

## VISA® COMMERCIAL CARD CARDHOLDER AGREEMENT

Effective 10/01/2018

**1.0: INTRODUCTORY PROVISIONS:** This is the Cardholder Agreement that sets forth the terms of your VISA Commercial Card Account with the Bank (“**Bank**”) issuing your Account. Please read this Agreement carefully and keep it for your records. Use of your Account confirms your acceptance of the terms and conditions of this Agreement.

**2.0: DEFINITIONS:** The following DEFINITIONS apply and will help you better understand this document. **Account:** An account assigned to a Cardholder at the Company’s request, all numbers issued by Bank in connection with that Account, and any physical Card issued to access the Account.

**Account Credit Limit:** The maximum portion of the Company Credit Limit that may be used by a particular Account.

**Account’s New Balance:** The entire amount owing on a particular Account.

**Agreement:** This VISA Commercial Card Cardholder Agreement (and all addenda) together and the carrier containing the Card.

**Bank/We/Us:** Means Zions Bancorporation, N.A., the issuer of your Card and holder of your Account.

**Card:** A Visa charge card issued by Bank pursuant to the Company Agreement. In some instances, “Card” can mean an Account number that is not embossed on any plastic card, or an Account number used without concurrent use of the plastic card upon which the number is embossed.

**Cardholder:** An (a) individual in whose name a Card is issued, and (b) any other employee, officer, director, or person authorized by the Company or named Cardholder to use a Card or Account.

**Company:** The business entity or organization at whose request the Bank has established an Account.

**Company Agreement:** The Commercial Card Program Master Agreement between the Company and Bank.

**Company Credit Limit:** The maximum available dollar amount of credit authorized by the Bank to the Company.

**Company’s New Balance:** The entire amount (i.e. the aggregate amount of all of the Accounts’ New Balances) owed by Company on all Accounts at any given time.

**Transaction:** A Purchase, Cash Advance, use of a convenience check, or any other activity that debits an Account.

**You/Your:** mean both to the Cardholder of an Account and to the Company (but see also the Section below entitled “Limited Personal Liability of Individual Cardholder”).

**3.0: AGREEMENT:** This Agreement becomes effective between you and us on the earlier of (1) 15 days after the Bank sends the Card, or (2) the first use of the Account. Any use of the credit associated with the Account constitutes acceptance of the terms of this Agreement. If you do not wish to be bound by this Agreement, you must not use (or authorize anyone else to use) the Card, Account, or any numbers pertaining to the Account, and you must cancel the Account within 15 days after receiving the Card.

**4.0: LIMITED PERSONAL LIABILITY OF CARDHOLDER:** Notwithstanding any other provision in this Agreement (including the definition of “you” and “your”), and notwithstanding Company instructions to Bank to issue monthly statements to the attention and address of a Cardholder, the Cardholder of a Card or Account has no personal liability for amounts charged to that Card or Account, except to the extent that: (a) the Cardholder has personally entered into a separate agreement to be liable for such charges, such as a personal guarantee or a Company Agreement; (b) the Cardholder’s use of the Card or Account was not authorized by the Company, or was outside the scope of the Cardholder’s authorization; (c) the Cardholder allowed another person to use the Cardholder’s Card or Account without authority from the Company; (d) the charges were for personal, family, or household purposes, and the Company is not obligated to reimburse the Cardholder for those charges; (e) the Cardholder knowingly or recklessly charged in excess of the Company’s ability to pay, the Company Credit Limit or the Account Credit Limit; (f) the Cardholder knowingly or recklessly failed to notify the Company or Bank of apparent loss, theft, or unauthorized use of the Cardholder’s Card or Account, resulting in charges that the Company or Bank could have prevented if the Cardholder had given reasonably timely notice to the Company or Bank after such loss, theft, or unauthorized use became apparent; or (g) interest, late charges, charges for exceeding credit limits, and other fees applicable to the personal liabilities described in the preceding clauses (a) through (f). Cardholder agrees to pay those limited personal liabilities upon demand, which demand may be made if the Company has not paid those amounts within ten (10) business days of their Payment Due date(s). Nothing in this Agreement constitutes authority or consent by Bank or the Company for a Cardholder to incur such personal liabilities or to make use of the Card or Account in a manner giving rise to personal liability. To the extent of personal liability under this Section, the Cardholder shall also be obligated for court costs, collection expenses and attorneys’ fees described below in the Section entitled “Collection Costs and Fees.”

**4.1: Company's Liability for Account:** Company shall be liable for the full amounts of Company's New Balance regardless of the purposes (whether for business purposes or for personal, family, or household purposes) of any of the transactions made with any Account. Company's liability shall also include all transactions, regardless of the purpose, made by any person to whom Company or any Cardholder has given express or implied permission to use a Card or Account, or has voluntarily provided any Card or Account number. Company's liability for transactions resulting from unauthorized uses of the Card or Account before notifying Bank of the loss, theft or unauthorized use of the Card or Account is more fully set forth in the Company Agreement with Bank.

**4.2: Notifying Bank of Loss, Theft, or Unauthorized Use of Card or Account:** If any Card or Account number is lost or stolen, or if you think that someone used or may use your Card or Account without permission, you agree to notify the Bank immediately by calling 1-888-758-5349. You may need to provide the Bank with certain information in writing to help the Bank determine what happened.

**5.0: COMPANY'S REPRESENTATIONS, WARRANTIES, AND COVENANTS:** Effective upon the opening of the Account, and continuing until termination of this Agreement and satisfaction of all obligations of Company hereunder, the Company covenants, represents, and warrants the following:

**5.1: Legal Status:** Company, whether it is a corporation, partnership, limited liability company, sole proprietorship, or other type of business entity or organization, is in good standing and duly qualified to do business in each jurisdiction where it conducts its business and has the full power and authority to carry on its business as presently conducted.

**5.2: Authority to Enter into Card Agreement:** Company has full power and authority to enter into and perform all obligations under this Agreement, and Company has been duly authorized to do so by all necessary organizational action.

**5.3: No Conflict with Other Documents:** Company's entering into and performing all obligations under this Agreement are not inconsistent with any of Company's governing documents, and do not and will not contravene any provision of or constitute a default under any indenture, mortgage, contract, or other instrument to which Company is a party or by which Company is bound.

**5.4: Accurate Information:** All information that Company has provided and will provide at any time in the future is and will be accurate, and the Company's Chief Financial Officer or Operating Officer (or other person with equivalent knowledge and responsibility regardless of that person's title) will certify the accuracy of such information on request.

**5.5: Further Assistance:** At the Bank's request, Company shall deliver, in a form acceptable to the Bank, any legal documents, financial statements, or information. The Company shall also promptly notify the Bank of any significant change in its business or other development that has or may have a material adverse effect on Company's business.

## **6.0: THE CARD:**

**6.1: Signature Panel:** You agree to sign the back of the Card before using it.

**6.2: Card and Account Numbers are Bank's Property:** The Card, the Account, and all account numbers issued in connection with the Account are the property of the Bank. The Card must be returned to the Bank if the Bank so requests. Also, the Bank can, at any time and without cause and without notice, revoke the right to use the Card or Account. If a merchant or a financial institution asks for the surrender of the Card, you agree to surrender the Card immediately.

**6.3: Expiration:** The Card is not valid after the expiration date printed on the front of the Card, and we may suspend, cancel, replace, or renew your Card at any time.

**6.4: Renewal and Replacement Cards:** The Bank will continue to issue renewal or replacement Cards until the Bank revokes the right to use the Card or until the Account is closed.

**7.0: USING YOUR CARD AND ACCOUNT:** Use of the Card or Account is for business or commercial purpose for the Company. Subject to the restrictions described herein, card network rules and the law, the Card and the Account may be used in any of the following transactions (a) unless otherwise restricted by the Company, the Card may be used to purchase or lease goods or services wherever the Card is honored ("**Purchases**"); and (b) subject to the Cash Advance feature being requested by Company and approved by Us, Cardholder may obtain Cash Advances from any financial institution that accepts the Card ("**Cash Advances**"). You agree to accept credits to your Account, instead of cash refunds, when the original transactions were charged to your Account. We are not obligated to honor any attempted use of your Account if a default has occurred, or if we have determined to terminate your Account or limit your Account privileges.

**7.1: No Illegal Use; OFAC Sanctions; Internet Gambling Notice:** You must not use your Account, Card or any convenience checks (a) for any illegal purpose; (b) for any transaction or in any manner that violates the law; (c) to conduct transactions in any country or territory, or with any individual or entity, 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 (d) to gamble on the Internet. Display of a Visa logo, MasterCard logo, or other payment system logo by any person (e.g., an online merchant), or acceptance of a transaction, does not mean that the transaction is lawful in all or any jurisdictions governing you, your Account, or the transaction. We have the right (but no obligation to you) to decline or block any transactions that we believe may be prohibited under this Section. We may also block use of your Card in countries or territories subject to OFAC sanctions. Company agrees to hold us harmless for any violation of this Section.

**8.0: CREDIT LIMIT – AUTHORIZED USAGE:** Your initial Account Credit Limit is shown on the carrier containing your Card. Your Account Credit Limit is based on the Company's requested Account Credit Limit for you, as approved by us in our sole discretion. We or the Company may increase or decrease your Credit Limit from time to time. Your latest Credit Limit will appear on your statement from us or a memorandum from the Company at the end of each billing cycle (or, if you do not receive statements or memoranda at the end of each billing cycle, the Company will be informed of your current Credit Limit). You agree not to attempt any transaction that would cause the unpaid balance on your Account to exceed your Account Credit Limit. We may honor transactions in excess of your Account Credit Limit, at our sole discretion. If we do, this Agreement also applies to that excess, and you agree to pay the excess immediately if we request that you do so. You agree that we may change or cancel your Account Credit Limit at any time without affecting the obligation to pay the New Balance and other amounts owed under this Agreement. We may designate that only a portion (or no portion) of your Account Credit Limit is available for Cash Advances. If we do and you exceed that limit, you will be considered to have exceeded your Account Credit Limit for all purposes of this Agreement. We may also cancel your Cash Advance access at any time without prior notice. For security reasons, we may limit the number or dollar amount of transactions that may be attempted with your Card or Account, and we have the right to limit authorizations to attempt transactions if we consider it necessary to verify payments received on your Account. You acknowledge that there is an aggregate Company Credit Limit for all the Accounts that are issued under the Company Agreement, and that we may refuse to honor transactions attempted by you that would be under your Account Credit Limit but which would cause the Company to exceed its aggregate Company Credit Limit.

**9.0: PERIODIC STATEMENTS:** We will send a statement to the Company (or first to the attention of the Cardholder if agreed between Bank and the Company) at the end of each billing cycle. An electronic statement may be made available in substitution for the paper statement. The length of the billing cycle will be determined pursuant to the Company Agreement. Among other things, unless otherwise agreed upon between the Company and us, statements will show the Payment Due, Account Credit Limit, and Payment Due Date for the Account. (If an invoice is first sent to the attention of Cardholder, a duplicate statement may be provided to the Company.)

**10.0: PAYMENTS:** All payments shall be made in U.S. Dollars drawn on funds on deposit in the United States. If Bank chooses to accept payments issued in foreign currency or by drawing on funds on deposit outside the United States, you agree to pay all conversion fees and bank collection fees incurred by the Bank. These fees are charged to your Account as purchase items.

**10.1: Payment Due:** The Payment Due amount will be your total Account balance due in full by the Payment Due Date, all as listed on each periodic statement or memorandum. The Account is intended for use only as a charge account and charge card for which the balance must be paid in full each month, and not a credit account or credit card with a balance carried forward into the next month. Subject to any mandatory provisions of applicable law, payments received will be applied first to any Fees, then to the New Balance, and then to any other amounts owing.

**10.2: Acceptance of Partial or Nonconforming Payments:** The Bank may accept late payments, partial payments, or any payment marked with any kind of restrictive endorsement (such as "paid in full" or "in settlement") without giving effect to the restrictive endorsement and without losing, waiving, or impairing any of the Bank's rights under this Agreement or under applicable law.

**10.3: Delay of Available Credit:** We credit payments to your Account on the day we receive them however, we reserve the right, based on risk, to delay the available credit resulting from those payments.

**11.0: OTHER FEES, CHARGES, AND OTHER PROVISIONS:**

**11.1: Cash Advance Transaction Fee:** Each new Cash Advance will be assessed a one-time transaction fee equal to 3.00% multiplied by the amount of the Cash Advance but never less than \$5.00. This fee is fully earned when assessed, and added to the balance of the transaction. This fee is charged to your Account as a Cash Advance item.

**11.2: Late Fee:** The New Balance of your Account will become delinquent if not paid by the Payment Due Date. Any unpaid portion of the "Minimum Payment Due" will be shown on subsequent billing statements as "Amount Past Due". If payment has not been received on the fifteenth (15<sup>th</sup>) day following the close of the Account's billing cycle, a late fee of two percent (2%) but never less than \$15.00, of the Amount Past Due will be charged to the Account on the last day of the billing cycle. This fee is charged to your Account as a Late Fee and included in the "Other Charges" section of your statement. (**Exception for Accounts invoiced to Individual Cardholders:** If your Account is invoiced to the attention and address of the Cardholder rather than the Company, then the late fee shall not be assessed until the twenty-sixth (26<sup>th</sup>) day following the close of each Account's billing cycle, and the late fee shall be \$20.00. In addition, if any portion of a previously billed Past Due Balance remains unpaid on that twenty-sixth day, an additional late fee of \$20.00 shall be charged to the Account.) A "previously-billed Past Due Balance" may include any previously-incurred but unpaid late fees, account fees, or other fees and charges.) Regardless of how and when late fees or other fees and charges are billed, you agree to pay all of those fees and charges, along with all other amounts set forth in this Agreement, even if those fees and charges could be re-characterized as "interest."

**11.3: Returned Payment Fee:** If any payment on the Account is dishonored or must be returned because it cannot be processed, there will be a returned payment fee of \$35.00 (except the fee shall be \$30.00 for Accounts issued by

Zions Bancorporation, N.A. dba Amegy Bank). This fee is charged to your Account as a Returned Payment Fee and included in the "Other Charges" section of your statement.

**11.4: International Transaction Fee:** There will be a 3.00% fee of the gross U.S. dollar amount of the transaction for transactions that take place outside of the United States, whether originally made in U.S. dollars or converted from a foreign currency. If a charge is incurred in a foreign currency, the charge will be converted into a U.S. dollar amount by VISA International depending on the Account. Currently, the currency conversion rate used is either a wholesale market rate or a government mandated rate in effect one day prior to the date the transaction is processed by VISA International plus 3.00% of the U.S. dollar rate. The currency conversion rate in effect on the processing date may differ from the rate in effect on the transaction date or the posting date. This fee is charged to your Account as a Cash Advance item.

**11.5: Copy Retrieval Fee:** If you request research, photocopies of receipts, or duplicate copies of periodic statements, we may charge you a Copy Retrieval Fee of \$5 per request. No charge will be assessed for such requests provided that the number and frequency thereof do not exceed such reasonable thresholds as Bank shall determine. This fee is charged to your Account as a Miscellaneous Fee and included in the "Other Charges" section of your statement.

**11.6: Expedited Card Delivery Replacement Fee:** We may charge a fee if you request the Bank to provide "expedited card delivery" or you request to personally obtain an "emergency card" (which requires special card production) at our Bankcard Center. This fee is charged to your Account as a Miscellaneous Fee and included in the "Other Charges" section of your statement.

## **12.0: RESTRICTIONS ON USE OF ACCOUNT:**

**12.1: Who may use:** Only the Company and Cardholder may use the Card and the Account.

**12.2: Business Use:** Company and Cardholder agree that the Card and the Account shall be used for business purposes and not for personal, family, or household purposes.

**12.3: Credit Limit:** Each use of a Card or Account by a Cardholder is subject to the available credit under that particular Account Credit Limit.

**13.0: DISCLOSURES OF INFORMATION:** You acknowledge and consent to the release of personal data about Cardholders by the Bank to VISA U.S.A., its Members, or their respective contractors for the purpose of providing emergency cash and/or emergency card replacement services. You agree to the release of personal data about the Cardholder by the Bank to Company and Company to Bank in connection with approving and issuing Cardholder's Accounts and Cards, processing transactions thereunder, collecting New Balances therein, and otherwise implementing the VISA Commercial Card program established by the Company Agreement.

**14.0: DISCLAIMER OF RESPONSIBILITY; REFUSAL TO HONOR ACCOUNT:** As otherwise required by applicable law or regulation, Bank will not be responsible for merchandise or services purchased or leased through the use of your Account. The Bank will not be responsible or liable in any manner for any of the following or for any claim of whatever nature (including without limitation any claim for incidental or consequential damages) arising from or related to any of the following: the refusal or delay of any other financial institution, any merchant, or any person to honor any Card or Account; any goods or services obtained with a Card or Account; any unsuccessful attempt to obtain prior credit authorization for any transaction when the authorization system is not working; or any unsuccessful attempt to use the Card in an ATM when the ATM or ATM network is not working or is temporarily closed or out of order.

## **15.0: FINANCIAL AND CREDIT INFORMATION:**

**15.1: Financial Statements:** The Bank may need updated financial information from Company at some time in the future. If the Bank asks, Company agrees to furnish a current financial statement or to update the Card Application.

**15.2: Credit Reports:** Company hereby authorizes the Bank to make whatever credit inquiries or investigations about Company that the Bank deems appropriate and to disclose to others credit information about the Account and Company's performance under this Agreement. The Bank may ask credit bureaus for reports of Company's credit history. At Company's request, the Bank will tell Company whether or not the Bank has requested such reports and will tell Company the names and addresses of the credit bureaus furnishing the reports.

**16.0: CHANGE OF NAME OR ADDRESS:** Company and Cardholder each agree to promptly notify the Bank in writing if Company or Cardholder changes its/his/her name, business address, or mailing address. Until Company or Cardholder notifies the Bank of updated information, the Bank can send statements, notices, and other communications to the name and address in the Bank's records, and they will be deemed effectively delivered for all purposes. If Company's or Cardholder's mailing address appears to no longer be valid (e.g., mail is returned undelivered), Company and Cardholder agrees that the Bank can suspend mailing Company and Cardholder's statements, notices, and other communications until a valid address is received from the Company and Cardholder. We may in our discretion accept address corrections from the United States Postal Service.

**17.0: CLOSING THE ACCOUNT:** Company may close the Account at any time by notifying the Bank in writing. The Bank may close the Account at any time without cause and without notice. When the Account is closed (whether by Company or by the Bank), the right to use the Card and to make transactions to the Account will be automatically revoked.

**18.0: DEFAULT:** Your Account will be in default, and we may demand immediate payment of the entire amount owed us without giving you prior notice, if: (1) in any billing cycle we do not receive from Company the full Payment Due amount by the Payment Due Date; (2) charges are made in excess of your Credit Limit; (3) you fail to comply with this Agreement; (4) Company files for bankruptcy; (5) Company becomes insolvent; (6) your employment with the Company is terminated; (7) the Company Agreement is terminated; (8) the Company breaches the Company Agreement or requests us to cancel your Account; or (9) we believe in good faith that the Company's payment or your performance of your Account is impaired for any reason.

**19.0: COLLECTION COSTS AND FEES:** In addition to all late fees and other charges, you agree to pay all court costs and collection expenses (whether or not awarded a court costs, including the cost of Bank staff), and reasonable attorney fees incurred by Bank to enforce this Agreement, to the extent permitted by law. (Cardholder shall not be liable for such costs, expenses and fees except as provided in the Section above entitled "Limited Personal Liability of Cardholder.")

**20.0: SECURITY INTEREST:** Company grants Bank a Uniform Commercial Code security interest in any deposits, investment accounts, or other assets that Company now or in the future maintains with Bank or any Bank Affiliate. That security interest shall secure payment of all amounts now or hereafter (a) owed to Bank under this Cardholder Agreement or the Company Agreement, and (b) all other indebtedness to Bank, whether or not related to the subject matter hereof.

**21.0: LEGAL ACTION AND COSTS:** Without waiving the Dispute Resolution provisions in this Agreement, Bank may initiate legal action (including collection action) against Company in the county of Bank's "Governing State" where Bank maintains its primary place of business. ("Governing State" is defined in the Section below entitled "Governing Law.") The Company hereby submits itself to jurisdiction of the federal and state courts located in the Governing State.

**22.0: NOTICES:** Notice that a Card or Account is or may be lost, stolen, or subject to unauthorized use shall be given to Bank in the manner provided in the Section above entitled "Notifying Bank of Loss, Theft or Unauthorized Use of Card or Account. Other notices from Cardholder to Bank shall be given as provided in Section below entitled "Notices, Inquiries or Questions." Other notices from Company to Bank shall be given as provided in the Company Agreement. We will send statements and other notices to you at the address shown in our files.

**23.0: VISA ACCOUNT UPDATER:** Card accounts are automatically enrolled in the Visa Account Updater (VAU) feature required by Visa. This feature enables the electronic exchange of account information between Visa and participating merchants to support payment continuity with credential-on-file merchants. Visa will securely provide updated credit card information when your Card is re-issued for any reason or is closed. Updates are not guaranteed before the next billing cycle; the Bank is not responsible for late, missed, or recurring payments. To opt-out of the Visa Account Updater feature for your card account, please contact the Bank by calling the number on the back of your card.

**24.0: PHONE CALLS:** In the regular course of our business, we may monitor and record phone conversations made or received by our employees. You agree that we will have such right with respect to all phone conversations between you and our employees, whether initiated by you or any of our employees.

**25.0: INTERPRETATION; EFFECT, CHANGES TO THIS AGREEMENT:**

**25.1: Duration:** Except for the right to use the Card and to make transactions to the Account (which right expires when the Account is closed), all other provisions of this Agreement shall remain in full force and effect until the Account is closed and Company's New Balance is paid in full.

**25.2: Headings:** The headings used in this Agreement are for convenience only and shall have no bearing on the interpretation of this Agreement.

**25.3: Governing Law:** This agreement shall be governed by and construed in accordance with the laws of the United States and of issuing Bank's Governing State, regardless of where you reside or use the Card or the Account. "Governing State" means Texas for Zions Bancorporation, N.A. dba Amegy Bank, California for Zions Bancorporation, N.A. dba California Bank & Trust, Arizona for Zions Bancorporation, N.A. dba National Bank of Arizona, Nevada for Zions Bancorporation, N.A. dba Nevada State Bank, Colorado for Zions Bancorporation, N.A. dba Vectra Bank Colorado, and Utah for Zions Bancorporation, N.A. dba Zions First National Bank.

**25.4: Monetary Figures:** All monetary figures on the Account and in this Agreement are and shall be denominated in United States Dollars.

**25.5 Amendments to this Agreement:** We can amend the terms of this Agreement at any time. We will notify you of what these amendments are. Subject to the requirements of applicable law, any amendment to this Agreement will become effective at the time stated in our notice to you and, unless we specify otherwise, the amended terms of this

Agreement will apply to all outstanding unpaid indebtedness on your Account as well as new transactions. If you do not agree to the amendment stated in our notice for your Account, (a) you must give us notice that you reject the change and want your Account to be terminated before the date our notice stated the change would take effect, and (b) you must not use your Card or Account after the date our notice stated the change would take effect.

**25.6: Integrated Agreement:** You agree that this Agreement is a final written expression of the agreement between you and the Bank, and that this Agreement may not be contradicted by evidence of any alleged oral agreement.

**25.7: Severability:** The provisions of this Agreement are severable to the extent that any provision hereof held to be prohibited or unenforceable in any jurisdiction shall not invalidate the remainder of this Agreement in that jurisdiction and shall be fully enforceable in any other jurisdiction not expressly prohibiting such provision.

**25.8: Delay in Enforcement:** The Bank may exercise its rights under this Agreement immediately, or, at the Bank's sole discretion, may decline to enforce or delay in enforcing any such rights without losing, waiving, or impairing them. You may not sell, assign, or transfer this Agreement or the Account or any portion thereof without the express prior written consent of the Bank. The Bank may sell, assign, or transfer this Agreement or the Account or any portion thereof without notice to you. Subject to the foregoing, this Agreement shall be binding upon the heirs, representatives, successors, and assigns of the parties hereto.

**26.0: DISPUTE RESOLUTION PROVISION: This Dispute Resolution Provision contains a jury waiver, a class action waiver, and an arbitration clause (or judicial reference agreement, as applicable), set out in four Sections. READ IT CAREFULLY.**

## **SECTION 1: GENERAL PROVISIONS GOVERNING ALL DISPUTES.**

**1.1: PRIOR DISPUTE RESOLUTION AGREEMENTS SUPERSEDED.** This Dispute Resolution Provision shall supersede and replace any prior "Jury Waiver," "Judicial Reference," "Class Action Waiver," "Arbitration," "Dispute Resolution," or similar alternative dispute agreement or provision between or among the parties.

**1.2: "DISPUTE" DEFINED.** As used herein, the word "Dispute" includes, without limitation, any claim by either party against the other party related to this Agreement, your Card or Account. In addition, **"Dispute" also includes any claim by either party against the other party regarding any other agreement or business relationship between any of them, whether or not related to the Loan or other subject matter of this Agreement.** "Dispute" includes, but is not limited to, matters arising from or relating to a deposit account, an application for or denial of credit, warranties and representations made by a party, the adequacy of a party's disclosures, enforcement of any and all of the obligations a party hereto may have to another party, compliance with applicable laws and/or regulations, performance or services provided under any agreement by a party, including without limitation disputes based on or arising from any alleged tort or matters involving the employees, officers, agents, affiliates, or assigns of a party hereto.

If a third party is a party to a Dispute (such as a credit reporting agency, merchant accepting a credit card, junior lienholder, or title company), each party hereto agrees to consent to including that third party in any arbitration or judicial reference proceeding for resolving the Dispute with that party.

**1.3: JURY TRIAL WAIVER.** Each party waives their respective rights to a trial before a jury in connection with any Dispute, and all Disputes shall be resolved by a judge sitting without a jury. If a court determines that this jury trial waiver is not enforceable for any reason, then **at any time prior to trial of the Dispute, but not later than 30 days after entry of the order determining this provision is unenforceable**, any party shall be entitled to move the court for an order, as applicable: (A) compelling arbitration and staying or dismissing such litigation pending arbitration ("Arbitration Order") under Section 2 hereof, or (B) staying such litigation and compelling judicial reference under Section 3 hereof.

**1.4: CLASS ACTION WAIVER.** If permitted by applicable law, each party waives the right to litigate in court or an arbitration proceeding any Dispute as a class action, either as a member of a class or as a representative, or to act as a private attorney general.

**1.5: SURVIVAL.** This Dispute Resolution Provision shall survive any termination, amendment, or expiration of this Agreement, or any other relationship between the parties.

**SECTION 2: ARBITRATION IF JURY WAIVER UNENFORCEABLE (EXCEPT CALIFORNIA).** If (but only if) a state or federal court located outside the state of California determines for any reason that the jury trial waiver in this Dispute Resolution Provision is not enforceable with respect to a Dispute, then any party hereto may require that said Dispute be resolved by binding arbitration pursuant to this Section 2 before a single arbitrator. An arbitrator shall have no authority to determine matters (i) regarding the validity, enforceability, meaning, or scope of this Dispute Resolution Provision, or (ii) class action claims brought by either party as a class representative on behalf of others and claims by a class representative on either party's behalf as a class member, which matters may be determined only by a court without a

jury. **By agreeing to arbitrate a Dispute, each party gives up any right that party may have to a jury trial, as well as other rights that party would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.**

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, National Arbitration Forum ("NAF") or JAMS ("Administrator") as selected by the initiating party. However, if the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. If NAF and JAMS both decline to administer arbitration of the Dispute, and if the parties are unable to mutually agree upon a licensed attorney to act as arbitrator with an Administrator, then either party may file a lawsuit (in a court of appropriate venue outside the state of California) and move for an Arbitration Order. The arbitrator, howsoever appointed, shall have expertise in the subject matter of the Dispute. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where Lender or Bank is headquartered. The arbitrator shall apply the law of the state specified in the agreement giving rise to the Dispute.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator: (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (ii) will render a decision and any award applying applicable law; (iii) will give effect to any limitations period in determining any Dispute or defense; (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable; (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases; and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* If the terms of this Section 2 vary from the Administrator's rules, this Section 2 shall control.

**SECTION 3: JUDICIAL REFERENCE IF JURY WAIVER UNENFORCEABLE (CALIFORNIA ONLY).** If (but only if) a Dispute is filed in a state or federal court located within the state of California, and said court determines for any reason that the jury trial waiver in this Dispute Resolution Provision is not enforceable with respect to that Dispute, then any party hereto may require that Dispute be resolved by judicial reference in accordance with California Code of Civil Procedure, Sections 638, et seq., including without limitation whether the Dispute is subject to a judicial reference proceeding. **By agreeing to resolve Disputes by judicial reference, each party is giving up any right that party may have to a jury trial.** The referee shall be a retired judge, agreed upon by the parties, from either the American Arbitration Association (AAA) or Judicial Arbitration and Mediation Service, Inc. (JAMS). If the parties cannot agree on the referee, the party who initially selected the reference procedure shall request a panel of ten retired judges from either AAA or JAMS, and the court shall select the referee from that panel. (If AAA and JAMS are unavailable to provide this service, the court may select a referee by such other procedures as are used by that court.) The referee shall be appointed to sit with all of the powers provided by law, including the power to hear and determine any or all of the issues in the proceeding, whether of fact or of law, and to report a statement of decision. The parties agree that time is of the essence in conducting the judicial reference proceeding set forth herein. The costs of the judicial reference proceeding, including the fee for the court reporter, shall be borne equally by the parties as the costs are incurred, unless otherwise awarded by the referee. The referee shall hear all pre-trial and post-trial matters (including without limitation requests for equitable relief), prepare a statement of decision with written findings of fact and conclusions of law, and apportion costs as appropriate. The referee

shall be empowered to enter equitable relief as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that are binding on the parties and rule on any motion that would be authorized in a trial, including without limitation motions for summary adjudication. Only for this Section 3, "Dispute" includes matters regarding the validity, enforceability, meaning, or scope of this Section, and (ii) class action claims brought by either party as a class representative on behalf of others and claims by a class representative on either party's behalf as a class member. Judgment upon the award shall be entered in the court in which such proceeding was commenced and all parties shall have full rights of appeal. This provision will not be deemed to limit or constrain Bank or Lender's right of offset, to obtain provisional or ancillary remedies, to interplead funds in the event of a dispute, to exercise any security interest or lien Bank or Lender may hold in property or to comply with legal process involving accounts or other property held by Bank or Lender.

Nothing herein shall preclude a party from moving (prior to the court ordering judicial reference) to dismiss, stay, or transfer the suit to a forum outside California on grounds that California is an improper, inconvenient or less suitable venue. If such motion is granted, this Section 3 shall not apply to any proceedings in the new forum.

This Section 3 may be invoked only with regard to Disputes filed in state or federal courts located in the State of California. In no event shall the provisions in this Section 3 diminish the force or effect of any venue selection or jurisdiction provision in this Agreement or any Related Document.

**SECTION 4: RELIANCE.** Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce a jury waiver, class action waiver, arbitration provision, or judicial reference provision in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, material reliance upon the mutual waivers, agreements, and certifications in the four Sections of this DISPUTE RESOLUTION PROVISION.

**27.0: NOTICES, INQUIRIES, OR QUESTIONS:** You may address any inquiries, questions, or notice that you have about your Account to: Commercial Card Services, P.O. Box 25787, Salt Lake City, Utah 84125-0787, or you may call 1-888-758-5349.