

**ACCOUNT OPENING DISCLOSURES  
FOR YOUR MERCHANTS BANK VISA CARD**



# BANK CREDIT CARD AGREEMENT

## MERCHANTS BANK, NATIONAL ASSOCIATION

### Welcome to the Merchants Bank ScoreCard!

Your Bank Credit Card Account (“**Account**” or “**Card**”) is issued by Merchants Bank, National Association (“**Bank**,” “**we**,” “**us**,” or “**our**”) and this Merchants Bank Credit Card Agreement (“**Agreement**”) governs your Account with us. Please review the Agreement in detail to be sure you understand all of the terms and conditions with using this Card. There are two main parts to this Agreement: the **Account Opening Disclosures**; and this **Agreement**, which includes **Your Billing Rights**. The **Account Opening Disclosures** show the primary pricing terms for this Card for new accounts available under this Agreement. This Agreement contains important information related to how we will administer the credit card program, and **Your Billing Rights** summarizes certain rights provided to you by law that are related to billing on your Account. The Agreement also includes any other disclosures or notices that are referenced or issued to you by us.

**This Agreement also includes a Dispute Resolution and Arbitration provision that limits the right to maintain a court action, the right to a jury trial, the right to participate in any form of class or representative action, as well as discovery and rights to appeal. You can opt out of the Arbitration Provision by following the instructions in that section and notifying us within the specified time.**

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 1-833-794-0032;
- Emailing us at [CC@merchantsbank.com](mailto:CC@merchantsbank.com); or
- Writing to us at P.O. Box 248, Winona, MN 55987.

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 OF TERMS

**We may change the rates, fees, and terms of this Agreement from time to time, subject to applicable law. Notice of any change will be given in accordance with 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

“**Account**” means the Merchants Bank ScoreCard Account opened for you under this Agreement.

“**Account Balance**” means the total amount owing on your Account at the end of a Billing Cycle shown on each Statement.

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

“**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.

“**Billing Cycle**” 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 Billing Cycle even if a Statement is not provided.

“**Business Day**” means Monday through Friday, excluding all U.S. federal banking 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.

“**Co-Owners**” means the persons who have joint account with more than one person liable for amounts owing under the Account.

“**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.

“**Statement**” means the document that we generally provide to you each Billing Cycle that shows Account activity and amounts you owe during the Billing Cycle.

“**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.

“**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.

“**You**,” “**your**,” and “**yours**” mean the person(s) who opened the Account and/or who are liable for amounts owing under the Account, including Co-Owners.

## Your Account

### **USING YOUR ACCOUNT**

You can use your Card and your Account to make Purchases, obtain Cash Advances, or for Balance Transfers. You can use your Card and your Account for personal, family, and household purposes only, but if your Card or Account are used for any other purpose, you are still responsible to pay all amounts due on your Account. Your Card and your Account may not be used for business or commercial purposes. You agree to use your Card and your Account in accordance with this Agreement. You agree not to use your Card or Account for any transaction prohibited by law.

### **PROMISE TO PAY**

You promise to pay us the full amount of all Transactions charged to your Account, plus finance charges and all other fees, collection costs, attorneys' fees as allowed by law, and all other charges imposed by us.

### **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 this is a joint Account, each Co-Owner is responsible individually and jointly to pay all amounts due on the Account. Each Co-Owner is responsible to pay us all amounts even if the Account is used by only one Co-Owner, and even if the other Co-Owner is ordered by a court to pay us. Your Account status will be reported to consumer reporting agency(ies) under each Co-Owner's name. Delivery of notices or Statements to any Co-Owner serves as delivery to each Co-Owner. Either Co-Owner can close the Account. A release of one Co-Owner or a release of any collateral securing this Agreement, will not operate as a release of any other Co-Owner. We can rely on instructions about the Account from any Co-Owner. We are not liable to any Co-Owner for relying on instructions from another Co-Owner.

### **AUTHORIZED USERS**

You may request that we add Authorized Users to your Account. We will evaluate and approve or deny your request. 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 consumer reporting agencies, including information in any Authorized User's name. This information may appear on their consumer 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 to consumer reporting agencies; 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.

### **YOUR CREDIT LIMIT**

Your initial Credit Limit is disclosed on the card carrier containing your Card. After that, your Credit Limit will be disclosed on your Statement. You should always keep your Account Balance below the Credit Limit, but if your Account Balance goes over your Credit Limit, you still must pay us the full amount due on your Account. We may designate part of your Credit Limit as a Cash Advance Limit, and you may use this part of your Credit Limit for Cash Advances. We may choose to authorize transactions that cause your Account Balance to go over your Credit Limit without raising your Credit Limit. If we do, we may require you to immediately pay us any amount over your Credit Limit, and it does not mean that we will authorize other transactions that cause your balance to go over your Credit Limit. We may raise or lower your Credit Limit at any time for any reason, as permitted by law. We will notify you of any change in your Credit Limit, but the change may take place before you receive the notice.

### **CASH ADVANCES**

You will need a PIN to request Cash Advances. When you request a Cash Advance, we will, subject to any limitations contained in this Agreement, give you the exact amount you request. Depending on how we agree to make the advance, we will either deposit the money into your transaction account, give the money directly to you, or pay any third person or account you tell us to pay.

### **SECURITY**

If you have granted us a security interest under a separate agreement to secure your obligations under this Agreement, we have a security interest in the deposit accounts identified in that agreement.

### **USE OF MOBILE PHONE 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 will advise the merchant who processed 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 USE**

You may be liable for the unauthorized use of your Card. You will not be liable for any unauthorized use of your Card that occurs after you notify us, orally or in writing, of the loss, theft, or possible unauthorized use of your Card. In any case, your liability will not exceed \$50.

### **TRANSACTIONS MADE IN FOREIGN CURRENCIES AND RELATED FEE**

Transactions, returns and credits made in a currency other than U.S. dollars (“**Foreign Transactions**”) will be converted into U.S. dollars. We will charge you a fee of 1% of the converted Transaction amount for any Foreign Transactions. The conversion will be performed by Visa, which 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. 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.

### **SCORECARD<sup>SM</sup> BONUS POINT PROGRAM**

If your Card is a ScoreCard Platinum-Merchandise or ScoreCard-Cash Back Card, the ScoreCard Bonus Point Program (“**Rewards**”) rules will be sent with your first Statement. Rewards will be subject to separate terms and conditions provided to you by us, our partners or our service providers. Rewards begin to accumulate after you have received and activated your new Card. Points earned between April of the current year and March 31st of the next year will expire after 5 years. Rewards may be changed or discontinued at any time for any reason and we will provide you any notice required under applicable law. We are not liable for Rewards, including the discontinuation or modification of any Rewards, or for the actions or omissions of any third parties.

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

#### **HOW WE DETERMINE INTEREST RATE(S)**

Your APRs are set forth in the Summary of Account Terms. Your APRs may be different for different types of Transactions, like Purchases, Balance Transfers, or Cash Advances. Your Summary of Account Terms indicates if you have an introductory APR period. We may change your APRs in accordance with this Agreement and applicable laws. APRs will never exceed the maximum rates permitted by applicable law.

#### **INTRODUCTORY RATES**

We may offer you a limited time introductory rate for all or part of new Purchases, Balance Transfers or Cash Advances that post to your Account. We will tell you in the Summary of Account Terms the intro-

ductory rate and the period of time during which the introductory rate will be in effect and any conditions of the offer. The introductory rate will remain in effect until the last day of the Billing Cycle in which the introductory rate expires. When the introductory rate period expires, the APR will increase to the interest rate disclosed on the Summary of Account Terms for that balance type.

#### **HOW VARIABLE INTEREST RATES ARE DETERMINED**

After any applicable introductory period, your interest rate is a variable rate and is determined by a combination of the Prime Rate (which may vary) added to a margin (which does not change). Because the Prime Rate may vary, your variable interest rate will go up or down if the Prime Rate changes. The Index used to determine your variable APRs is the U.S. Prime Rate shown in the “Money Rates” section of The Wall Street Journal on the last day the rate is published in each calendar month (the “determination date”). If the Prime Rate is higher or lower on a later determination date, the above APRs may increase or decrease accordingly. The APR will be limited to a ceiling rate of 17.99%. The Prime Rate will be effective for the entire billing cycle that ends in the second month after the determination date. For example, if your billing cycle ends in July, we will use the Index determined on the last day the rate is published in The Wall Street Journal in May.

To determine the variable APR for Purchases and Balance Transfers we add a margin of 5.49% to 9.49% to the Prime Rate based on your creditworthiness at the time your Account is opened.

#### **HOW WE CALCULATE YOUR BALANCE**

Purchases and Balance Transfers are subject to a finance charge from the date they are posted to the Account; however, no interest is imposed if the Account Balance is paid in full by the Payment Due Date. If you elect not to pay the entire Account Balance shown on your Statement, a finance charge will be imposed on the unpaid average daily balance of Purchases and Balance Transfers from the previous statement closing date and on new Credit Purchases and Balance Transfers from the date of posting to your Account during the current Billing Cycle, and will continue to accrue until the closing date of the Billing Cycle preceding the date on which the entire new balance is paid in full or until the date of payment if more than 25 days from the closing date. Cash Advances are subject to a finance charge and accrue daily interest beginning on the day of the advance. We figure the interest charge on your Account by applying the periodic rate to the “average daily balance” of your Account. To get the “average daily balance” we take the beginning balance of your Account each day and subtract any unpaid interest or other finance charges and any payments or credits. We do not add in any new Purchases, Cash Advances and fees. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the “**average daily balance**.” Each daily balance of Credit Purchases, Balance Transfers, and Cash Advances is determined by adding to the outstanding unpaid balance at the beginning of the Billing Cycle any new Credit Purchases, Balance Transfers, and Cash Advances posted to your Account, and subtracting any payments as received or credits as posted to your Account, but excluding any unpaid finance charges.

#### **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 and Balance Transfers 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 Cash Advances. This means you will pay interest on Cash Advances from the date they occur.

## IMPACT OF REVERSED PAYMENTS OR CREDITS

If your Account is paid in full by the Payment Due Date and we post the payment to your Account but then that payment is returned unpaid, we may charge you the interest you saved or would have saved because of the reversed payment. If you want to avoid paying interest during a Billing Cycle when a payment is reversed, you must pay before that Billing Cycle's Payment Due Date the entire Account Balance (which will include the amount of the reversed payment plus any additional interest charged due to the reversed payment).

## FEES

All fees required to establish your Account have been disclosed on the Summary of Account Terms. Any annual fee indicated on the Summary of Account Terms will be charged to the Account as a Cash Advance at the Account opening and each succeeding year on the anniversary of the Account opening until the Account is closed. The amount of the annual fee may be adjusted in the future.

In addition to the fees shown on Summary of Account Terms, we charge a replacement card fee of \$15 if a Card is replaced more than once in any 12 month period and an expedited card fee of \$20 if you request expedited shipping of any Card. These fees will be charged as Purchase Transaction on your Account.

## LATE FEE

Subject to applicable law, we will assess a late fee if we do not receive at least the Minimum Payment Due shown on your Statement by 10 days after the Statement Date. The late fee is disclosed on the Summary of Account Terms. 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 is the greater of:

- \$15; or
- The sum of (i) 3% of the Account Balance (rounded up to the next dollar) of that portion of the Account Balance which does not exceed your credit limit, (ii) plus the entire portion of the Account Balance in excess of your credit limit, (iii) plus any amount past due.

You may pay more than the Minimum Payment Due at any time without a prepayment penalty.

### Making Payments

## PAYMENT INSTRUCTIONS

You agree to pay us for all Purchases, Balance Transfers, Cash Advances, interest charges and Account fees. Each Billing Cycle 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 Billing Cycle, such as new Transactions, interest and fees. It will also identify your Account Balance, the Minimum Payment Due and the Payment Due Date. We may send only one Statement per Billing Cycle for your Account, even if your Account is a joint Account. Your Statement will be sent to the address indicated in our Account records.

You must pay at least your Minimum Payment Due by the Payment Due Date each Billing Cycle. 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.

You must pay us in U.S. dollars, using a check, similar instrument, or

electronic debit that is drawn on and honored by a bank in the United States. We credit your payments in accordance with the terms of your Statement. If you mail your payment to an address other than the address shown on your Statement, there may be a delay in processing and crediting the payment to your Account.

## APPLYING YOUR PAYMENTS

We may apply payments equal to or less than the Minimum Payment Due to whichever balances we choose. Payments over the Minimum Payment Due will be applied to balances subject to higher APRs before balances subject to lower APRs. We may apply your payment to Purchases, Cash Advances, interest charges, fees and other charges in any order we choose, and we may change the order of application of payments from time to time if and when we choose.

## STOPPING AUTOMATIC PAYMENTS

If you have authorized us to make a one-time or recurring payment from your savings, checking or other account, you can stop the payment by notifying us at least three days before the automatic payment is scheduled to occur.

## 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 returns unpaid.

## RESTRICTIVE ENDORSEMENT

If you mark any check payable to us as "Paid in Full" or words to that effect, you will still be responsible for repaying any balance that remains due on the Account and we shall not lose any of its rights under this Agreement.

### Account 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 any payment toward your Minimum Payment Due is returned unpaid or cannot be processed;
- You violate any term of this Agreement, the accompanying security agreement applicable to any secured card, or any other agreement with us;
- An Authorized User breaches any term of this Agreement;
- You become the subject of any voluntary or involuntary proceeding under the Bankruptcy Code or under any statutory or judicial proceeding for the rehabilitation of debtors;
- You give us any false, incomplete or misleading information;
- You cause or permit any act or event which we in good faith believe will impair the collateral, if your Account is secured, or adversely affect your ability to repay any of the obligations under this Agreement; or
- You die or become legally incompetent.

## 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 consumer reporting agencies;

- Begin collections activities;
- Take possession, as permitted by law, of any property or collateral securing this or any other obligation, and sell or apply the property to reduce or satisfy the obligations;
- Suspend or close your Account;
- Remove any Authorized Users from your Account;
- Require you to immediately pay all or any portion of your total out-standing balance;
- Require you to pay our collection costs, attorneys' fees, court costs and all other expenses of enforcing our rights under this Agreement, including interest accrued on any judgment we may obtain against you for any amount due under this Agreement at the judgment rate of interest permitted by law; and/or
- Take any other action permitted by law.

### **Suspending or Closing Your Account**

#### **BY YOU**

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

#### **BY US**

We, in our sole discretion, 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 Purchases and cancel any automatic or recurring bill payments; and
- Continue to pay at least the Minimum Payment Due each Billing Cycle until the total outstanding balance of your Account, including any amounts which post after the Account's closure, is paid in full.

Once your Account is closed, our obligation, if any, to honor Purchase or Cash Advance requests against your Account shall cease. You shall continue to be obligated to pay all amounts due to use pursuant to the terms of this Agreement at the time the Account is closed until all amounts due and owing have been paid. We will notify you that your Account has closed in writing. We are not liable for any refusal of a merchant to honor your Card or Account, any declined Transaction or any retention of your Card by any person or entity.

### **Credit Information & Credit Reporting**

#### **OBTAINING YOUR CONSUMER REPORTS**

You authorize us to obtain your consumer report(s) and other information from consumer reporting agencies and/or other third party sources while you maintain an Account with us for the following purposes: (i) servicing, monitoring, collecting or enforcing this Agreement or any other agreement between you and us; (ii) providing your credit data to you; and/or (iii) other related purposes.

#### **FURNISHING INFORMATION TO CREDIT BUREAUS**

YOU AGREE THAT WE MAY FURNISH INFORMATION ABOUT YOUR ACCOUNT TO CONSUMER REPORTING AGENCIES. LATE PAYMENTS, MISSED PAYMENTS OR OTHER DEFAULTS ON YOUR ACCOUNT MAY BE REFLECTED IN YOUR CONSUMER REPORT.

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

If you believe that we have reported incorrect information about your Account to a consumer reporting agency, you notify us at the following address:

Merchants Bank, National Association  
P.O. Box 248, Winona, MN 55987

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 consumer report in question.

### **Communications**

#### **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 expressly 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 notice or other communication to be provided under this Agreement shall be in writing and sent to you or us at the addresses described in this Agreement or such other address as you or us may designate in writing. Notices we send to you will be effective when sent to you electronically, or when mailed 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.

## CALL RECORDING

You agree and consent that we will record and may monitor any calls between you and us.

### Other Important Information

## GOVERNING LAW

Except as set forth in the Arbitration Provision, this Agreement is entered into between you and us in the State of Minnesota and we extend credit to you from Minnesota. This Agreement and your Account will be governed by and construed in accordance with federal law and any applicable laws of the State of Minnesota without regard to rules concerning conflicts of law or choice of law. You consent to the jurisdiction and venue of any court located in the State of Minnesota in the event of any legal proceeding under this Agreement.

## BANKRUPTCY FILING

All bankruptcy notices and related correspondence to us must be sent to the following address: Merchants Bank, P.O. Box 248, Winona, MN 55987, 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 mailing 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 Co-Owner will be considered notice to all Co-Owners.

## 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.

## MODIFICATION AND WAIVER

The modification or waiver of any of your obligations or our rights under this Agreement must be contained in writing signed by us. We may perform any of your obligations or delay or fail to exercise any of our rights without causing a waiver of those obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Your obligations under this Agreement shall not be affected if we amend, compromise, exchange, fail to exercise, impair or release any of the obligations belonging to any Co-Owner or any of our rights against any Co-Owner or collateral.

## INFORMATION SHARING AND PRIVACY

We send you our privacy policy when you open your Account and thereafter in accordance with law. Our privacy policy summarizes the personal information we collect; how we safeguard its confidentiality and security; when it may be shared with others; and how you can limit our sharing of this information. You accept the terms of our privacy policy

when you use your Account. Contact us if you would like a copy.

## 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. Except as set forth in the Arbitration Provision of this Agreement, 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.

## SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of you and us and our respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees, and devisees.

## MILITARY LENDING ACT

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

## SIGNATURES

Your signature on the Application shall indicate that you agree to the terms and conditions of the Agreement.

### Dispute Resolution: Arbitration

If you have a dispute with us, we want to resolve it as quickly and easily as possible. Please contact us to discuss your concerns. If we are unable to resolve a dispute informally, then you and we agree that either party may elect to resolve it as provided in this Arbitration Provision. Please read it carefully. **THIS ARBITRATION PROVISION AFFECTS YOUR RIGHTS BY LIMITING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS OR REPRESENTATIVE ACTION, AS WELL AS DISCOVERY AND RIGHTS TO APPEAL. YOU HAVE THE RIGHT TO OPT OUT OF THE ARBITRATION PROVISION AS SET FORTH BELOW.**

## SPECIAL DEFINITIONS

Solely for purposes of this Arbitration Provision: (1) the terms "we," "us," and "our" include Merchants Bank, N.A., any of our corporate parents, subsidiaries, affiliates, assigns, successors, employees, officers, directors, agents, controlling persons and representatives, as well as any third party who is named as a co-defendant with us in a Claim asserted by you; and (2) the terms "you" and "your" include each Account owner and

each heir, successor, representative and beneficiary (including a pay-on-death or similar beneficiary) of an Account owner.

## SCOPE

As used in this Arbitration Provision, a **"Claim"** means any and all controversies, disagreements, or other disputes between you and us arising out of or relating to this Agreement, your Account (including any joint Account), any transaction conducted with us related to your Account, any advertisement, solicitation or application concerning your Account, any Account(s) you previously had with us, or the relationship that arises between you and us from your use of our products and services or any of the foregoing. A Claim has the broadest possible reasonable meaning and includes, without limitation, disputes in the past, present or future, whether based under a statute, regulation, ordinance, in contract, tort, intentional tort or otherwise, and including any claim for individual injunctive or declaratory relief. A Claim also includes, without limitation, disputes concerning your credit card, disclosures, finance charges, late charges, purchases, payments, insurance, security, default, credit transactions, fees, cash advances, balance transfers, credit limits, credit reports, overdraft charges, foreign currency conversions, repossession or the collection of monies owed and the manner of collection, and any data breach or privacy claims arising from or relating directly or indirectly to our disclosure of any non-public personal information about you. Disputes regarding this Agreement as a whole are for the arbitrator to decide.

However, disputes about the validity, enforceability or scope of this Arbitration Provision are for a court, not an arbitrator, to decide. In addition, if applicable law provides that a Claim is not subject to binding arbitration, this Arbitration Provision will not apply to such Claim. For example, if you are on active duty military service or a spouse or dependent of a person who is on such active duty military service and a Claim involves a covered transaction under the Military Lending Act, this Arbitration Provision will be inapplicable to such Claim. Similarly, this Arbitration Provision will not apply to a dispute arising from a consumer credit transaction secured by a dwelling.

This Arbitration Provision also does not prohibit you or us, at any time, from (a) exercising any lawful rights to preserve or obtain possession of property or self-help remedies, including but not limited to, the right to set-off, the right to restrain funds in an Account, recoupment, repossession, replevin or trustee's sales; (b) obtaining provisional or ancillary remedies or individual injunctive relief (other than a stay of arbitration), including, but not limited to, attachment, garnishment, interpleader or the appointment of a receiver by a court of appropriate jurisdiction; or (c) bringing an individual action in court that is limited to preventing the other party from using a self-help or non-judicial remedy and that does not involve a request for damages or monetary relief of any kind.

## RIGHT TO OPT OUT OF THE ARBITRATION PROVISION

If you do not want this Arbitration Provision to apply, you may reject it (**"opt out"**). To opt out, you must send us written notice of your decision to reject this Arbitration Provision to the address set forth below. We must receive your written notice within forty-five (45) days after the earlier of (i) the day we sent you this Agreement via US Mail, through electronic disclosure, or provided it to you in person or by other reasonable delivery method, or (ii) the day you open an Account that is subject to this Agreement. Your written opt out notice must: (a) include a signed statement that you reject the Arbitration Provision of the Agreement; (b) include your name, address and the Account number you wish to opt out; and (c) be sent to us at the following address: Merchants Bank, National Association, Attn: Credit Card Agreement Opt Out, c/o Legal Department, P.O. Box 248, Winona, MN, 55987. This is

the only way you can reject this Arbitration Provision. If you opt out, it will not affect any other terms of the Agreement and will not adversely affect your Account.

In the case of joint ownership of an Account, one owner's rejection of this Arbitration Provision will be deemed to be a rejection of this Arbitration Provision by all joint owners. In all other circumstances, your rejection of this Arbitration Provision shall not be imputed to any other person or entity or be deemed to be a rejection of this Arbitration Provision by any person or entity other than you. Nor shall your rejection of this Arbitration Provision eliminate the obligation of other persons or entities who wish to reject this Arbitration Provision to personally comply with the notice and time requirements of this opt-out provision.

## HOW CLAIMS WILL BE RESOLVED; JURY TRIAL WAIVER

You or we may elect to resolve any Claim through binding and final arbitration and not in a court of law. If either party elects to arbitrate a Claim, with limited exceptions, neither you nor we will have the right to litigate such Claim in court or have a trial of such Claim before a judge or jury.

## PROCEDURES FOR ARBITRATION

If you or we elect to arbitrate a Claim, it will be resolved by mandatory binding arbitration. A Claim may be submitted to binding arbitration at any time, regardless of whether you or we have previously initiated any lawsuit or other proceeding. If a party files a lawsuit in court asserting Claim(s) that are subject to arbitration and the other party files a motion to compel arbitration with the court which is granted, it will be the responsibility of the party asserting the Claim(s) to start the arbitration proceeding in accordance with the Administrator's rules and procedures. Even if all parties have opted to litigate a Claim in court, you or we may elect arbitration with respect to any Claim made by a new party or any Claim later asserted by a party in that or any related or unrelated lawsuit (including a Claim initially asserted on an individual basis but modified to be asserted on a class, representative or multi-party basis). Nothing in that litigation shall constitute a waiver of any rights under this Arbitration Provision. The arbitration will be heard and determined by one neutral arbitrator. At the timely request of either party, the arbitrator shall provide a brief written explanation of the grounds for the decision. The arbitrator's decision will be final and binding, except for any appeal rights under the Federal Arbitration Act ("**FAA**"), 9 U.S.C. §§ 1 et seq., and may be enforced in any court of competent jurisdiction. No arbitration award involving the parties will have any impact as to issues or claims in any dispute involving anyone who is not a party to the arbitration, nor will an arbitration award in prior disputes involving other parties have any impact in an arbitration between the parties to this Arbitration Provision.

The arbitrator will follow applicable substantive law consistent with the FAA and give effect to the applicable statute of limitations, defenses and privileges. The arbitrator is authorized to award all remedies available in an individual lawsuit under applicable substantive law, including, without limitation, compensatory, statutory and punitive damages (subject to constitutional limits that would apply in court), declaratory, injunctive and other equitable relief (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim), and attorneys' fees and costs. The arbitrator may decide that an in-person hearing is unnecessary and that he or she can resolve a Claim based on written filings and/or a conference call. Any in-person arbitration hearing will be conducted at a place reasonably convenient to where you reside, unless you or we agree otherwise. You and we agree to maintain the confiden-

tiality of any arbitration proceeding, meaning that you and we agree not to publicize or disclose to third parties its existence, content, subject or resolution, except as required by law.

### **ARBITRATION RULES**

Claims will be administered by the American Arbitration Association (“AAA”) or any other arbitration organization agreed to by you and us in writing (either, an “**Arbitration Administrator**”). If the AAA cannot serve and you and we cannot agree on a replacement, a court with jurisdiction will select the Administrator or arbitrator, who will be bound by the terms of this Arbitration Provision. The Arbitration Administrator will administer the arbitration proceeding and the selection of arbitrator according to its rules at the time the Claim is filed (“**Arbitration Rules**”). If the AAA is selected as the Arbitration Administrator, then the Arbitration Rules will be the AAA’s Consumer Arbitration Rules. You may obtain a copy of the Arbitration Rules by contacting the Arbitration Administrator or visiting its website (1-800-778-7879 or www.adr.org if the AAA is selected). The arbitrator will be appointed in accordance with the Arbitration Rules, and he or she must be a retired judge or attorney with more than 10 years of experience and knowledge of the laws applicable to financial transactions. If the Arbitration Provision conflicts with the Arbitration Rules or other provisions of this Agreement, the terms of this Arbitration Provision will control. This Arbitration Provision is made in connection with a transaction involving interstate commerce and is governed by the FAA.

### **CLASS ACTION WAIVER**

All Claims will proceed on an individual basis on behalf of the named parties only. Claims may not be arbitrated on a class or representative basis. Neither you nor we may act as a class representative nor participate as a member of a class of claimants with respect to any Claim in court or in arbitration. You agree not to bring a Claim against us on behalf of any other person, and you agree that no other person may bring a Claim against us on your behalf. The arbitrator may not consolidate or join the claims of other persons who may be similarly situated without the express written consent of all parties. The arbitrator will have no authority to conduct any class, collective, private attorney general, multiple-party or representative proceeding.

### **ARBITRATION FEES AND COSTS**

You agree that you will pay the portion of the administrative, hearing and arbitrator fees and costs you are responsible for pursuant to the Arbitration Rules. We agree that we will pay the portion of such fees and costs that we are responsible for pursuant to the Arbitration Rules. Notwithstanding anything to the contrary in the Arbitration Rules, each party will pay its own attorneys’, expert, witness and other fees not covered by the Arbitration Rules, unless awarded by the arbitrator under applicable law. We will always pay amounts required under applicable law or the Administrator’s rules or if payment is required to enforce this Arbitration Provision.

### **OTHER RIGHTS**

If the amount of a Claim is within the jurisdiction of the small claims court (or an equivalent court), you or we may bring it in small claims court or instruct the Administrator to administratively close the arbitration case because the Claim should be decided by a small claims court. You and we do not have to arbitrate a small claim that is filed in small claims court, but if that claim is transferred, removed, or appealed to a different court, you or we may elect to compel arbitration. Moreover, if you or we bring any counterclaim or cross-claim that is for more than the small claims court’s jurisdiction, the entire Claim (including the counterclaim or cross-claim) must, if you or we choose, be resolved by arbitration. Nothing in this Arbitration Provision prevents you from

filing a complaint against us with regulatory agencies. Either you or we may delay enforcing or not exercise rights under this Arbitration Provision without waiving them. This Arbitration Provision will survive the termination or cancellation of this Agreement and your Account(s) with us, repayment of amounts owed under this Agreement, any default or breach, any sale, assignment or transfer of your Account, any bankruptcy and any legal proceeding to collect a debt. We will not amend the Arbitration Provision in a manner that adversely affects your rights or responsibilities in a material manner unless we give you a right to reject the amendment and/or the Arbitration Provision in its entirety. If any part of this Arbitration Provision is found to be invalid or unenforceable, then that specific part shall be severed, and the rest of this Arbitration Provision will continue in full force and effect, except that: (A) the entire Arbitration Provision (other than this sentence) shall be null and void with respect to any Claim asserted on a class, representative or multiple-party basis that does not seek public injunctive relief if the Class Action Waiver is held to be invalid with respect to such claim and that determination becomes final after all appeals have been exhausted; and (B) if a court determines that a public injunctive relief claim may proceed notwithstanding the Class Action Waiver or other provisions of this Arbitration Provision, and that determination becomes final after all appeals have been exhausted, 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. In no event will a claim for class or public injunctive relief be arbitrated.

### **Your Billing Rights**

#### **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:

Merchants Bank, National Association  
P.O. Box 248, Winona, MN 55987

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.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors in writing (or electronically). You may call us, but if you do, we are not required to investigate any potential errors and you may have to pay the amount in question.

#### **WHAT WILL HAPPEN AFTER WE RECEIVE YOUR LETTER**

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

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the

error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

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

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

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

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

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

#### **YOUR RIGHTS IF YOU ARE DISSATISFIED WITH YOUR CREDIT CARD PURCHASES**

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

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

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

If all of the criteria above are met and you are still dissatisfied with the Purchase, contact us in writing (or electronically):

Merchants Bank, National Association  
P.O. Box 248, Winona, MN 55987 or  
CC@merchantsbank.com

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.