS SECTION 20, YOU AND WE WILL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS PERTAINING TO THAT CLAIM. ARBITRATION PROCEDURES ARE GENERALLY SIMPLER THAN THE RULES THAT APPLY IN COURT. DISCOVERY IN ARBITRATION IS MORE LIMITED. THE ARBITRATOR’S DECISIONS ARE AS ENFORCEABLE AS A COURT ORDER AND ARE SUBJECT TO LIMITED REVIEW BY A COURT. OTHER RIGHTS YOU OR WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.**

**Agreement to Arbitrate**. You and we agree that you or we may choose to resolve any claim by individual arbitration. We will not elect arbitration for any Claim you file in small claims court as long as: (1) the Claim is individual; and (2) the Claim is pending only in that court. You or we may delay exercising or enforcing rights under this Section 20 without waiving the right to exercise or enforce those rights.

As used in Section 20, “**Claim**” means any current or future claim, dispute or controversy arising out of or relating to this Loan and any aspect related to the relationship between you and us, including the servicing of this Loan, except for the validity, enforceability, or scope of this Section 20. “Claim” includes: (1) initial claims, counterclaims, crossclaims, and third-party claims; (2) claims based upon contract, tort, fraud, statute, regulation, common law, and equity; (3) claims by or against any third party using or providing any product, service or benefit in connection with this Note; and (4) claims arising from or relating to (A) advertisements, promotions, or statements related to this Loan, (B) your application for the Loan, and (C) credit reporting on the Loan. In this Section 20 only, the terms “we,” “us,” and “our” mean Guaranteed Rate, Inc.; any person who obtains Guaranteed Rate, Inc. rights in this Note; their respective predecessors, successors, assigns, parents, subsidiaries, affiliates, agents, employees; and any third party that provides services to these entities, such as Loan servicers or debt collectors. In this Section 20 only, the terms “you” and “your” mean the Borrower, any guarantors, any authorized or unauthorized users or beneficiaries of the Loan or its proceeds, and those people’s heirs, trustees, representatives, and agents. Borrower and Guaranteed Rate, Inc. agree that these third parties are intended third-party beneficiaries of this Section 20.

Section 20 will be given the broadest possible interpretation that is enforceable. The Note is made pursuant to a transaction involving interstate commerce. Section 20 shall be governed by the Federal Arbitration Act (“FAA”).

**Opt-out.** You may opt-out of this Section. If you want to opt-out, you must send an opt-out notice to Guaranteed Rate, P.O. Box 82546 Lincoln, NE 68501-2546. We must receive the opt-out notice within 45 days of your acceptance of this Note. Your opt-out notice must be signed by you. Your opt-out notice must include the following information: (1) your name; (2) your address; (3) your loan number; and (4) a clear statement that you are rejecting arbitration under this Note. The opt out notice may be sent by mail, delivery servicer, or courier. You may not use any other method to opt-out of this Section 20. If you opt-out, this Section 20 will not apply to you. However, all other portions of this Note will continue to apply to you.

**Pre-Arbitration Resolution.** You can often resolve concerns by contacting us. You may call us at 833-531-1306 or write to us at Guaranteed Rate, P.O. Box 82546 Lincoln, NE 68501-2546.

Before you or we start an arbitration, the claimant must mail a signed notice of your or our intent to arbitrate to the other party. The notice must include your Loan number, address and phone number, and a description of the claims, the underlying facts and circumstances, the amount being requested, and how the claimant would like the claim to be resolved. If you are represented by an attorney, your notice must include your signed authorization that we share your confidential account records with your attorney if necessary, in resolving your claim. The notice to us should be sent to C T Corporation System (Chicago), 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604 with copy to Guaranteed Rate, Inc, Attn: General Counsel, 3940 North Ravenswood, Chicago, IL 60613. The notice to you will be sent to your address, as identified in our records. Either you or we may request a telephone or video conference to discuss settlement within 60 days of receiving a notice of intent to arbitrate. If you or we request a telephone or video conference, the telephone or video conference must occur before the claimant starts an arbitration proceeding. Courts of competent jurisdiction may enforce the provisions of this Pre-Arbitration Resolution paragraph, including by enjoining the filing or prosecution of arbitration or the collection or assessment of arbitration fees if the claimant failed to comply with the notice of dispute or informal settlement discussion requirements.

**Arbitration Procedures.** The party starting the arbitration must do so with the American Arbitration Association (“AAA”) or Judicial Alternatives and Mediation Services (“JAMS”). The arbitration will be conducted according to the rules of the selected administrator for consumer disputes. However, if there is a conflict between the AAA or JAMS rules and this Section 20, this Section 20 shall control. If you have any questions concerning AAA or would like to obtain a copy of the AAA rules, you may call 1-800-778-7879 or visit [www.adr.org](http://www.adr.org). If you have any questions concerning JAMS or would like to obtain a copy of the JAMS rules, you may call 1-800-352-5267 or visit [www.jamsadr.com](http://www.jamsadr.com).

Claims will be decided by one neutral arbitrator. The arbitrator will be a retired judge or an attorney with at least ten years of experience.

If the value of the relief sought is $10,000 or less, you or we may choose to have the arbitration conducted: (1) by telephone or video conference; or (2) based solely on written submissions. This choice is binding on you and us unless the arbitrator requires an in-person hearing. We or you may attend a hearing by telephone or video conference unless the arbitrator requires in-person attendance. The arbitrator may consider rulings in arbitrations involving different borrowers, but arbitral rulings are not binding in any proceeding involving other borrowers.

**Costs of Arbitration.** The rules of the arbitration administrator shall govern the allocation of arbitration fees. If you are required to pay any arbitration fees that you believe are excessive and that the arbitration administrator will not waive, we will pay those fees on your behalf (or reimburse them following the arbitration) if required by applicable law for this Section 20 to be enforceable. If the arbitrator determines that your claims are frivolous or otherwise violate the standards of Federal Rule of Civil Procedure 11(b), the arbitrator shall have the power to reallocate the arbitration fees as justice or applicable law permits.

**Class Action Waiver and Other Limitations on Arbitration.** IF EITHER PARTY ELECTS TO RESOLVE A CLAIM BY ARBITRATION, THAT CLAIM WILL BE ARBITRATED ON AN INDIVIDUAL BASIS. THERE WILL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION BASIS, IN A REPRESENTATIVE CAPACITY, OR ON BEHALF OF THE GENERAL PUBLIC, OTHER BORROWERS, OR OTHER PERSONS. The arbitrator’s authority is limited to Claims between you and us alone. Claims may not be joined or consolidated with claims of other borrowers involving other loans. If any of the prohibitions in this paragraph (“Class Action Waiver and Other Limitations on Arbitration”) are found to be unenforceable as to a particular claim or with respect to a particular request for relief (such as a request for injunction), then the parties agree that such a claim or request for relief shall be decided by a court after all other claims and requests for relief are arbitrated.

**Survival.** Section 20 will survive: (1) payment of all amounts due pursuant to this Note; (2) any legal proceeding to collect the Loan; (3) any bankruptcy or insolvency; and (4) any sale or assignment of this Note. If the Note is sold or assigned, the buyer or assignee will be bound by Section 20. The buyer or assignee may enforce the terms of this Section 20.

**SIGNATURES**

By signing below, you agree to the terms of the Note, including the Arbitration Provision. By considering and taking action on your application for the Loan, we agree to the terms of this Note, including the arbitration provision.

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| **NOTICE TO CONSUMER:**  **1. Do not sign this Contract before you read it.**  **2. Do not sign this Contract if it contains any blank spaces.**  **3. You are entitled to a copy of this Contract.**  **4. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.** |

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| --- |
| **CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ AND UNDERSTAND THIS AGREEMENT BEFORE YOU SIGN.** |

Borrower Signature: «borrower1FirstName» «borrower1LastName»

Date: «borrower1SignedDate»

**EXPIRATION NOTICE:**

This Agreement must be executed no later than: «applicationExpiration» After that date this Loan offer will expire.