

## **CARDMEMBER AGREEMENT**

**General Information:** This Cardmember Agreement and the Important Disclosures About Your Ollie's Credit Card ("**Important Disclosures**") (together, the "**Agreement**") is the agreement for your Ollie's credit card account issued by TAB Bank (your "**Account**"). Key terms are defined throughout this Agreement, including in the "Definitions" section, below. The words "**we**," "**us**," "**our**" and "**TAB Bank**" each mean Transportation Alliance Bank, Inc. d/b/a TAB Bank, and its successors and assigns. The word "**Sunbit**" means Sunbit Now, LLC, dba Sunbit, the company that assists TAB Bank in servicing your Account. (We may allow Sunbit and/or other third parties to exercise our rights on our behalf.) The words "**Cardmember**," "**you**" and "**your**" each mean all persons whom we approve to use the Account, and any person who agrees to be responsible for payment of the Account. Please keep a copy of the Agreement for your records and read it carefully.

**Arbitration Notice:** SECTION 33 OF THIS AGREEMENT IS AN ARBITRATION PROVISION WHICH WILL APPLY TO YOU UNLESS (1) YOU ARE A MEMBER, OR A DEPENDENT OF A MEMBER, OF THE ARMED FORCES ON THE DATE YOU OPEN THIS ACCOUNT, OR (2) YOU REJECT THE ARBITRATION PROVISION AS PROVIDED IN SECTION 33. IF APPLICABLE, THE ARBITRATION PROVISION WILL SIGNIFICANTLY AFFECT YOUR RIGHTS IF A DISPUTE ARISES BETWEEN YOU AND US. FOR EXAMPLE, YOU WILL NOT BE ABLE TO BRING OR PARTICIPATE IN A CLASS ACTION RELATING TO MATTERS ARISING UNDER THIS AGREEMENT.

1. **Definitions:** The following terms as used in this Agreement mean the following:

"**Annual Percentage Rate**" or "**APR**" means the rate, disclosed as a percentage, used to calculate interest charges for your Account.

"**Card**" means any credit card, Account number, virtual account or other access device issued by us to you, or any other form of access device that can be used to access credit on your Account.

"**Credit Limit**" means the maximum amount of credit that can be accessed using your Account.

"**Daily Periodic Rate**" or "**DPR**" means the APR divided by 365.

"**Minimum Payment Due**" means the minimum amount you must pay us by the applicable Payment Due Date for your Account to remain in good standing. Your Minimum Payment Due will be shown on each Statement.

"**Payment Due Date**" is the date shown on each Statement by which you must pay at least the Minimum Payment Due shown on such Statement.

"**Purchase**" means using your Card (including through a mobile device or mobile wallet) to purchase or lease goods or services. "Purchases" generally include any credit adjustments related to a Purchase.

"**Statement**" means a periodic billing statement we will provide to you if and as required by applicable law.

2. **Acceptance and Use of This Account; Promise to Pay:** By accepting a Card, activating or using the Account, or allowing someone else to do so, you agree to and accept the terms of this Agreement, as such terms may be changed from time to time by us. You may use your Account only for personal, family, or household purposes, and not for any business, commercial or investment purpose. You should sign the back of your Card before using it. You promise to pay us the amount of all transactions, interest, fees, if any, and other amounts charged to your Account.

You may make Purchase transactions up to your Credit Limit either by presenting your Card to a merchant, or by using your Card or Account number over the telephone, internet or some other electronic method, to complete such transactions.

Certain mobile phones or other electronic devices can be provisioned to function as a Card, such as by storing and/or accessing Account data (for example, through a mobile wallet). Transactions using such devices can proceed like an online transaction over the internet, or can function like a traditional credit card. Any such electronic device constitutes a "Card" under this Agreement. Applications that enable your electronic devices to function as a Card may be subject to separate terms and conditions. We are not responsible if a transaction violates such terms and conditions. However, transactions subject to any such terms and conditions are also subject to this Agreement.

If your mobile phone or other electronic device can function as a Card, you are solely responsible for protecting it in the same manner as protecting a plastic credit card or Account information. Giving another person a device that functions as a Card and/or any information necessary to use the device as a Card has the same consequence for you as permitting such person to use your Account.

You may be able to establish recurring periodic billing arrangements with various merchants, and it will be your responsibility to ensure such merchants are provided with current Account information. If your Account information changes, such as a change in Account number or Card expiration date, you consent to our providing such new Account information, at our discretion, to any or all such merchants, but we are not obligated to do so. If your Account is closed or your charging privileges are suspended, you will need to contact such merchants to stop the automatic transactions.

You may not use your Account for balance transfers, to obtain cash advances or for "quasi-cash" transactions, which include, but are not limited to, purchases of wire transfers, money orders, traveler's checks, foreign currency, lottery tickets, off-track bets and casino gambling chips. If you are somehow able to use your Account for a transaction of this type, you agree to repay any amount(s) for such transactions upon demand.

3. **Credit Limit:** Your initial Credit Limit is provided on the Card carrier accompanying this Agreement and is included in this Agreement by reference. We will disclose your then-current Credit Limit to you on each of your Statements. You agree we may change your Credit Limit at any time subject to applicable law. You agree never to use your Card when the use would exceed your Credit Limit, and that we are not obligated to extend credit to you for an amount that would cause your outstanding balance to exceed your Credit Limit, or for any amount if your outstanding balance is already over the Credit Limit.

Any increases in your Credit Limit you request will require that you make either a written, oral or electronic application for our approval. We will re-evaluate your financial condition, including your ability to make payments, if you request a higher Credit Limit (and we accept your request), or at any time we deem it appropriate to review your Account, and this may include obtaining a current credit bureau report, and/or asking you for current financial information. Based on such reviews, we may immediately increase or reduce your Credit Limit, or close the Account, without prior written notice to you except as required by applicable law.

If you make a transaction that would cause you to exceed your Credit Limit, we may (a) allow the transaction without increasing your Credit Limit; (b) allow the transaction without increasing your Credit Limit and treat that amount as immediately due, or (c) refuse the transaction. If the transaction is refused, we may notify the person who attempted the transaction that it has been refused. If we permit a transaction that causes an over-limit

condition, it does not mean that we will do so again in the future. You will pay any amount(s) which exceeds your Credit Limit, upon demand.

4. **Illegal Activities and Card Use:** You agree not to use your Card or Account to engage in illegal activities, including, but not limited to, certain internet gambling. If you use your Card or Account to engage in any illegal activity, you understand that you will nevertheless be liable for any resulting transactions made by use of your Card or Account, and any related interest and fees, if any.
5. **Variable Annual Percentage Rate:** The Annual Percentage Rate (and Daily Periodic Rate) on this Account will vary from time to time due to changes to the "**Index**," plus the applicable percentage identified in your Important Disclosures as the margin. The APR (and DPR) may change each billing cycle if the Index changes. The Index is determined monthly, and is the highest U.S. Prime Rate published in the "Money Rates" section of *The Wall Street Journal* on the 28<sup>th</sup> (twenty-eighth) day of the month or, if the Index is not published on such date, then on the immediately following publication day. If the Index has changed, the new APR (and DPR) will apply to your Account as of the first day of your next billing cycle. If the APR increases (or decreases), you will pay a correspondingly higher (or lower) interest charge and may pay a higher (or lower) Minimum Payment Due. The **Prime Rate** is simply a pricing index and may not be the lowest interest rate available. If *The Wall Street Journal* temporarily or permanently stops publishing the Prime Rate, or how the Prime Rate is defined is changed, then we may select a new third party source for obtaining the Prime Rate or select a substitute Index not under our control, in our sole discretion.
6. **Periodic Interest on Your Account:**

- a) **Paying Interest/When Periodic Interest Begins to Accrue:** We do not charge periodic interest in any billing cycle if you pay the New Balance, if any, as shown on your prior Statement in full by the Payment Due Date shown on such Statement every month. A billing cycle without periodic interest is an "**Interest Free Period**." If your current Statement indicates that you made full payment of the Previous Balance (which is the same as the New Balance shown on your previous Statement) by the Payment Due Date as shown on the previous Statement or if the current Statement indicates that the Previous Balance was zero or a negative amount, and if you also make a payment equal to the New Balance indicated on the current Statement by the Payment Due Date shown on the current Statement, then we will not charge periodic interest on any portion of the new Purchases that appear on the current Statement to which we allocated such payment.

On each Purchase, we charge periodic interest from the posting date of the Purchase on your Statement unless such Purchase posts during an Interest Free Period. If the Purchase posts during an Interest Free Period but the next billing cycle is not an Interest Free Period, we start charging periodic interest as of the first day of that next billing cycle on the portion of the Purchase, if any, that is not paid by the Payment Due Date. We do not charge periodic interest on any Purchase that is posted during an Interest Free Period and paid in full by the Payment Due Date in the next billing cycle.

- b) **Interest Calculation; Balances Subject to Interest Rate:** We calculate periodic interest on your Account by multiplying the "**Balance Subject to Interest Rate**" by the DPR, and by the number of days in the billing cycle. If you have an Interest Free Period for a billing cycle, the Balance Subject to Interest Rate for that billing cycle will be \$0.

We figure your Balance Subject to Interest Rate by (i) figuring the "daily balance" of Purchases for each day in the current billing cycle, (ii) adding up all such daily balances together and (iii) dividing the total by the number of days in the billing cycle. This gives us the "average daily balance."

We figure each "daily balance" on your Account as follows. If a daily balance is less than zero, we will treat it as zero. For each day in the billing cycle:

- (i) we start with the beginning balance of Purchases for such day (which equals the daily balance of Purchases for the immediately preceding day), if any;
- (ii) as of the first day of the billing cycle, if the immediately preceding billing cycle was an Interest Free Period we subtract all payments and credits applied to Purchases and posted by the Payment Due Date in the current billing cycle, and make any other necessary debit or other adjustments;
- (iii) we add any new Purchases, if any; and
- (iv) we subtract any payments and credits for that day that apply to Purchases (but do not subtract a second time any payments or credits that have already been subtracted in step (ii), above).

7. The Military Lending Act provides protections for certain members of the Armed Forces and their dependents ("Covered Borrowers"). The provisions of this section apply only to Covered Borrowers.

- a) **Statement of Military APR:** Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specific credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account).

- b) **Oral Disclosures:** Covered Borrowers may receive important disclosures and payment obligation information about this Agreement verbally by calling us toll free at 855.950.0057.

8. **Foreign Transactions:** If a Purchase is in a currency other than U.S. dollars, the payment network supporting your Account will convert the Purchase into U.S. dollars using its own currency conversion procedures. Currently, the exchange rate is determined in one of two ways. The rate will come from either the range of rates available in the wholesale currency markets for the processing date (which may be different from the rate the payment network receives) or a government-mandated rate in effect on that date. The exchange rate used may differ from the rate on the date of your Purchase or its posting date. These rules may change without notice.

9. **[Reserved]**

10. **[Reserved]**

11. **Minimum Payment Due; Making Payments:** The Minimum Payment Due in a billing cycle, shown on the monthly statement for the immediately preceding billing cycle (the "Prior Statement"), is the greater of \$40 or 3% of the New Balance indicated in the Prior Statement; plus the amount of "Interest Charged" during the preceding billing cycle (as

indicated on the Prior Statement); plus all past due amounts (if any). If the New Balance is less than \$40, then the total New Balance is the Minimum Payment Due.

You agree to make your payments only in U.S. dollars. In our discretion, we may delay increasing your available credit by the amount of any payment until we determine that your payment has been indefeasibly collected. You agree that we are not obligated to accept payment checks drawn on a financial institution that is outside of the U.S. or that do not contain proper signatures and amounts. If you present and we accept a check drawn on a non-U.S. financial institution, posting of your payment will be delayed. You agree to allow us, at our discretion, to place a hold on your Account until a check drawn on a non-U.S. financial institution has been finally collected. We reserve the right to reject any payment that will create or increase a credit balance on your Account as of the date we receive the payment. We will not pay interest on any credit balance on your Account.

Payment received at the address we specify for payments on your Statement in proper form by 5:00 p.m. Pacific Time on a business day will be credited to your Account as of that day. Payments received in proper form at this address after that time will be credited to your Account as of the next business day. We may, in our discretion, accept payments not received in proper form, but crediting of such payments may be delayed up to five days following receipt.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer ("EFT") from your deposit account or to process the payment as a check transaction. When we use information from your check to make an EFT, funds may be withdrawn from your deposit account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. If your check is returned unpaid for insufficient or uncollected funds, we may re-present your check electronically.

- 12. Irregular Payments:** We may accept late payments, partial payments, disputed payments or payments marked with restrictive writing, such as "Paid in Full" or similar language, without losing any of our rights under the Agreement. If you wish to make a payment in satisfaction of a disputed amount or balance, you must send it to TAB Bank, c/o Sunbit, Attn: **Legal Department**, PO Box 24010, Los Angeles, CA 90024 with a letter of explanation. Despite any such language, we may deposit such a payment without such deposit satisfying the amount in dispute or otherwise affecting our right to receive payment in full.

You may not use a post-dated check as a payment, and we may return or deposit any such check without waiting for the date found on the check. We are not liable to you for any expense or loss you incur arising from the actions we may take with respect to a post-dated check.

- 13. Allocation of Payments:** We will allocate payments and other credits in our sole discretion, subject to applicable law. As required by law, we will apply payments in excess of the Minimum Payment Due to outstanding balances with higher APRs, if any, before outstanding balances with lower APRs, if any. The method we use to allocate payments may result in your paying higher periodic interest.
- 14. Amendments:** Subject to applicable law, we may change the terms of this Agreement for any reason or no reason, and in any respect, by adding, deleting or modifying any provision, including APRs, fees, the calculation of Minimum Payment Due and other terms. In certain circumstances, when we are required by law to notify you of changes to the terms of this Agreement, we will do so. In other circumstances we may not be required to do so. When required by law to advise you that you have a legal right to reject any changes we make, we will provide an explanation about how to do that. Changes will not

apply to existing balances except where permitted by applicable law. In some circumstances, APRs or other aspects of your Account may change even though the terms of the Account do not change, such as when the Prime Rate changes. We can update any address or telephone number provided in this Agreement, but we will notify you if we do so.

- 15. Events of Default:** We may declare you to be in default under this Agreement, to the extent permitted by law, if any of the following events occur: (a) you fail to pay any Minimum Payment Due on or before its Payment Due Date; (b) you breach any other term of this Agreement or of any other obligation or agreement you have or will have with us or any of our affiliates; (c) you die or become insolvent; (d) a petition is filed or other proceeding is started under the federal Bankruptcy Code or any state insolvency statute by or against you; (e) a receiver is appointed or a writ or order of attachment, levy or garnishment is issued against you or any of your property assets or income; (f) we believe in good faith, that the likelihood of your paying or performing all your obligations under this Agreement is impaired; or (g) you make a fraudulent, false or misleading statement in your Account application or otherwise in connection with any other obligation or agreement you have with us or any of our affiliates.

**IDAHO, IOWA, KANSAS, MAINE AND SOUTH CAROLINA RESIDENTS ONLY:** We may declare you to be in default if you fail to make a payment in full within ten days after its Payment Due Date or if the prospect of your payment or performance is significantly impaired (for Iowa residents, if, following an event of default, the prospect of your payment is materially impaired). We have the burden of establishing the impairment of such prospect of payment or performance.

**WISCONSIN RESIDENTS ONLY:** We may declare you to be in default (a) if you permit to be outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after its scheduled due date or deferred due date, or if you fail to pay the first payment or last payment within 40 days of its scheduled due date or deferred due date or (b) if you fail to observe any other provision of this Agreement, the breach of which materially impairs your ability to pay the amounts due under the Agreement.

- 16. Remedies on Default:** If you are in default, we may (a) declare all or any part of the total outstanding balance on your Account to be immediately due and payable; (b) terminate or suspend your Account and/or your ability to make additional transactions using the Account; (c) reduce your Credit Limit; and (d) commence an action for the collection of all amounts owed in connection with this Agreement.
- 17. Waiver:** We may delay or waive enforcing our rights under applicable law or this Agreement without losing them. A waiver of rights by us shall not be deemed to be a waiver of other rights or of the same rights at any other time.
- 18. Transfer of Account:** You cannot transfer or assign your Account or your rights under this Agreement to any other person, and any attempt to do so is automatically void and of no legal effect. You understand and agree that we may transfer or assign all or any part of your Account balance and/or our rights under this Agreement at any time and without notice to you.
- 19. Cancellation:** You may close your Account by notifying us in writing or by telephone, and by destroying all Card plastics or other credit devices for the Account. You must notify anyone you have authorized to charge transactions to your Account that you have closed your Account or we may continue to allow these transactions. Your obligations on the Account will continue even though we have closed your Account. We may close your Account or suspend your ability to use your Account or Card, or otherwise cancel, or limit this Agreement at any time for any reason or no reason, and without notice to you, subject

to applicable law. We are not liable for any refusal by anyone to honor your Account or Card.

20. **Liability for Account:** Except as otherwise noted herein, you are liable for all amounts due under this Agreement regardless of who receives benefit from the Account.
21. **Other Users of your Account:** If you permit another person to use your Account by providing such person with a Card or the Account number, your permission will be deemed to extend to all transactions made by that person, and will continue until you notify us at 855-306-0116 or otherwise take the necessary steps to prevent such person from making further transactions using the Account. You will be obligated to pay all transactions made by any person you permit to use your Account, as well as all related interest, whether or not you intended to be responsible for such charges.
22. **Liability for Unauthorized Use:** If you notice the loss or theft of your Card or a possible unauthorized use of your Account or Card, you should write to us immediately at: TAB Bank c/o Sunbit, PO Box 24010, Los Angeles, CA 90024. You will not be liable for any unauthorized use that occurs after we receive your notice.

We issue the Card to you at your request and you agree to destroy it upon demand. You will notify us promptly if your Card is lost, stolen or if there is unauthorized use of your Card or Account, or if someone uses your Card or Account to make unauthorized purchases at merchants not authorized to accept your Card or Account. Under our no fraud liability policy, you will not be liable for any unauthorized purchases made through the Visa® network at merchants, including those transacted on the internet if you contact us promptly after the Statement on which the transaction occurred was mailed or electronically sent to you. If you orally give us notice concerning loss or theft, you agree to confirm such notice in writing upon request. Also, you agree to assist us in determining the facts and circumstances relating to any loss, theft or possible unauthorized use of your Card or Account, and to comply with such procedures as we may reasonably require in connection with our investigation. You agree that unauthorized use does not include use by a person to whom you have given authority to use the Card or Account, and that you will be liable for all use by such a person until you notify us that such authority to use the Card or Account is no longer authorized. To terminate that authority, you must notify us at 855-306-0116.

23. **Credit Reports and Account Information:** You give us permission to request information and to make whatever inquiries we consider necessary and appropriate (including obtaining information from third parties and requesting consumer reports from consumer reporting agencies) for the purpose of considering your application for this Account and subsequently, in connection with any product upgrades or any updates, renewals, credit limit increases or extensions of credit, or reviewing or collecting your Account. You also authorize us and/or Sunbit to obtain reports on you, including consumer reports from consumer reporting agencies, and to use such reports to market to you other products and/or services. You also authorize us to report information concerning you or your Account, including information about your performance under this Agreement, to consumer reporting agencies and others who may properly receive such information. **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 bureau report. If you believe that any information that we have reported to a credit bureau is inaccurate or incomplete, you may write to us at TAB Bank c/o Sunbit, PO Box 24010, Los Angeles, CA 90024. In your letter, (a) provide your name and the Account number, (b) identify the specific information that is being disputed, (c) explain the basis for the dispute, and (d) provide any supporting documentation you have that substantiates the basis of the dispute. We will investigate the matter.**

If our investigation shows that you are right, we will contact each credit reporting agency to which we reported the information and will request they correct the report. If we disagree with you after our investigation, we will tell you in writing.

If you believe that you have been the victim of identity theft, submit an identity theft report and affidavit to TAB Bank c/o Sunbit, PO Box 24010, Los Angeles, CA 90024.

24. **Change of Contact Information:** You agree to notify us promptly if you change your name, address, telephone number or any other contact information. You also agree that if the U.S. Postal Service or one of its agents notifies us of a change in address for you, we may change your address based on this information. We will have no liability to you for changing your address based on such information, even if the information provided by the U.S. Postal Service or one of its agents is in error. If any Statement is returned to us because of an incorrect address, we may stop sending Statements to you until a valid address is provided to us, but for all purposes it shall be considered as if we made your Statement available to you as of the Statement date that was or would have been printed on your Statement.
25. **Telephone Communication Monitoring and Contacting You:** You agree that your telephone communications with us or any of our representatives, affiliates or service providers may be monitored, recorded and retained by any of them. You expressly consent and authorize us, our representatives, affiliates, agents and service providers to contact you at any telephone number you provide to us, in the application or otherwise, now or in the future, or any number you have previously provided to us, or any of our representatives, affiliates or service providers, using an auto dialer, pre-recorded messages, or text messages, in order to provide alerts and other information regarding your current or future applications and accounts for all products you have or may have with us. Message and data rates may apply. You also expressly consent to TAB Bank, or any of its representatives, affiliates or service providers sending email messages regarding your Account to your email address, including emails delivered to a cell phone or mobile device. You agree that you will accept calls at your home, place of business or on a mobile telephone regarding the Account. You understand that calls may be automatically dialed and a message played; you understand and agree that these calls and messages may be read or listened to by anyone with access to your telephone or email account, and that such calls are not "unsolicited calls" for purposes of any state or federal law, and you expressly consent to receive such calls and messages. You agree that we are not liable for any resulting breach of privacy or for any charges or costs you incur in connection with text messaging, emails or other communication that we or any of our representatives, affiliates or service providers may send you. You agree that this authorization constitutes a bargained for exchange. To the extent you have the right under applicable law to revoke this authorization, you agree you may so only by writing to us at TAB Bank c/o Sunbit, PO Box 24010, Los Angeles, CA 90024.
26. **Communications Under Federal Bankruptcy Code:** Any communication with us required or permitted under the Federal Bankruptcy Code must be in writing, must include your Account number, and must be sent to TAB Bank c/o Sunbit, PO Box 24010, Los Angeles, CA 90024.
27. **Rewards, Special Programs and Benefits:** We or Sunbit may offer from time to time rewards or special programs and benefits ("**Programs**") for Cardmembers. This Agreement will apply to these Programs except to the extent it is inconsistent with the specific offer. The features of these Programs will vary and use of the Account under the terms of these Programs constitutes acceptance of the terms of the Programs without modifying or amending this Agreement.

28. **GOVERNING LAW; CLASS ACTION WAIVER:** THE TERMS AND ENFORCEMENT OF THIS AGREEMENT AND YOUR ACCOUNT SHALL BE GOVERNED AND INTERPRETED IN ACCORDANCE WITH FEDERAL LAW AND, TO THE EXTENT STATE LAW APPLIES, THE LAW OF THE STATE OF UTAH, WITHOUT REGARD TO CONFLICT-OF-LAW PRINCIPLES. THE LAW OF THE STATE OF UTAH, WHERE WE AND YOUR ACCOUNT ARE LOCATED AND FROM WHICH WE EXTEND CREDIT TO YOU, WILL APPLY NO MATTER WHERE YOU LIVE OR USE THE ACCOUNT. **YOU EXPRESSLY WAIVE YOUR RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION RELATED TO THIS AGREEMENT PURSUANT TO UTAH CODE ANN. § 70C-3-104.**

29. **Waiver of Jury Trial:** You acknowledge that the right to trial by jury is a constitutional right but may be waived in certain circumstances. To the extent permitted by law, you knowingly and voluntarily waive any right to trial by jury in the event of litigation arising out of or related to this Agreement. This jury trial waiver shall not affect or be interpreted as modifying in any fashion the Arbitration Provision below, which has its own separate jury trial waiver. This waiver does not apply if you are a Covered Borrower under the Military Lending Act at the time this Account is originated.

30. **Enforceability:** Subject to and except as otherwise provided in the Arbitration Provision, if any term of this Agreement is finally determined to be void or unenforceable by a court or government agency of competent jurisdiction, that term will continue to be enforceable to the extent allowed by such court of agency, and the remainder will no longer be a part of this Agreement. All other provisions of this Agreement will remain in effect.

31. **Agreement in Writing:** This Agreement (including this Cardmember Agreement and the Important Disclosures), is the final expression of the agreement between you and us and it may not be contradicted by evidence of an alleged oral agreement.

32. **Unsecured Line of Credit:** Notwithstanding any language in any agreement to the contrary, this Account and this Agreement, and your obligation to pay amounts due under this Agreement, are not secured, and any security interest which might otherwise exist with respect to the Account or Agreement is hereby waived by us.

33. **ARBITRATION PROVISION:**

This ARBITRATION PROVISION does not apply if you are a Covered Borrower under the Military Lending Act at the time this Account is opened.

A. **How are disputes resolved?** Any disputes between you and us will be resolved per the questions and answers in this Arbitration Provision (this "Provision"). This Provision is legally binding.

B. **What is arbitration?** An alternative to a court case. In arbitration, a neutral third party (an "NTP") decides claims without a judge or jury.

C. **Does it differ from court and jury trials?** Yes. The hearing is private. There is no jury. It is usually less formal, faster and less expensive than a lawsuit. It involves limited pre-hearing fact-finding and limited appeals. Courts rarely reverse arbitration awards.

D. **Who does this Provision cover?** You and us. This Provision governs you and us. Solely as used in this Provision, "you" means all persons whom we approve to accept or use the Account, any person who agrees to be responsible for payment of the Account, and the heirs, executors and assigns of the foregoing. Solely as used in this Provision, the words "we," "us," and "our" mean: (1) TAB Bank; (2) Sunbit; (3) any servicer or any agent acting on behalf of TAB Bank or Sunbit; (4) the parents, subsidiaries, affiliates, assignees and successors of the companies named in (1)-(3); (5) the employees, directors, officers,

shareholders, members and representatives of the companies named in (1)-(4); and (6) any person or company that is named in a Claim you pursue at the same time you pursue a related Claim against us, such as a credit reporting agency, a merchant accepting a credit card, a servicing company or a debt collector.

- E. Can you opt out of this Provision? Yes, within 60 days.** If you do not want this Provision to apply, you must send us a signed notice within 60 calendar days after receipt of the Card after your Account is opened. You must send the notice in writing (and not electronically) via certified mail, return receipt requested to TAB Bank c/o Sunbit, PO Box 24010, Los Angeles, CA 90024 (or any address we later provide you) (the "**Notice Address**"), Attn. Legal. Provide your name, address and the date. State that you "opt out" of the Arbitration Provision. If you send a rejection notice, we will give you a credit for the standard cost of a letter sent by certified mail.
- F. What is this Provision about? The parties' agreement to arbitrate Claims.** Unless prohibited by law or you opt out, either you or we may elect to arbitrate or require arbitration of any "**Claim**" (as defined below).
- G. What Claims does this Provision cover? All legal claims (except certain claims about this Provision).** This Provision governs all "**Claims**" between you and us that a court would normally decide. The word "**Claims**" has the broadest reasonable meaning. It includes contract and tort claims (including fraud and intentional tort claims) and claims under constitutions, statutes, ordinances, rules and regulations. It includes all claims even indirectly related to: (1) any events leading up to the Cardmember Agreement, including any disclosure, advertisement, application, solicitation, promotion or oral or written statement, warranty or representation made by us; (2) the Cardmember Agreement and/or our privacy policy; (3) any Card; (4) your Account; (5) any transaction on your Account; (6) fees, charges or interest; (7) the servicing or collection of amounts due under the Cardmember Agreement and the manner of collection; (8) an application for or denial of credit; (9) credit reporting; (10) benefit programs related to your Account; (11) any product or service provided by or through us or third parties in connection with the Cardmember Agreement and any associated fees; (12) our use or disclosure of, or failure to protect, your personal information; (13) enforcement of any and all of the obligations a party hereto may have to another party; (14) compliance with applicable laws and/or regulations; or (15) the relationships resulting from the Cardmember Agreement or any of the foregoing. This Provision applies to actions, omissions and events prior to, on or after the date of the Cardmember Agreement. **It includes claims related to the validity of the Cardmember Agreement as a whole. However, it does not include disputes about the validity, coverage or scope of this Provision or any part of this Provision. All such disputes are for a court and not the NTP to decide.**
- H. Who manages the arbitration? What rules apply? Usually, the AAA.** Usually, the American Arbitration Association ("**AAA**") will manage the arbitration under its rules. But, if the AAA cannot do this and the parties cannot agree on another company, a court will pick the manager (if any). Also, an NTP may conduct some arbitrations ("**Group Arbitrations**") of common issues of law or fact ("**Common Issues**") without a manager. See section BB of this Provision. **No arbitration brought on a class basis may be managed or conducted without our consent by any company or NTP that would permit class or representative arbitration under this Provision.**

Generally, arbitrations are subject to the rules of the arbitration manager in effect at the time the arbitration begins. But, rules that conflict with this Provision do not apply.

The manager (if any) will select the NTP under its rules. But, the NTP must be a lawyer with at least ten years of experience or a retired judge unless you and we otherwise agree.

- I. Can a Claimant bring Claims in court? Sometimes.** The party bringing a Claim ("**Claimant**") may bring a lawsuit if the other party (the "**Respondent**") does not demand arbitration. Also, either party may require that a small claims court resolve any individual Claim that such court may hear. But, either party may require arbitration of any appeal of a

small-claims decision or any small-claims action brought on a class basis. Finally, some Claims for a public injunction may be brought in court. See section L of this Provision.

- J.** **Are you giving up any rights? Yes.** If we demand arbitration of a Claim you bring, you are giving up your right to: (1) have a court or jury decide the Claim; (2) bring the Claim as a private attorney general or representative of other parties (but see section L of this Provision as to public injunction Claims); (3) without our consent (and except for Group Arbitrations), join the Claim with claims of other consumers; or (4) engage in a class action or class arbitration.
- K.** **Can you start a class arbitration? No.** The NTP may not decide any Claim on a class or representative basis.
- L.** **What happens if part of this Provision is invalid? It depends.** You must give us written notice and at least 30 days to cure any problem that might prevent arbitration of a Claim. See section DD of this Provision. But:
- i. If any part of this Provision is held invalid, generally the rest will continue to apply.
  - ii. But, if a court rules that the NTP can decide a Claim on a class or other representative basis and the ruling becomes final after all appeals, only this sentence will apply and the remainder of this Provision will be void.
  - iii. And, if you bring a Claim for public injunctive relief and a court rules that the restrictions in this Provision prohibiting the NTP from awarding relief on behalf of third parties are invalid with respect to such Claim (and the ruling becomes final after all appeals), the Claim for public injunctive relief will be decided in court and any individual Claims seeking monetary relief will be arbitrated. In such a case, the parties agree to request the court to stay the Claim for public injunctive relief until a court has entered the arbitration award as to individual relief.
  - iv. **A Claim for class relief or public injunctive relief can never be arbitrated. This limit applies to individual arbitrations and to Group Arbitrations.**
- M.** **In sum, what options do you have to assert Claims against us? Most Claims are subject to arbitration.** All Claims subject to this Provision must be decided in: (1) an individual arbitration; (2) a Group Arbitration of Common Issues; (3) a lawsuit if (and only if) the Respondent does not demand arbitration; (4) an individual action in small-claims court; or (5) a lawsuit that solely addresses a Claim for public injunctive relief, but only as provided in section L of this Provision.
- N.** **What law applies? The Federal Arbitration Act ("FAA").** The Card and Account involve interstate commerce. Thus, the FAA governs this Provision. The NTP must apply substantive law and comply with the FAA. The NTP must honor statutes of limitation and privilege rights. As to punitive damages, the NTP must honor constitutional standards that apply in court.
- O.** **Will anything you do make this Provision invalid? No.** If you do not opt out, this Provision will stay in force even if you: (1) cancel the Cardmember Agreement or Account; (2) stop using your Card; (3) default or pay the Account in full; or (4) become insolvent or bankrupt.
- P.** **What must a party do before starting a lawsuit or arbitration? Send a written Claim Notice and work to settle the Claim.** Before starting a lawsuit or arbitration, the Claimant must give the Respondent written notice of the Claim (a "Claim Notice"). The Claim Notice must explain in reasonable detail the nature of the Claim, any supporting facts and the requested relief. If you are the Claimant, you must send the Claim Notice in writing (and not electronically) to us at the Notice Address, Attn. Legal. You or a lawyer you have personally hired must sign the Claim Notice and must provide your full name and a phone number for you or your lawyer. If we are the Claimant, we may send a Claim Notice to you at any mail or email address we have for you in our records. A collections letter from us to you will serve as a Claim Notice. The Claimant must give the Respondent a reasonable chance for at least 30 days to settle the Claim on an individual basis. **If the Respondent gives notice that the**

**Claimant has not complied with this section P and the Claimant does not dispute such notice, no arbitration manager or NTP may proceed under this Provision.**

- Q. How does arbitration start? Per the manager's rules.** If the parties do not reach an agreement to settle a Claim within 30 days, the Claimant may start a lawsuit or arbitration. To start an arbitration, the Claimant must follow the manager's rules. If the Claimant begins or threatens a lawsuit, the Respondent may demand arbitration. The Respondent may make this demand in court papers. Also, the Respondent may make this demand if the Claimant starts a lawsuit on an individual basis and then tries to pursue a class action. Any lawsuit must stop at once if the Respondent makes an arbitration demand.
- R. Should the NTP limit costs and burdens on the parties? Yes.** The NTP should try to limit costs and burdens on the parties to the extent possible. Where possible: (1) arbitrations should be limited to documents, without any testimony, oral argument or in-person hearing; (2) any needed testimony should be by recorded deposition instead of live testimony; (3) discovery obtained from a party in a prior proceeding involving similar facts, legal issues and/or counsel should be used instead of new discovery from that party; (4) any needed hearing should be virtual or by conference call; and (5) any in-person hearing must be at a place reasonably convenient to you.
- S. What about appeals? Very limited.** Appeal rights under the FAA are very limited. Except for: (1) FAA appeal rights; (2) Claims involving more than \$50,000 (including Claims for an order that could cost more than \$50,000); and (3) Claims involving Common Issues decided in a Group Arbitration, the NTP's award will be final and binding. For Claims involving more than \$50,000 and Claims involving Common Issues decided in a Group Arbitration, any party (including a majority of the Claimants in a Group Arbitration) may appeal the award to a three-NTP panel selected per this Provision. The appeals panel will reconsider from the start any part of the initial award either party has appealed. The panel's decision will be final and binding except for any FAA appeal right. Any appropriate court may enter judgment upon the NTP's award.
- T. Do arbitration awards affect other disputes? No.** You and we agree that no arbitration award involving you will affect any issues or claims involving any other party (including the parties in a Group Arbitration that does not involve you). Also, no arbitration award in another party's dispute will affect any individual arbitration or Group Arbitration involving you.
- U. Who bears arbitration fees? Usually, we do.** Except for Group Arbitrations, we will pay all filing, administrative, hearing and NTP fees if you act in good faith, cannot get a waiver of such fees and ask us to pay. We will always pay these amounts if required by law or the manager's rules or if required to enforce this Provision.
- V. When will we cover your legal fees and costs? Usually, if you win.** If you win an arbitration you start (meaning you recover more than we offered before the arbitration), we will pay your reasonable fees and costs for attorneys, experts and witnesses. We will always pay these amounts if required by law or the manager's rules or if required to enforce this Provision. Attorney's fees will be based on the number of hours worked and standard rates. The NTP will not limit his or her fee award because your Claim is for a small amount. But, unless required by law or to enforce this Provision, the NTP shall not award you any fees and costs you incur after we make a written offer to resolve a Claim for at least the amount the NTP awards you.
- W. Will you ever owe us for arbitration or attorney's fees? Only for bad faith or breaches of this Provision.** The NTP may require you to pay our attorney's fees if: (1) the NTP finds that you have acted in bad faith under the standards in Federal Rule of Civil Procedure 11(b); and (2) this power does not make this Provision invalid. Also, you may be liable for certain arbitration fees under the manager's rules or applicable law or in a Group Arbitration, as provided below. Finally, the NTP or a court may award us some or all of our attorney's fees that result from your bad-faith breach of this Provision (but not if the power to assess such fees would make this Provision invalid).

- X. **Can the parties get a written ruling? Yes.** Any party may request details from the NTP, within 14 days of the ruling. Upon such request, the NTP will explain the ruling in writing.
- Y. **Can Common Issues be decided in a Group Arbitration? Sometimes.** It is possible that many Claimants will pursue or threaten Claims against us involving Common Issues. In some cases, this may make individual arbitrations impractical or too costly. We have designed the Group Arbitration provisions of this Provision to address this problem.
- i. Any group of 25-100 Claimants who have given Claim Notices that involve Common Issues and are not already participating in individual arbitrations under this Provision may form a **"Qualifying Group"** to participate jointly in a Group Arbitration. Also, we may form a Qualifying Group of 25-100 such Claimants. (We and the Qualifying Group are the **"Parties"** to the Group Arbitration.) No Claimant may participate in an arbitration of the same Common Issue in more than one Qualifying Group. The NTP may not decide any class Claims or Claims for public injunctions in a Group Arbitration.
  - ii. To form a Qualifying Group and start a Group Arbitration, either Party may give written notice to the other Party (a **"Group Arbitration Notice"**). A majority of the Qualifying Group (a **"Group Majority"**) or a Qualifying Group representative appointed by a Group Majority (a **"Group Agent"**) will act for the Qualifying Group. If a new Claimant asserts a Claim that involves a Common Issue in an existing Group Arbitration, either Party may require the new Claimant to join in the existing Group Arbitration if joinder will not make the Qualifying Group too large.
  - iii. Different Qualifying Groups may bring separate Group Arbitrations to decide the same or different Common Issues (for example, if there are more than 100 Claimants with the same Common Issues). A different NTP must conduct each Group Arbitration. No single NTP may hear more than one Group Arbitration of the same Common Issues. The NTP will resolve all Common Issues for each Qualifying Group by Group Arbitration under this Provision. Before a Group Arbitration starts, either Party may elect for an NTP to conduct the Group Arbitration without help from the AAA. See section BB of this Provision.
- Z. **Who bears arbitration costs in Group Arbitrations? We bear NTP fees. We may split other fees with the Qualifying Group.** In a Group Arbitration, we will bear the fees and charges of the NTP. We will share with the Qualifying Group fees and charges of the arbitration manager (if any). The arbitration manager will decide how we share. But, the Qualifying Group will never bear more than 50% of such fees and charges. It will never bear fees and charges that would render this Provision unenforceable or conflict with the law. Also, the NTP may direct us to bear more than 50% of such fees and charges, up to 100%.
- AA. **What happens if the NTP cannot decide your Claim in a Group Arbitration? This Provision will apply.** After a Group Arbitration, any Claim the NTP cannot decide in the Group Arbitration will be subject to this Provision. Before starting a lawsuit or arbitration with respect to such Claim, the Claimant must give the Respondent a new Claim Notice and right to resolve such Claim per section P of this Provision.
- BB. **What happens if a party does not want a manager for a Group Arbitration? Special rules will apply.** If either Party gives timely written notice to the other that such Party does not want a manager for a Group Arbitration, the Parties must try to agree on an NTP to conduct the Group Arbitration. If the Parties cannot agree within 30 days, either Party may ask a court to appoint the NTP. See section H of this Provision. The court must weigh the qualifications of the NTP and the fees charged by the NTP. See section H of this Provision. The court should try to find a qualified NTP who charges no more than the NTP charges in AAA consumer arbitrations. Once the NTP has been selected and retained, such NTP will commence and conduct the Group Arbitration in accordance with this Provision and such additional procedures as such NTP shall adopt, giving due regard to the rules of the leading nationwide arbitration managers that would apply in an arbitration managed by them.

- CC.** **Is the arbitration confidential? Yes.** You and we agree to keep confidential all aspects of the arbitration, any confidential information produced in the arbitration and any arbitration award or decision. But, either party may disclose such information to the extent needed to pursue the arbitration, to appeal or confirm any award or to get professional services. At either party's request, the NTP shall enter an order protecting confidential information.
- DD.** **Can we amend this Provision without your consent? Yes, but only in your favor.** We may waive any rights or amend this Provision at any time without your consent, solely to give you more rights and/or less duties. Any other change to this Provision needs your written consent.
- EE.** **What happens if I agreed to an arbitration agreement as part of the application process? The Arbitration Provision in this Agreement supersedes any arbitration agreement you agreed to when applying for credit.** If you opted-out of the arbitration agreement applicable to the application process, you have also opted-out of this Arbitration Provision. Any opt-out of this Arbitration Provision will also serve as an opt-out from the arbitration agreement applicable to the application process.

## **34. BILLING RIGHTS SUMMARY**

### **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 FIND A MISTAKE ON YOUR STATEMENT**

If you think there is an error on your statement, write to us at: TAB Bank c/o Sunbit, PO Box 24010, Los Angeles, CA 90024. In your letter, give us the following information:

- **Account information:** Your name and 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**. 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 is 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** at:

TAB Bank c/o Sunbit  
PO Box 24010, Los Angeles, CA 90024.

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.

#### **35. Additional Disclosures**

**IOWA, MISSOURI, NEBRASKA, AND TEXAS RESIDENTS ONLY:** ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF DEBT INCLUDING PROMISES TO

EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU AND US FROM ANY MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

**CALIFORNIA AND UTAH RESIDENTS:** As required by California and Utah law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

**NEW YORK, RHODE ISLAND AND VERMONT RESIDENTS:** You understand and agree that we may obtain a consumer credit report in connection with any updates, renewals or extensions of any credit as a result of your application and card membership. If you ask, you will be informed whether or not such a report was obtained and, if so, the name and address of the agency that furnished the report. You also understand and agree that we may obtain a consumer credit report in connection with the review or collection of any extension of credit made to you or for other legitimate purposes related to such extension of credit.

**MARRIED WISCONSIN RESIDENTS:** If you are married: (i) you confirm that this Account is being incurred in the interest of your marriage or family; (ii) no provision of any marital property agreement, unilateral statement, or court decree under the Wisconsin Marital Property Act will adversely affect a creditor's interest unless, before the time credit is granted, the creditor is furnished a copy of that agreement or decree or is given complete information about the agreement or decree; (iii) you understand and agree that we will provide a copy of this Agreement to your spouse for his or her information. If the Account for which you are applying is granted, you will notify us if you have a spouse by sending your name and your spouse's name and address to us at TAB Bank c/o Sunbit, PO Box 24010, Los Angeles, CA 90024.