



**THESE TERMS AND CONDITIONS INCLUDE AN ARBITRATION PROVISION. YOU MAY REJECT THE ARBITRATION PROVISION IN ACCORDANCE WITH THE PARAGRAPH BELOW IN SECTION 18 TITLED "ARBITRATION PROVISION".**

**M&T Rewards Program Terms & Conditions**  
Effective **May 20<sup>th</sup>, 2020**

The M&T Rewards Program ("**Program**") is a promotional incentive program offered by Manufacturers and Traders Trust Company, and its affiliates ("**M&T Bank**", "**Issuer**", "**we**," and "**us**") with Credit Cards (as defined below) issued in the United States. Under the Program, you earn points every time an Account Holder, as defined below ("**you**", "**your**", and "**yours**") or an Authorized User makes a purchase or engages in a qualifying transaction ("**Purchase**") with a Credit Card that is in Good Standing (defined below) and is enrolled in the Program. You, or in the case of a Business Account, the Administrator or anybody granted permission by the Administrator, may use these points to redeem any of the items shown on the Program Website, which may include merchant gift certificates, gift cards, merchandise, and other items (referred to generally as "**Rewards**"). By using a Credit Card or otherwise participating in the Program, you are agreeing to be bound by the following terms and conditions. This is a separate and distinct agreement from the agreement that governs your Credit Card Account and the appropriate card or product agreement shall continue to govern use of your Credit Card ("**Credit Card Agreement**").

**1. Definitions.**

"**Credit Card**" means each M&T credit card issued by us or one of our affiliates that is eligible to participate in the Program as designated by us from time to time. Currently, only the M&T Visa® Credit Card with Rewards, the M&T Visa® Signature Credit Card, and the M&T Business Rewards Credit Card are eligible to participate in the Program.

"**Account Holder**" means the M&T customer who holds a Credit Card that is issued by us and in whose name the Credit Card account is held.

"**Administrator**" means the individual who will act on a Business's behalf as the primary contact with M&T and who is authorized to give M&T Instructions about a Business's Eligible Accounts and Authorized Users.

"**Authorized User**" means an individual permitted to use the Account, but who is not an Account Holder.

"**Business Account**" means an Eligible Account owned by a Business.

"**Program Account**" means an account we maintain for points you earn under the Program (the Program Account is not a deposit account and is not insured by the FDIC).

"**Program Website**" is [www.rewards.mtb.com](http://www.rewards.mtb.com), or such other website that we may designate from time to time.

- 2. Changes to the Program. WE MAY MODIFY, RESTRICT OR CHANGE THE PROGRAM, INCLUDING THESE PROGRAM TERMS AND CONDITIONS, AT ANY TIME, WHICH CHANGES MAY INCLUDE, BUT ARE NOT LIMITED TO, CHANGING THE NUMBER OF POINTS YOU EARN FOR A PARTICULAR TYPE OF ACTIVITY OR THE NUMBER OF POINTS YOU NEED TO REACH FOR A PARTICULAR REWARD TIER OR TO REDEEM A PARTICULAR REWARD, OR OMITTING OR ADDING REWARD LEVELS OR CATEGORIES, OR CHANGING THE SELECTION OF REWARDS, OR IMPOSING, INCREASING OR ELIMINATING POINTS CAPS OR PROGRAM FEES, OR CHANGING THE CONDITIONS UNDER WHICH POINTS EXPIRE OR ARE FORFEITED. WE WILL NOTIFY YOU OF MATERIAL CHANGES TO THE**

**PROGRAM TERMS AND CONDITIONS AND, UNLESS YOU DECIDE TO TERMINATE YOUR PROGRAM PARTICIPATION, YOU WILL BE BOUND BY THE REVISED TERMS AND CONDITIONS. WE ALSO RESERVE THE RIGHT TO SUSPEND OR TERMINATE THE PROGRAM, OR YOUR PARTICIPATION IN THE PROGRAM, AT ANY TIME WITHOUT COMPENSATION TO YOU. YOU CAN FIND THE MOST CURRENT PROGRAM TERMS AND CONDITIONS [WWW.REWARDS.MTB.COM](http://WWW.REWARDS.MTB.COM) OR BY CALLING REWARDS CUSTOMER SERVICE AT 1-888-448-6679.**

### **3. This Program and Enrollment.**

3.1 Availability of Program. This Program is available only for Credit Cards (and not for debit cards). Accordingly, you cannot enroll a debit card in the Program and points cannot be earned under the Program in respect of any debit card.

3.2. Enrollment in The Program. All cards associated with Your Credit Card account will be automatically enrolled in the Program. When your Credit Card is enrolled in the Program, we will establish a Program Account for you. All points that are earned by joint Account Holders (or by the Account Holder(s) and Authorized Users) of a Credit Card that is enrolled in the Program automatically will be consolidated into a single Program Account associated with that Credit Card. The Program Account associated with the Credit Card can only be accessed by Account Holders, not by Authorized Users. It is your responsibility to monitor your Program Account and keep Program Account information current (e.g., contact information, including a current e-mail address for notice purposes which should be updated in your online banking profile at [www.mtb.com](http://www.mtb.com)).

### **4. Purchases.**

4.1 Base Earning - Points can be earned for your Program Account if you make Purchases with a Credit Card. Points may not be available in connection with any transaction violating any federal, state or local law. A “**Purchase**” is any purchase or bill payment made with a Credit Card and such other transactions that we may designate from time to time. The following are not Purchases: payments of existing Credit Card balances, balance transfers, cash advances, ATM transactions, convenience checks, fees charged by us (e.g., annual fees, finance charges, and related service charges, if any apply), and such other transactions that we may designate from time to time. In addition, we reserve the right to determine in our sole discretion whether a particular Credit Card transaction is a Purchase.

### **5. Points.**

5.1 You will start earning points immediately for any Purchases made with your enrolled Credit Card and based on the actual purchase amount, including tax.

5.2 In order to be eligible to earn points, the Program Account must be “**active**” (meaning that the Program Account must not be cancelled by you or by us) and the Credit Card must be in “**Good Standing**” (meaning that the Credit Card is not cancelled, past due, or otherwise in default under the terms of the Credit Card Agreement and the Credit Card is not overdrawn (over the credit limit)). We reserve the right to determine in our sole discretion whether a particular Credit Card or Account Holder is eligible to earn points in the Program.

#### **You will earn the following points for each \$1 in Purchases:**

- For M&T Visa® Credit Card with Rewards - You will earn one (1) point for each \$1 in Purchases.
- For M&T Visa® Signature Credit Card - You will earn one and a half (1.5) points for each \$1 in Purchases.
- For M&T Business Rewards Credit Card - You will earn one and half (1.5) points for each \$1 in Purchases.

You also may earn points in connection with bonus point promotions (and the terms and conditions relating to such bonus point promotions are provided to you on the Program Website and/or through other promotional materials relating to such bonus point promotion).

5.3 Any returns, credits, or chargebacks earn “negative” points and such “negative” points will reduce the total points posted to your Program Account and may result in a negative balance in your Program Account. If at any time an enrolled Credit Card account is not in Good Standing, Purchases you make while the Credit Card is not in Good Standing may not accrue any points, in our sole discretion.

5.4 Occasionally, we may authorize an adjustment to your Program Account point balance (e.g., correct an error in your Program Account). These adjustments can be positive or negative. Details on adjustments can be found on the Program Website or by speaking with the Rewards Center (see below for contact information).

5.5 Points earned in the Program Account do not constitute property of the Account Holder or Authorized User and are not transferable (except as set forth in Section 7 below). In the event your Credit Card account is closed (whether by you or by us), your Program Account will be automatically cancelled and, in accordance with Section 6.4 below, all unredeemed points earned in the Program Account may be immediately forfeited. In the event of an Account Holder’s death, any points earned in the Program Account will remain eligible for redemption by another account holder for 45 days. .

5.6 Any tax liability, including any applicable federal, state, local or other sales tax and disclosures, in connection with the earning of any points or the receipt or use of any Rewards is your or the Reward recipient’s sole responsibility.

## **6. Point Activity/Redemption/Expiration/Forfeiture**

6.1 You or, in the case of a Business Account, only the Administrator or anybody granted permission by the Administrator, can view your Program Account point balance and points earning and redemption activity at any time online at [www.mtb.com](http://www.mtb.com). You can also call the Rewards Center (see below for contact information) for such information. It may take 1-2 weeks for some of your Purchases and the associated points to post to your Program Account.

6.2 Points are redeemed on a “first-in, first-out” basis, such that the first points earned will be the first points redeemed over the life of your Program Account. Once a redemption order is placed, your Program Account will be reduced by the number of points used to acquire the Reward. If your Reward order is cancelled or the Reward item becomes unavailable, your points will be reinstated and you will be notified of the cancelled order. The expiration date of the reinstated points will not re-set. We may suspend your ability to redeem points if a Credit Card is not in Good Standing.

**6.3 All unredeemed points in your Program Account will expire at the end of the 48th month from the month in which they were posted to your Program Account.**

6.4 If (i) your Program Account or Credit Card account is cancelled for any reason (whether by you or by us) or (ii) your Credit Card account is no longer maintained in Good Standing, all unredeemed points in your Program Account may (in our sole discretion) be immediately forfeited. You will not be provided with notice of expiration or forfeiture of points. You are not entitled to compensation from us or from any other entity when your points expire or if they are forfeited for any reason. Points have no cash or monetary value.

6.5 Suspected fraud or abuse relating to earning points in the Program or redemption of Rewards may result in forfeiture of earned points as well as cancellation of your Program Account.

6.6 You may view the posting date and the expiration date of points in your Program Account at [www.mtb.com](http://www.mtb.com).

6.7. All points that are earned by joint Account Holders (or by the Account Holder(s) and Authorized Users) of a Credit Card that is enrolled in the Program automatically will be consolidated into a single Program

Account associated with that Credit Card. Only Account Holders or, in the case of a Business Account, only the Administrator or anybody granted permission by the Administrator, will have access to the Program Website and Rewards Redemption Center. In addition, only Account Holders or, in the case of a Business Account, only the Administrator or anybody granted permission by the Administrator, will have the ability to redeem points in the Program Account. Authorized Users will not have access to the Program Account, unless, in the case of a Business Account, the Administrator grants Authorized Users such Access. Authorized Users will not have the ability to redeem points in the Program Account unless, in the case of a Business Account, the Administrator grants Authorized Users the ability to redeem points. Points earned on the Credit Card will be redeemed on a "first in, first out" basis, regardless of which Account Holder redeems such points. Rewards points awarded pursuant to criteria based upon the combined activity of a Credit Card will remain in the Program Account, without regard to which Account Holder/Authorized User actually used the Credit Card or whether such reward points have or have not been entirely or partially redeemed or adjusted.

6.8 Except for the automatic consolidation of points earned on a Credit Card as set forth in Section 6.7 above, you may not link any other eligible Credit Cards to your Program Account in order to consolidate points in a single Program Account.

6.9 Points redeemed through the Cash Back – Credit Card option will post as a statement credit under current transactions and cannot be used to satisfy an owed balance or minimum payment due. Please note that if your statement credit pays your entire outstanding balance, you will not be assessed a late fee if you do not also submit a separate minimum monthly payment, even if online banking or the mobile app state otherwise.

## **7. Transferring Your Points**

7.1. You may transfer some or all of your available unredeemed points to another Program Account through the M&T Rewards Redemption Center (1-888-448-6679). In addition, you, in the case of a Business Account, only the Administrator or anybody granted permission by the Administrator, may also transfer some or all of your available unredeemed points to another Program Account by using the Transfer Points feature at [www.mtb.com](http://www.mtb.com).

7.2. Points can be transferred under this Section 7 only to another Program Account that is established and in Good Standing with M&T Bank.

7.3. Once you transfer points to another Program Account, the transferred points will be deducted from your Program Account and added to the recipient's Program Account. Such transferred points will post to the recipient's Program Account immediately.

7.4. The transferring of points under this Section 7 shall not affect or re-set the expiration date of such points. For example, if certain points (set to expire on March 31, 2021) are transferred to another Program Account on January 10, 2020, such points will still expire on March 31, 2021. All other provisions of these terms and conditions (including the ability to transfer such points under this Section 7) also shall continue to apply to such transferred points.

7.5. If an item redeemed with transferred points is returned, the transferred points used for the redemption will be returned to the Program Account of the redeemer.

7.6. You may not cancel or revoke a request to transfer points from your Program Account after such request has been submitted to M&T Bank. However, nothing in this Section 7 shall restrict the ability of the recipient of such transferred points from transferring those points back to the transferor under this Section 7.

## **8. Rewards/Shipping.**

8.1 To redeem points in your Program Account to obtain Rewards call the Rewards Center (see below for contact information). In addition, you, or in the case of a Business Account, only the Administrator or

anybody granted permission by the Administrator, may also go to [www.mtb.com](http://www.mtb.com) to redeem points in your Program Account to obtain Rewards. You can only acquire Rewards to the extent that you have the required number of points in your Program Account. All Rewards are subject to availability and we reserve the right to cancel, change, or substitute Rewards at any time with or without notice.

8.2 Each Reward will be subject to terms and conditions specific to the Reward that will be provided to you in conjunction with the Reward. These terms and conditions may address such matters as the expiration date of the Reward, the purchase or other requirements to use the Reward, any warranties for the Reward, or any other limitations or restrictions on obtaining, retaining or using the Reward. All Rewards are subject to availability and restrictions may apply as to when Rewards can be redeemed. In the case of merchandise rewards that we provide and that are not available, we reserve the right to substitute merchandise that we determine is of equal value or credit the Program Account at our sole discretion. Neither we nor any other entity is liable to you if a Reward expires prior to your use of the Reward. An expired Reward will no longer be available for use or redemption.

8.3 Many of the Rewards are gift cards or certificates issued by merchants that are redeemable only at such merchant and which may be subject to the merchant's terms and conditions, including expiration dates. You and the merchant are responsible for compliance with all laws related to the Reward, including the payment and collection of any federal, state, or local taxes. Refer to the Reward certificate or gift card for details. Rewards generally will be sent to you within 4 weeks of placing your Rewards order. Rewards frequently will be sent sooner, depending upon Reward type and availability.

8.4 Any merchandise Reward, if it has been damaged in transit, can be returned to the Rewards Center in its original packaging within ten (10) days of your receipt, in which event you will receive a full reinstatement of the points you redeemed to acquire the Reward. Contact the Rewards Center (see below for contact information) for return instructions. All non-merchandise Rewards (for example, gift cards and certificates) cannot be returned. Except as otherwise provided above in connection with merchandise damaged in transit, redeemed Rewards are not refundable, exchangeable, replaceable, redeemable, or transferable for cash, credit, other Rewards or points under any circumstances; we and Participating Retailers are not responsible for replacing lost, stolen, or mutilated Rewards, including retail or travel certificates, gift certificates, gift cards, or merchandise.

For the current list and description of the Rewards, as well as the number of points necessary to obtain each Reward, go to the Program Website.

## **9. Airline Tickets & Travel Packages.**

9.1 You may redeem points for travel through the Online Rewards Center ("**Booked Travel**") or through the M&T Rewards Redemption Center (1-888-448-6679). Travel rewards may be subject to general restrictions, limitations, and requirements as may be: (i) posted on the Program Website from time to time, or (ii) disclosed to you during the redemption process. These restrictions, requirements and limitations may change at any time, without notice to you.

9.2 For Booked Travel, electronic ticket travel itineraries will be emailed. Travel itinerary discrepancies must be reported to the Rewards Center within 24 hours of the date of point redemption. Applicable lost ticket fees and/or replacement costs will be the responsibility of the Account Holder. Tickets may be purchased in any name designated by the Account Holder. Tickets are non-refundable, and lost, stolen, or expired tickets cannot be replaced.

## **10. Communications with Program Participants.**

10.1 We may communicate with you regarding any matter related to the Program by mail, by telephone, or by electronic communications. We may send electronic communications to you, including electronic mail and/or postings to the Program Website. All electronic communications from us to you shall be deemed to be communications "in writing" and deemed delivered to you no later than the earlier of the date actually received or five days from the date of posting or dissemination. To access information electronically, you need Internet access, an Internet Browser and an email account. To retain copies of electronic communications, you will need a printer attached to your computer or sufficient storage space in your disk

drive to save an electronic copy. Additionally, you must login to online banking to access your information electronically or to conduct any activity online regarding your Program Account on [www.mtb.com](http://www.mtb.com).

10.2 You can contact the Rewards Center if you would like to request a paper copy of these terms and conditions, or to withdraw your consent to receive electronic marketing communications. We are not obligated to provide any additional communications to you, other than these terms and conditions, in a paper form. We also reserve the right at our option to terminate your participation in the Program if you withdraw your consent to receive electronic communications regarding the Program.

**11. Canceling Program Participation.** You may cancel your participation in the Program at any time by calling the Rewards Center. If you cancel your participation in the Program, the positive point balance in your Program Account will be forfeited and cannot be transferred to another Program Account. Only the joint Account Holders or the Account Holder (but not the Authorized User) may cancel participation in the Program for such Credit Card. Any negative point balance in your Program Account will carry over to any other Program Account set up later with the same Credit Card. We reserve the right to also carry over a negative point balance to a Program Account set up later with a different Credit Card belonging to the same Account Holder.

**12. Lost, Stolen or Damaged Visa Credit Cards.** You will not lose the points in your Program Account if your enrolled Credit Card is lost, stolen or damaged and we provide a replacement card, even if such replacement Credit Card has a different card number.

**13. Rewards Center, Error Resolution.** If you have a problem or question regarding whether you earned points from a particular Purchase, whether a Reward was properly redeemed, or the status of your redemption order, or any other question regarding the Program, you can reach the Rewards Center by telephone at 1-888-448-6679 9 a.m. to 9 p.m. (EST) Monday - Friday and 10 a.m. to 7 p.m. (EST) Saturday and Sunday. If you contact us regarding an error or mistake with respect to your Program Account, we will use reasonable efforts to investigate and correct the error or mistake, subject to the limitations set forth in these terms and conditions. In any event, you must notify us within 30 days of the posting date or the date of the alleged error or mistake in order for us to undertake an investigation of the matter. We may require you to provide written confirmation of the alleged error or mistake. If we do not receive the requested written confirmation at the address and within the time frame requested by us, we may in our sole discretion determine not to correct the alleged error or mistake. If we complete our investigation of the alleged error or mistake and notify you of our determination, we have no further responsibilities should you later reassert the same alleged error or mistake. All questions or disputes regarding the Program, including eligibility, earning points, or redemption of points for Rewards, will be resolved by us in our sole discretion.

**14. Disclaimers and Limitations.**

**14.1 NEITHER WE NOR OUR SERVICE PROVIDERS ARE RESPONSIBLE FOR ANY DISPUTES BETWEEN OR INVOLVING ACCOUNT HOLDERS OR AUTHORIZED USERS RELATING TO POINTS, REDEMPTION FOR REWARDS, OR USE OF REWARDS.**

**14.2 REWARDS ARE PROVIDED BY A VARIETY OF MERCHANTS. WE, AND OUR SERVICE PROVIDERS, ARE NOT RESPONSIBLE TO YOU FOR THE QUALITY OR PERFORMANCE OF THE REWARDS OR THE PRODUCTS OR MERCHANDISE PURCHASED OR OBTAINED WITH THE REWARDS. YOU MAY BE SUBJECT TO ADDITIONAL TERMS AND CONDITIONS, WARRANTIES OR OTHER REQUIREMENTS OF THE MERCHANT, MANUFACTURER, OR OTHER REWARDS PROVIDER. NEITHER WE NOR OUR SERVICE PROVIDERS MAKE ANY GUARANTEE, WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE REWARDS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE AND OUR SERVICE PROVIDERS ARE NOT LIABLE FOR ANY INJURY, DAMAGE OR LOSS TO PERSON OR PROPERTY OR ANY EXPENSE, ACCIDENT OR INCONVENIENCE THAT MAY ARISE FROM THE USE OF THE POINTS, OR THE USE OF THE REWARDS OR PRODUCTS OR MERCHANDISE PURCHASED OR OBTAINED WITH THE REWARDS, OR OTHERWISE IN CONNECTION WITH THE PROGRAM. FURTHER, FOR ANY TRAVEL REWARDS, WE ASSUME NO LIABILITY OR RESPONSIBILITY FOR DELAYS CAUSED BY ACCIDENTS, BREAKDOWN OR OTHER CONDITIONS BEYOND CONTROL. WE AND OUR SERVICE PROVIDERS WILL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO PROPERTY. FURTHER, WE AND**

**OUR SERVICE PROVIDERS ARE NOT RESPONSIBLE FOR MERCHANTS, MANUFACTURERS OR OTHER REWARD PROVIDERS THAT DISCONTINUE OR CANCEL A REWARD DUE TO BANKRUPTCY OR FOR ANY OTHER REASON. NEITHER WE NOR OUR SERVICE PROVIDERS MAKE ANY REPRESENTATION OR ENDORSEMENT OF ANY REWARD, MERCHANT, OR OTHER PROVIDER OF A REWARD IN CONNECTION WITH THE PROGRAM.**

**14.3 YOU HEREBY RELEASE AND HOLD US, OUR SERVICE PROVIDERS AND ALL PARTIES ASSOCIATED WITH THE PROGRAM, HARMLESS FROM ANY CLAIM, LIABILITY OR DAMAGE RELATING TO THE PROGRAM OR YOUR USE OF THE REWARDS. ANY REWARD OFFERED UNDER THIS PROGRAM IS VOID WHERE PROHIBITED BY LAW. NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS TO THE CONTRARY, WE, OUR SERVICE PROVIDERS AND ANY OF THEIR SERVICE PROVIDERS SHALL HAVE NO LIABILITY TO YOU IN CONNECTION WITH THE PROGRAM.**

**15. Privacy.** All information collected in connection with the Program is subject to our privacy policies, the terms of which you can view online at [www.mtb.com](http://www.mtb.com). By participating in the Program, you agree that we can use your name and likeness for marketing and publicity purposes, without further compensation.

**16. Jury Trial Waiver, Governing Law. TO THE EXTENT PERMITTED BY LAW, YOU AND WE WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF A LAWSUIT ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS. THIS JURY TRIAL WAIVER SHALL NOT AFFECT THE ARBITRATION PROVISION BELOW (INCLUDING THE JURY TRIAL WAIVER CONTAINED THEREIN). YOU AND WE EACH REPRESENT THAT THIS WAIVER IS GIVEN KNOWINGLY, WILLINGLY AND VOLUNTARILY. Except as set forth in the below Arbitration provisions, these Terms and Conditions will be governed by the Laws of the State of New York without regard to its conflict of law principles.**

**17. Notice and Cure.** Prior to bringing a lawsuit or initiating an arbitration that asserts a claim arising out of or related to the Program and/or these terms and conditions (as further defined below, a “**Claim**”), the party asserting the Claim (the “**Claimant**”) shall give the other party (the “**Defendant**”) written notice of the Claim (a “**Claim Notice**”) and a reasonable opportunity, not less than 30 days, to resolve the Claim. Any Claim Notice to you shall be sent in writing to the address we have in our records (or any updated address you subsequently provide to us). Any Claim Notice to us shall be sent by mail to M&T Bank, M&T Center, One Fountain Plaza Buffalo NY 14203 Attn: M&T Reward Program Manager (or any updated address we subsequently provide or post on the Program Website). Any Claim Notice you send must provide your name, address and account number. Any Claim Notice must explain the nature of the Claim and the relief that is demanded. You may only submit a Claim Notice on your own behalf and not on behalf of any other party. No third party, other than a lawyer you have personally retained, may submit a Claim Notice on your behalf. The Claimant must reasonably cooperate in providing any information about the Claim that the other party reasonably requests.

**18. Arbitration Provision**

**Your Right to Reject:** You may reject this Arbitration Provision and any prior arbitration agreement between you and us that you have not had a prior chance to reject (“**Prior Arbitration Agreement**”) by mailing us, within 30 days after the date that you become subject to these Terms and Conditions, a signed rejection notice which gives your name(s) and address(es) and states that you reject arbitration. The rejection notice must be sent to us at M&T Bank, Regulatory Support, P.O. Box 1468, Buffalo, NY 14240-1468 (attn. Arbitration Rejection).

**Covered Claims:** “Claim” means any claim, dispute or controversy whatsoever between you and us that in any way arises from or relates to these Terms and Conditions. However, “Claim” does not include any dispute about the validity, effect or enforceability of the Class Action Waiver below or any dispute concerning the last sentence of the Severability section below; any such dispute shall be resolved by a court and not by an arbitrator or Administrator.

**Notice and Cure:** Prior to initiating a lawsuit or arbitration regarding any Claim, the party asserting the Claim (the “**Claimant**”) shall give the other party (the “**Defending Party**”) written notice of the Claim (a “**Claim Notice**”) and a reasonable opportunity, not less than 30 days, to resolve the Claim on an individual basis. Any Claim Notice must explain the nature of the Claim and the relief that is demanded. The Claimant

must reasonably cooperate in providing any information about the Claim that the Defending Party reasonably requests. Any Claim Notice to us shall be sent by mail to any address provided for notices in any agreement between the parties (or any updated address we have subsequently provided you), attention Claim Notice. Any Claim Notice must include your name and address.

**Starting Arbitration**



: Arbitration may be elected by any party with respect to any Claim, even if that party has already initiated a lawsuit with respect to a different Claim. Arbitration is started by giving a written demand for arbitration to the other party. We will not demand to arbitrate an individual Claim that you bring against us in small claims court or your state's equivalent court, if any. But if that Claim is transferred, removed or appealed to a different court, we then have the right to demand arbitration. The party starting an arbitration must select as "**Administrator**" either the American Arbitration Association ("**AAA**"), 1633 Broadway, 10th Floor, New York, NY 10019, www.adr.org., or JAMS, 620 Eighth Avenue, 34th Floor, New York, NY 10018, www.jamsadr.org. However, any other company may be selected by mutual agreement of the parties or, if AAA and JAMS cannot serve, a court. Notwithstanding the foregoing, no arbitration may be administered by any Administrator that has in place a formal or informal policy that is inconsistent with the Class Action Waiver.

**Conduct of Arbitration:** The language of any arbitration shall be in English. Any party desiring or requiring a different language shall bear the expense of an interpreter. The parties shall select a single arbitrator or, in the event the parties shall fail to agree, a single, neutral arbitrator shall be chosen by the Administrator. Each arbitrator shall be a licensed attorney who has engaged in the private practice of law continuously during the 10 years immediately preceding the arbitration or a retired judge of a court of general or appellate jurisdiction. All statutes of limitation, defenses, and attorney-client and other privileges that would apply in a court proceeding will apply in the arbitration. In conducting the arbitration and making the award, the arbitrator shall be bound by and shall strictly enforce the terms of this Arbitration Provision and may not limit, expand or otherwise modify its terms.

**Court and Jury Trials Prohibited:** IF YOU OR WE ELECT TO ARBITRATE A CLAIM, YOU WILL NOT HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM.

**Prohibition Against Certain Proceedings:** IF YOU OR WE ELECT TO ARBITRATE A CLAIM: (1) NEITHER YOU NOR WE MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION; (2) YOU MAY NOT ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; (3) CLAIMS BROUGHT BY OR AGAINST YOU MAY NOT BE JOINED OR CONSOLIDATED WITH CLAIMS BROUGHT BY OR AGAINST ANY OTHER PERSON; AND (4) THE ARBITRATOR SHALL HAVE NO POWER OR AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY GENERAL ARBITRATION OR MULTIPLE-PARTY ARBITRATION.

**Location and Costs of Arbitration:** Any arbitration hearing that you attend must take place at a location reasonably convenient to you. The parties shall jointly and equally pay the expenses of the arbitrator and administrative costs assessed by the Administrator, as well as their own expenses incurred during the dispute resolution process. We will pay a greater proportion of such fees, to the extent required to make this Arbitration Provision enforceable or if required by applicable law.

**Governing Law:** This Arbitration Provision involves interstate commerce and is governed by the Federal Arbitration Act (the "**FAA**"), and not by any state arbitration law, provided that New York law shall apply to the extent relevant to determine the validity of this Arbitration Provision under the FAA. The arbitrator must apply applicable substantive law consistent with the FAA and applicable statutes of limitations and claims of privilege recognized at law. The arbitrator may award any remedy provided by the substantive law that would apply if the action were pending in court (including, without limitation, punitive damages, which shall be governed by the Constitutional standards employed by the courts). At the timely request of either party, the arbitrator must provide a brief written explanation of the basis for the award.

**Right to Discovery:** In addition to the parties' rights to obtain discovery pursuant to the arbitration rules of the Administrator, either party may submit a written request to the arbitrator to expand the scope of discovery normally allowable under the arbitration rules of the Administrator. The arbitrator shall have discretion to grant or deny that request.

**Arbitration Result:** Judgment upon the arbitrator's award may be entered by any court having jurisdiction. The arbitrator's decision is final and binding, except for any right of appeal provided by the FAA.

**Rules of Interpretation:** This Arbitration Provision shall survive the repayment of all amounts owed under any agreement between the parties, the closing of any related account(s), any legal proceeding and any bankruptcy to the extent consistent with applicable bankruptcy law. This Arbitration Provision replaces any Prior Arbitration Agreement and governs over any inconsistent provision in the applicable arbitration rules or other provisions of any agreement between the parties.

**Severability:** If any portion of this Arbitration Provision, other than the Class Action Waiver, is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. However, if a determination is made that the Class Action Waiver is unenforceable, only this sentence of the Arbitration Provision will remain in force and the remaining provisions shall be null and void, provided that the determination concerning the Class Action Waiver shall be subject to appeal.