



**CNH INDUSTRIAL CAPITAL<sup>SM</sup> PRODUCTIVITY PLUS<sup>SM</sup> ACCOUNT DISCLOSURES**

<b>Annual percentage rate (APR) for purchases</b>	<b>17.90%</b> variable.
<b>Other APRs</b>	Default APR: 22.90% variable. See explanation below.*
<b>Variable Rate Information</b>	Your APRs may vary each billing period.** The purchase APR equals the Prime Rate plus 9.90% (with a minimum of 17.90% and a maximum of 25.90%). The default APR equals the Prime Rate plus 16.90% (with a minimum of 22.90% and a maximum of 25.90%).
<b>Grace period for repayment of the balance for purchases</b>	At least 25 days if you pay the total balance in full by the due date every billing period. If you do not, you will not get a grace period.
<b>Method of computing the balance for purchases</b>	Daily balance. This includes new purchases.
<b>Minimum finance charge</b>	\$1.00.
<b>Annual fees</b>	None.
<b>Other fees</b>	Late fee: \$25 Returned Payment Fee: \$25

**\*How can your actions trigger the default APR?** If you default under the account agreement because you do not make the Minimum Payment Due by the payment due date for three billing periods in a row, your APRs (excluding promotional APRs on promotional balances) may automatically increase to the default APR.

**\*\*How do we calculate variable rates?** For each billing period we use the Prime Rate published in *The Wall Street Journal* two business days prior to the Closing Date for that billing period.

**When can we change the rates, fees, and terms of your account agreement?** We may change the rates, fees, and terms of your account agreement at any time, for any reason. These reasons may be based on information in your credit report or general market conditions. If the change will cause a rate or fee to increase, you will receive advance notice and a right to opt out. If you opt out, we will close your account. You can then pay the remaining balance under the old rates, fees and terms.

The Account Disclosures are accurate as of April 1, 2021. To find out what may have changed after that date write to us at Citibank, N.A., P.O. Box 790449, St. Louis, MO 63179.

**TERMS AND CONDITIONS OF OFFER**

- This offer is only valid for new accounts. You must be at least 18 years of age. This account is only for business or commercial purposes. It is not for personal, family or household purposes. Citibank, N.A. (“we” or “us”) is the issuer of your Productivity Plus account. Citibank, N.A. is located in Sioux Falls, SD. Credit card offers are intended for residents of, and this is not an offer for the credit card to individuals outside of, the United States and its Territories.
- To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. This means that we will ask for your name, address, date of birth, and other information that will allow us to identify you when you open an account. In addition, the bank must obtain the business’ legal name, its street address, and its taxpayer identification number. We may also ask to see your driver’s license or other identifying documents; and obtain identification information about you or any employees you add to your account.
- We may gather information about you, including from your employer, your bank, credit bureaus, and others, to verify your identity and determine your eligibility for credit, renewal of credit, and future extensions of credit. If you ask us, we will tell you whether or not we requested a credit bureau report, and the names and addresses of any credit bureaus that provided us with such reports.
- You authorize us to share with merchants, the retailer for whom this card is issued, and its affiliates, experiential and transactional information regarding you and your account.
- To receive a Productivity Plus Account, you must meet our credit qualification criteria. Your credit limit will be determined by a review of your credit report and, in some instances, a review of such other financial information as we may ask you to provide. You will be informed of the amount of your credit line when your account is opened.
- Please see the following Initial Disclosure Statement for important additional information. If you are approved for credit, you will receive an account agreement with your card(s).

## INITIAL DISCLOSURE STATEMENT

Please read this Initial Disclosure Statement ("Statement") and keep it for your records. If you are approved for credit, you will receive an Account Agreement ("Agreement") with your card.

Each use of the card to charge purchases constitutes a loan from us to you for commercial, business, agricultural, or governmental purposes. If you are approved for credit, your account may be used only for purchasing goods and services to be used for commercial, business, agricultural, or governmental purposes on behalf of the Business. You may not use this account to purchase goods or services for personal, family or household purposes.

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### Definitions

**account** means the relationship established between you and us by this Agreement. This includes any sub-account we establish for you or any authorized user.

**APR** means an annual percentage rate.

**Authorized Officer** means any natural person, whether or not an actual officer of the Business, who applies for the account on behalf of the Business.

**authorized user** means any person you allow to use your account.

**Business means** the corporation, limited liability company, partnership, sole proprietorship, association, governmental agency, or other entity or organization that applied to open the account and any successors to that entity or organization.

**Business Liability Only account** means an account that was not opened as a joint account, the account did not later become a joint account, and the Authorized Officer did not agree when applying for the account to be jointly and severally (or otherwise) liable with the Business for all amounts owed on the account.

**card** means one or more cards or other access devices that we give you to get credit under this Agreement. This includes account numbers.

**we, us, and our** mean Citibank, N.A., the issuer of your account. Citibank, N.A. is located in Sioux Falls, SD.

**you, your, and yours** means the Business and, except for a Business Liability Only account, each Authorized Officer, who are jointly and severally liable for all amounts owed on the account.

### Your Account

You agree to use your account in accordance with this Agreement. You must pay us for all amounts due on your account. This Agreement is binding on you unless you close your account within 30 days after receiving the card and you have not used or authorized use of the card. Your account must only be used for lawful transactions.

**Business Purpose.** You agree that your account is a business account. You agree that each use of the card is a loan from us to you for commercial, business, agricultural, and governmental purposes. You agree that the account will be used only for such purposes. You therefore agree that the account will not be used for personal, family, or household purposes. This applies to use of the account by you and by authorized users. But you will still be liable to us for any use of the account for personal, family or household purposes by you or authorized users. This applies even if the use does not benefit you. Because this is a business account, you understand that certain federal and state consumer protection laws do not apply to it.

**Joint and Several Liability.** Except for a Business Liability Only account, the Business and each Authorized Officer are jointly and severally liable for all amounts owed on your account. We may enforce any right or remedy we may have regarding any of your obligations under this Agreement without affecting our other rights or remedies. You waive (i) any right to require us to proceed against any other entity, individual, organization, or other person liable on the account or pursue any other remedy in our power whatsoever; (ii) any defense because of any disability or other defense or cessation of liability on the account by anyone else for any reason other than full payment; (iii) any defense or right against us arising out of the exercise of our rights under this Agreement to the extent that such exercise of rights results in the loss of any right of subrogation, reimbursement or other right you may have against anyone else liable on the account; and (iv) all presentments, diligence, protests, demands and notices or protest, dishonor or nonperformance.

**Joint Notices and Instructions.** The Business and each Authorized Officer agree that the delivery of notices or billing statements to any one of them constitutes delivery to each of them. The Business and each Authorized Officer agree that instructions from any of them constitute instructions from each of them. If we rely on such instructions, we are not liable to any of them for doing so. This paragraph does not apply to a Business Liability Only account.

**Authorized Users.** You may request additional cards for authorized users. You must pay us for all charges made by authorized users. You must pay us even if you did not intend to be responsible for those charges. You are responsible for controlling authorized users. We are not responsible for controlling them.

We may cancel an authorized user's right to use your account at any time. We may do this for any reason. We may do this without prior notice to you or the authorized user. You also may cancel an authorized user's right to use your account at any time. To do this, you must notify us in writing of the cancellation. After a cancellation, you must promptly retrieve any cards given to an authorized user. You must promptly destroy all cards unless we tell you otherwise. You must do these things whether the cancellation was begun by us or you. When you begin the cancellation, you must also inform the authorized user of the cancellation. You must tell the authorized user to stop using the card and your account immediately. If an authorized user brings a claim of wrongful cancellation against us because of a cancellation begun by you, the claim is your responsibility. You agree to indemnify and hold harmless us and our parent company, subsidiaries and affiliates from any losses, damages or other liability arising from the claim.

**Credit Line.** The full amount of your credit line is available to use where the card is honored. We may reduce or increase your credit line at any time for any reason. We will notify you of any change, but the change may take effect before you receive the notice. You should always keep your total balance below the credit line. However, if the total balance goes over your credit line you still must pay us. If your account has a credit balance, we may reduce the credit balance by any new charges on your account. You may not maintain a credit balance in excess of your credit line.

**Billing Statement.** Your billing statement shows the New Balance. This is the total amount you owe us on the Closing Date. To determine the New Balance, we begin with the total balance at the start of the billing period. We add any purchases. We subtract any credits or payments. We then add any periodic finance charges or fees and make other adjustments.

Your billing statement also shows your transactions; the Minimum Payment Due and payment due date; your credit line; and your periodic finance charges and fees. On the statement, a regular purchase balance will appear under the heading "regular revolve credit plan."

We deliver a billing statement to only one address. You must notify Customer Service of a change in address. We may stop sending you statements if we deem your account uncollectible. We may also stop sending you statements if we send your account to an outside agency or attorney for collection. Periodic finance charges and fees continue to add up even if we stop sending statements.

### APRs

**APRs Based on Prime.** We calculate any APR based on the U.S. Prime Rate ("Prime Rate") by adding the applicable amount that appears on the card carrier to the Prime Rate. For each billing period we use the Prime Rate published in *The Wall Street Journal* two business days prior to the closing date for that billing period. If *The Wall Street Journal* does not publish the Prime Rate, we may substitute a similar published rate. A change in an APR due to a change in the Prime Rate takes effect as of the first day of the billing period for which we calculate the APR. We apply the new applicable APR to any existing balances, subject to any promotional rate that may apply.

**Purchase APR.** The **ANNUAL PERCENTAGE RATE** for regular purchases equals the Prime Rate plus 9.90%, but not less than 17.90%. As of April 1, 2021, this APR is 17.90%. This APR will not exceed 25.90%. This APR equals a daily periodic rate of 0.04904%.

**Default APR.** Your APRs on your balances (excluding promotional APRs on promotional balances) will automatically increase to the default APR if you default because you do not make the Minimum Payment Due by the payment due date for three billing periods in a row.

The default **ANNUAL PERCENTAGE RATE** equals the Prime Rate plus 16.90%, but not less than 22.90%. As of April 1, 2021, this APR equals a daily periodic rate of 0.06273%. The default APR will not exceed 25.90%. The default APR takes effect as of the first day of the third consecutive billing period in which you fail to make the Minimum Payment Due by the payment due date. We will lower the APR for all balances at the default APR if you meet the terms of this Agreement for six billing periods in a row.

**Effect of APR Increases.** If an APR increases, periodic finance charges increase. Your minimum payment may increase as well.

### Promotions

We may offer you promotional terms for all or a part of any balances. Any promotional terms may apply for a limited period of time. They will be governed by the terms of the promotional offer and this Agreement. They may include the Deferred Interest and No Interest offers described below.

**Deferred Interest.** No finance charges will be imposed on this balance if you pay the balance in full by the end of the promotional period. We will impose finance charges on this balance if you do not pay the balance in full by the end of the promotional period. We will impose these finance charges from the date of purchase until the balance is paid in full.

**No Interest.** No finance charges are imposed on this balance during the promotional period.

**Rentals.** From time to time, we may offer you the ability to charge to your account the monthly rental fee and related rental costs (such as transportation and shipping fees, repair costs and incidentals like fuel) associated with the rental of equipment or other eligible items from participating dealers ("rental transaction"). Rental transaction charges are not subject to a finance charge but are due in full on the payment due date for the billing period that includes the date thirty (30) days after the charge is added to the account and cannot be deferred or revolved to a future payment date. Refer to your dealer's rental agreement to determine the applicable monthly rental fee and the related rental costs that your dealer will charge to your account, as well as all other terms governing your rental transaction.

### Periodic Finance Charges Based on APRs

**Periodic Finance Charges.** We impose periodic finance charges when we apply APRs to your account balances. We do this every day by using a daily periodic rate. To get a daily periodic rate, we divide the APR by 365.

**When Periodic Finance Charges Begin.** Periodic finance charges begin the first day we add a charge to a daily balance. The charges we add to a daily balance include purchases. They also include finance charges and fees. We continue to impose periodic finance charges until we credit your account with full payment of the total amount you owe us.

**Grace Period on Purchases.** You can avoid periodic finance charges on purchases. This is called a grace period on purchases. The grace period is at least 25 days. To get the grace period on purchases, you must pay the New Balance by the payment due date every billing period.

If you have a balance subject to a Deferred Interest promotion or a No Interest promotion and that promotion does not expire before the payment due date, that balance (an "excluded balance") is excluded from the amount you must pay in full to get a

grace period on a purchase balance other than an excluded balance. In addition, if you have a major purchase plan balance, that balance (an “excluded balance”) is excluded from the amount you must pay in full to get a grace period on a purchase balance other than an excluded balance. However, you must still pay any separately required payment on the excluded balance. In billing periods in which payments are allocated to Deferred Interest balances first, the Deferred Interest balance will be reduced before any other balance on the account. However, you will continue to get a grace period on purchases, other than an excluded balance, so long as you pay the New Balance (including any rental transaction charges), less any excluded balance, plus any separately required payment on an excluded balance in full by the payment due date each billing period.

In addition, certain promotional offers may take away the grace period on purchases. Other promotional offers not described above may also allow you to have a grace period on purchases without having to pay all or a portion of the promotional balance by the due date. If either is the case, the promotional offer will describe what happens.

**Calculation of Periodic Finance Charges.** We calculate periodic finance charges each billing period. To do this:

- We start with each of your different balances. These balances include, for example, regular purchases and different promotional balances, but do not include rental transaction charges. (Purchases made under the same promotional terms, including APR and expiration date, will be part of the same promotional balance.)
- We calculate the daily balance for each of your different balances. To get a daily balance, we start with the balance as of the end of the previous day. We add any periodic finance charge on the previous day’s balance. (This results in daily compounding of finance charges.) We add any new charges. We then subtract any new credits or payments.
- We multiply each daily balance by the daily periodic rate that applies to it. We do this for each day in the billing period. This gives us the daily periodic finance charges for each of your different balances.
- We add up all the daily periodic finance charges. The sum is the total periodic finance charge for the billing period. You authorize us to round the total periodic finance charge to the nearest cent.

When we calculate daily balances, we add a purchase as of the Transaction Date. We subtract a payment or credit as of the day it is credited to the account and then make other adjustments. We treat a credit balance as a balance of zero.

**Balance Subject to Finance Charge.** For each different balance, your statement shows any Balance Subject to Finance Charge. The Balance Subject to Finance Charge is the average of the daily balances during the billing period. A billing period begins on the day after the Closing Date of the previous billing period. It includes the Closing Date of the current billing period.

You can use your billing statement to calculate periodic finance charges. For each different balance, multiply the Balance Subject to Finance Charge by its daily periodic rate. Multiply that amount by the number of days in the billing period. The result is the total periodic finance charge on that balance. Rounding may cause a small difference.

**Minimum Finance Charge.** If the total periodic finance charge is less than \$1, we charge a minimum **FINANCE CHARGE** of \$1. We add the additional amount to the regular purchase balance or to one or more of the balances that is assessed a periodic finance charge.

### Other Fees

**Late Fee.** We add a late fee of \$25 for each billing period you do not pay the Minimum Payment Due by the payment due date. We add this fee to the regular purchase balance.

**Returned Payment Fee.** We add a fee of \$25 if a payment check or similar instrument is not honored or if it is returned because it cannot be processed. We also add this fee if an automatic debit is returned unpaid. We assess this fee the first time your check or payment is not honored, even if it is honored upon resubmission. We add this fee to the regular purchase balance.

### Payments

**Minimum Payment Due.** You must pay at least the Minimum Payment Due by the payment due date each billing period. The sooner you pay the New Balance, the less you will pay in periodic finance charges.

We calculate the Minimum Payment Due as follows. We begin with any past due amount. We add the amount due on each major purchase plan balance. We add any additional amount specified in a promotional offer, including any amount due for rental transaction charges. We then add the largest of the following:

- The Calculated New Balance if it is less than \$10.
- \$10 if the Calculated New Balance is at least \$10.
- 1% of the Calculated New Balance plus the amount of your billed periodic finance charges on the Calculated New Balance and any applicable late fee (the result is rounded up to the nearest dollar). For this purpose, billed periodic finance charges do not include periodic finance charges that accrued during prior billing periods on a Deferred Interest or other promotional balance that ended during the billing period covered by the statement.

The Calculated New Balance equals the New Balance on the billing statement less any balances subject to a major purchase plan, or to either of two types of promotional terms. The first are terms that do not require a minimum payment. The second are terms that require an additional amount as part of the Minimum Payment Due, such as rental transaction charges.

The amount due on a major purchase plan balance is the smaller of:

- The Repayment Percentage times the major purchase plan’s Highest Balance plus any credit protection or credit insurance fee allocated to that balance. (The result is rounded up to the nearest dollar.) Or

- The major purchase plan's balance on the Statement Closing Date.

For each 0% APR major purchase plan balance, we determine the payment as follows:

- We take the plan balance on the last day of the billing cycle in which the transaction is posted to your account.
- We divide the result by the number of months of the major purchase plan. (The result is rounded up to the nearest dollar.) This gives us the major purchase plan payment.

The amount due on each interest-bearing major purchase plan balance is the smaller of:

- The Repayment Percentage times the major purchase plan's Highest Balance. (The result is rounded up to the nearest dollar.) Or
- The major purchase plan's balance on the Statement Closing Date.

For each interest-bearing major purchase plan balance, the Highest Balance is the highest major purchase plan balance on a Statement Closing Date, less any credit protection or credit insurance fee allocated to that balance for that cycle, since the last time that balance was zero. The balance is zero at account opening.

The Repayment Percentage for each interest-bearing major purchase plan is as follows:

- 12 month major purchase plan with an APR of 3.99%: 8.5145%
- 18 month major purchase plan with an APR of 5.99%: 5.8227%
- 24 month major purchase plan with an APR of 3.99%: 4.3421%
- 24 month major purchase plan with an APR of 7.99%: 4.5223%
- 36 month major purchase plan with an APR of 3.99%: 2.9520%
- 36 month major purchase plan with an APR of 7.99%: 3.1332%
- 48 month major purchase plan with an APR of 3.99%: 2.2575%
- 48 month major purchase plan with an APR of 7.99%: 2.4409%

The Minimum Payment Due never exceeds your Calculated New Balance plus two amounts. The first is any amount required by a major purchase plan. The second is any required additional amount specified in a promotional offer, including any rental transaction charges. In calculating the Minimum Payment Due, we may subtract from the New Balance certain fees added to your account during the billing period.

**Application of Payments.** You authorize us to apply payments and credits in a way that is most favorable or convenient for us. This may include applying payments and credits to low APR balances first.

**Payment Instructions.** We credit your payments in accordance with our payment instructions on the billing statement. You must pay us in U.S. dollars. To do so, you must use a check, similar instrument, or automatic debit that is drawn on and honored by a bank in the U.S. Do not send cash. We can accept late or partial payments, or payments that reflect "paid in full" or other restrictive endorsements, without losing our rights. We also reserve the right to accept payments made in foreign currency and instruments drawn on funds on deposit outside the U.S. If we do, we select the currency conversion rate. We will then credit your account in U.S. dollars after deducting any costs incurred in processing your payment. Or we may bill you separately for these costs.

**Optional Pay by Phone Service.** You may use our optional Pay by Phone Service to make your payment by phone. To do so, call us to request the service. Each time you do, you agree to pay us the amount shown in the Pay by Phone section on the back of the billing statement. Our representatives are trained to tell you this amount whenever you call to use the service.

### **Credit Reporting**

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. We may also obtain follow-up credit reports on you.

If you think we reported incorrect information to a credit bureau, write us at the Customer Service address on the billing statement. We will investigate the matter. We will then tell you if we agree or disagree with you. If we agree with you, we will contact each credit bureau to which we reported and request a correction. If we disagree with you, we will tell you that.

### **Information Sharing**

You authorize us to share any information about you with others (including with CNH Industrial Capital America LLC and CNH Industrial America LLC, their affiliates and merchants). This includes information we get from you and from others, including, but not limited to information you provided with your application. It also includes information about the account and your transactions with us. You authorize us, and any one we share information with, to use it in any manner permitted by law.

### **Changes to this Agreement**

**We may change the rates, fees, and terms of this Agreement at any time for any reason. These reasons may be based on information in your credit report or general market conditions. Any changes we make may add, replace, or remove provisions of this Agreement. They may also change your rights and obligations under this Agreement as well as ours. These changes are binding on you unless you have the right to opt out and you choose to opt out by following our instructions.**

**You will have a right to opt out if the change will cause a rate or fee to increase. In that case, we will mail you advance written notice of the change. We will do this at least 15 days before the beginning of the billing period in which the change takes effect. If you do not agree to the change, you can opt out by contacting us. You must do**

**this within 25 days of the effective date of the change. If you opt out, we will close your account. You can then pay the remaining balance under the old rates, fees, and terms. If you use the card after the effective date of a change, you will be deemed to have accepted the change. This applies even if the 25 day opt out period has not expired.**

#### **Default**

You default under this Agreement if you fail to pay the Minimum Payment Due by its due date; go over your credit line; pay by a check or similar instrument that is not honored or that we must return because it cannot be processed; pay by automatic debit that is returned unpaid; fail to comply with the terms of this Agreement or have made any false or misleading statements on the application for your account. You also default under this Agreement if you become insolvent; suffer an attachment, execution, or levy against you or your property; make an assignment for the benefit of creditors; file a bankruptcy petition or have one filed against you; have a guardian, conservator, receiver, custodian or trustee appointed for you; are generally not paying your debts as they become due; or experience an adverse change in your financial standing. You also default under this Agreement if you agree to, become subject to, or experience a material change in the nature of your business; a cessation of ongoing business operations; a change in the control or structure of you or your business; or the sale or other transfer of all or substantially all of your assets. If you default, we may close your account and demand immediate payment of the total balance.

#### **Refusal of the Account or Card, Closed Accounts, and Related Provisions**

**Refusal of the Account or Card.** We do not guarantee approval of transactions. We are not liable for transactions that are not approved. That is true even if you have enough credit. We may limit the number of transactions approved in one day. If we detect unusual or suspicious activity, we may suspend your credit privileges.

**Preauthorized Charges.** We may suspend any automatic or other preauthorized card charges you arrange with a third party. We may do this if you default; if the card is lost or stolen; or we change your account for any reason. If we do this, you are responsible for paying the third party directly if you wish to do so. You are also responsible for reinstating the preauthorized charges if you wish to do so and we permit it.

**Lost or Stolen Cards or Account Numbers.** You must call us if any card or account number is lost or stolen. You must also call us if you think someone used or may use them without permission. When you call, we may require you to provide information to help our investigation. We may require you to provide this information in writing. For example, we may ask you to identify any charges that were not made by you or someone authorized by you. We may also ask you to confirm that you received no benefit from those charges.

**Unauthorized Use Liability.** You agree to be liable for any unauthorized use of your account if we have, at your request, issued ten (10) or more cards for use by your employees. (This includes any unauthorized use of cards or account numbers). This waives all limitations on your liability for unauthorized use of your account under the federal Truth in Lending Act. This waiver is allowed by Section 135 of that Act.

**Closing Your Account.** You may close your account by notifying us in writing or over the phone. When you do, you must promptly retrieve and, unless we instruct you otherwise, destroy all cards issued on your account. If you close your account, you must still repay the total balance in accordance with this Agreement. We may also close your account or suspend account privileges at any time for any reason. We may do this without prior notice to you. We may also reissue a different card at any time. You must return any card to us upon request.

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#### **ARBITRATION**

**PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR INSTEAD OF A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN COURT PROCEDURES.**

**Agreement to Arbitrate:** Either you or we may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between you and us (called "Claims").

#### **Claims Covered**

**What Claims are subject to arbitration?** All Claims relating to your account, a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; and Claims made independently or with other claims. A party who initiates a proceeding in court may elect arbitration with respect to any Claim advanced in that proceeding by any other party. Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis.

**Whose Claims are subject to arbitration?** Not only ours and yours, but also Claims made by or against anyone connected with us or you or claiming through us or you, such as a co-applicant or authorized user of your account, an employee, agent, representative, affiliated company, predecessor or successor, heir, assignee, or trustee in bankruptcy.

**What time frame applies to Claims subject to arbitration?** Claims arising in the past, present, or future, including Claims arising before the opening of your account, are subject to arbitration.

**Broadest interpretation.** Any questions about whether Claims are subject to arbitration shall be resolved by interpreting this arbitration provision in the broadest way the law will allow it to be enforced. This arbitration provision is governed by the Federal Arbitration Act (the “FAA”).

**What about Claims filed in Small Claims Court?** Claims filed in a small claims court are not subject to arbitration, so long as the matter remains in such court and advances only an individual (non-class, non-representative) Claim.

### ***How Arbitration Works***

**How does a party initiate arbitration?** The party filing an arbitration must choose one of the following two arbitration firms and follow its rules and procedures for initiating and pursuing an arbitration: American Arbitration Association or JAMS. Any arbitration hearing that you attend will be held at a place chosen by the arbitration firm in the same city as the U.S. District Court closest to your then current billing address, or at some other place to which you and we agree in writing. You may obtain copies of the current rules of each of the arbitration firms and forms and instructions for initiating an arbitration by contacting them as follows:

American Arbitration Association  
800-778-7879 (toll-free) (TTY: Use 711 or other Relay Service)  
Website: [www.adr.org](http://www.adr.org)

JAMS  
800-352-5267 (toll-free) (TTY: Use 711 or other Relay Service)  
Website: [www.jamsadr.com](http://www.jamsadr.com)

At any time you or we may ask an appropriate court to compel arbitration of Claims, or to stay the litigation of Claims pending arbitration, even if such Claims are part of a lawsuit, unless a trial has begun or a final judgment has been entered. Even if a party fails to exercise these rights at any particular time, or in connection with any particular Claims, that party can still require arbitration at a later time or in connection with any other Claims.

**What procedures and law are applicable in arbitration?** A single, neutral arbitrator will resolve Claims. The arbitrator will be either a lawyer with at least ten years experience or a retired or former judge, selected in accordance with the rules of the arbitration firm. The arbitration will follow procedures and rules of the arbitration firm in effect on the date the arbitration is filed unless those procedures and rules are inconsistent with this Agreement, in which case this Agreement will prevail. Those procedures and rules may limit the discovery available to you or us. The arbitrator will take reasonable steps to protect customer account information and other confidential information if requested to do so by you or us. The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations, will honor claims of privilege recognized at law, and will have the power to award to a party any damages or other relief provided for under applicable law. You or we may choose to have a hearing and be represented by counsel. The arbitrator will make any award in writing and, if requested by you or us, will provide a brief statement of the reasons for the award. An award in arbitration shall determine the rights and obligations between the named parties only, and only in respect of the Claims in arbitration, and shall not have any bearing on the rights and obligations of any other person, or on the resolution of any other dispute.

**Who pays?** Whoever files the arbitration pays the initial filing fee. If we file, we pay; if you file, you pay, unless you get a fee waiver under the applicable rules of the arbitration firm. If you have paid the initial filing fee and you prevail, we will reimburse you for that fee. If there is a hearing, we will pay any fees of the arbitrator and arbitration firm for the first day of that hearing. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. However, we will advance or reimburse your fees if the arbitration firm or arbitrator determines there is good reason for requiring us to do so, or if you ask us and we determine there is good reason for doing so. Each party will bear the expense of that party’s attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines.

**Who can be a party?** Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. The arbitrator will not award relief for or against anyone who is not a party. If you or we require arbitration of a Claim, neither you, we, nor any other person may pursue the Claim in arbitration as a class action, private attorney general action or other representative action, nor may such Claim be pursued on your or our behalf in any litigation in any court. Claims, including assigned Claims, of two or more persons may not be joined or consolidated in the same arbitration. However, applicants, co-applicants, authorized users on a single account and/or related accounts, or corporate affiliates are here considered as one person.

**When is an arbitration award final?** The arbitrator’s award is final and binding on the parties unless a party appeals it in writing to the arbitration firm within fifteen days of notice of the award. The appeal must request a new arbitration before a panel of three neutral arbitrators designated by the same arbitration firm. The panel will consider all factual and legal issues anew, follow the same rules that apply to a proceeding using a single arbitrator, and make decisions based on the vote of the majority. Costs will be allocated in the same way they are allocated for arbitration before a single arbitrator. An award by a panel is final and binding on the parties after fifteen days has passed. A final and binding award is subject to judicial review and enforcement as provided by the FAA or other applicable law.

### ***Survival and Severability of Terms***

This arbitration provision shall survive: (i) termination or changes in the Agreement, the account, or the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the entire arbitration provision shall not remain in force. No portion of this arbitration provision may be amended, severed or waived absent a written agreement between you and us.

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### **Governing Law and Enforcing our Rights**

**Governing Law.** Federal law and the law of South Dakota, where we are located, govern the terms and enforcement of this Agreement.

**Enforcing this Agreement.** We will not lose our rights under this Agreement because we delay in enforcing them or fail to enforce them.

**Information Requests.** You will give us any information that we may lawfully request about use of the card or account. This includes any use by you or an authorized user. You will give us any documents that we may reasonably request about such use. You will give us reasonable help in any investigation about use of the card or account. You will also give us reasonable cooperation in any prosecution or other litigation about such use.

**Collection Costs.** To the extent permitted by law, you are liable to us for our legal costs if we refer collection of your account to a lawyer who is not our salaried employee. These costs may include reasonable attorneys' fees. They may also include costs and expenses of any legal action.

**Assignment.** We may assign any or all of our rights and obligations under this Agreement to a third party.

**Notify Us In Case of Errors or Questions About Your Bill.** If you think your billing statement is wrong, or if you need more information about a transaction on your billing statement, write to us (on a separate sheet) as soon as possible at the billing errors address on the front of your statement. We must hear from you in writing no later than 60 days after we sent you the first statement on which the error or problem appeared.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.

Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

### **For Further Information**

Call us toll-free for further information. Call the toll-free Customer Service telephone number shown on the billing statement or on the back of your card. You can also call local or toll-free Directory Assistance to get our telephone number.

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