

**Please review the terms and conditions below and click the “I Agree” button to continue. By clicking “I Agree” or using the Service, you accept and are bound by these terms and conditions.**

This is your loan payment processing agreement (“Agreement”) with Bayer Heritage Federal Credit Union (“Provider”). You may use this loan payment service (the “Service”), to make payments to your account with Provider (“Service Account”). “You” or “your” means each person who signs or otherwise indicates assent to this Agreement or is otherwise authorized to use the Service by you or uses the Service with your credentials. “We”, “us” or “our” means “Provider” set forth above.

YOU ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT CONTAINS A LIMITATION OF LIABILITY AND A BINDING ARBITRATION PROVISION THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, MAY AFFECT YOUR RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO THE SERVICE.

By registering for this Service, you authorize Provider to process the transactions submitted through your Service Account (“Payment Instructions”), and for Provider, or its designee, to post pending and completed transactions to your Service Account (“Loan payments”). You may request a payment be delivered on a one-time basis or you may request recurring payments. This option may be changed at any time by accessing the Service and changing your Payment Instructions in the Service at least five (5) business days before the payment is scheduled and/or due. By logging into the Service and completing Payment Instructions, you authorize Provider to charge/debit your debit card or bank account for any and all payments that have been agreed to under this Agreement, and direct the payment to Provider, or its designee, as payment for amounts owed to Provider.

### **Definitions**

“Business day” means Monday through Friday, excluding Federal holidays.

“Future Dated Payment” means a one-time payment scheduled for any date after the date the payment was initiated. (i.e. A payment dated for January 15<sup>th</sup> that was initiated on January 2<sup>nd</sup>.)

- *Future Dated Payments will only be accepted up to 27 days in advance.*

“Payment Account” means a checking account, or debit card account held at a United States financial institution from which the payments and fees (if applicable) will be debited. Additionally, credit can be moved back to a payment account if appropriate.

“Recurring Payment” means a series of payments of a fixed or variable amount, where date, frequency and duration are selected by you.

“Payment date” means a current or future calendar day you elect your payment account to be debited and for the service account to receive the payment. If the calendar day you elect falls on a non-business day or after the daily cutoff time for the payment service, the actual payment date and the actual date your payment account will be debited will be the following business day.

“Same Day Payment” means a one-time payment scheduled for the same date the payment was initiated. (i.e. A payment dated for January 15<sup>th</sup> that was initiated on January 15<sup>th</sup>.)

"Service Account" means loan account where payment is being made.

"Scheduled payment" means a payment that has been initiated by you to be processed on a future date.

### **Transfer Types and Limitations**

#### **(1) Payment Types Accepted**

You may use the Service to make one-time or recurring payments to your Service Account using a valid: (i) select debit card account number; or (ii) checking account number. Some of these payment types may not be available through all payment channels.

#### **(2) Limitations on Dollar Amounts of Transfer**

You may use the Service to make payments up to a maximum payment amount based on the loan type. Limit is subject to change without notice.

Loan Types	Maximum Payment Amount
All Consumer loan types except Closed-End Mortgage.	\$2,500.00
Consumer Close-End Mortgage, and all Commercial/Business loan types.	\$3,500.00

#### **(3) Limitations on Payments per Loan Type**

You may use the Service to make up to one (1) payment per week, not to exceed five (5) payments in a rolling month, per loan. Limit is subject to change without notice.

### **Payment Channels**

The following payment channels may be available to you to make payments to your Service Account. Account/authentication information is required to submit payments through any payment channel.

#### **(1) Enrolled Web**

Service can be accessed through BHFCU's Online Banking (OLB). An active OLB profile is required to utilize enrolled web payment channel. See Electronic Services Disclosures and Agreements for additional information.

One-time and recurring payments supported via Enrolled Web.

#### **(2) Pay By Text**

Service can be accessed through text communication; Enrolled Web access (*see 1 Enrolled Web above*) is required to utilize Pay by Text. Active enrollment per loan is required to utilize Pay by Text service.

One-time payment supported via Pay By Text.

#### **(3) Guest Web**

Service can be accessed through a link on BHFCU's public website. No registration is required.

One-time payment supported via Guest Web.

(4) Standard IVR

Service can be accessed via automated phone system. No registration is required.  
One-time payment supported via Standard IVR.

(5) Call Center Agent

Service can be accessed via phone interaction with a live Call Center Agent. No registration is required. Call Center Agent channel has limited hours and availability.  
One-time payment supported via Call Center Agent.

Payment channels may become unavailable from time to time due to system outages or updates, as well as other circumstances outside of the credit union's control.

**Fees & Charges**

You understand and agree that you are responsible for paying all fees associated with the use of this Service. You authorize us to charge your Payment Account for any service fees and charges applicable to the payment(s) requested through the service. We reserve the right to change the fees and charges for the use of this service. At the time of this agreement, fees associated with this Service include:

- Recurring Payment Fee
  - Via Enrolled Web – No Fee
- One-Time Payment Fee
  - Via Enrolled Web – \$3.00
  - Via Pay By Text – \$3.00
  - Via Guest Web – \$5.00 per payment
  - Via Standard IVR – \$3.00 per payment
  - Via Call Center Agent – \$10.00 per payment

The Payment Account Financial Institution you use may have fees, charges, limits, etc. associated with the use of the products and services they offer; please contact that institution for details and limitations prior to use of BHFCU's Loan Payment Processing service. Phone Service Provider Data and Message Rates May Apply; please contact your service provider for additional information.

**The Loan Payment Process**

We will process payments on the business day you designate, provided the payment request is received prior to the cut-off time set by us. Payment requests received after the business day cut off time or at any time on a non-business day will be processed on the next business day.

For recurring payment requests, if you designate a processing date of the 28<sup>th</sup> through the 31<sup>st</sup> of a month, processing will be initiated on the scheduled date, if it occurs in that month. If the scheduled date does not occur in that month, processing will be initiated on the last business day of the month. Otherwise, recurring payment requests will be processed on the dates you have designated, unless such date falls on a non-business day resulting in your payment being processed on the next business day.

When scheduling Loan Payments, you must select a scheduled payment date (taking into account the processing information described in the previous paragraph) that is no later than your actual due date. Scheduled payment dates and recommended delivery times should be prior to any late date or grace

period. We will not be responsible for any finance charges or penalties incurred for late payments that were due to invalid information entered by you.

When scheduling Loan Payments, you must select a scheduled payment amount option. The payment amount option you select may vary depending on the loan type and is important to ensure timely payments are made.

Payment Amount Options include:

- **Current Balance** is the Service Account principal balance, as of current date, reflecting activity since most recent statement date.
  - o *Depending on the loan type the balance shown may not include pending charges, accrued interest or fees/service charges.*
- **Current Statement Balance** is the Service Account balance at the time of most recent statement date.
  - o *This balance will not reflect any activity since the close of the most recent statement, including payments, advances, pending charges, accrued interest or fees/service charges, etc.*
- **Minimum Payment Due** is the lowest payment amount required to advance the loan due date forward based on the loan documentation.
  - o *Minimum Payment Due may vary from month to month for lines of credit, credit cards, adjustable/variable rate accounts, etc. Refer to periodic account statements and notification from credit union regarding changes to your loans.*
- **Amount Past Due** is the lowest payment amount required to bring loan to a “paid current” status and advance the loan due date to the next scheduled payment date.
  - o *Depending on the loan type and efforts to collect past due amount, the past due amount shown may not include all pending charges, accrued interest or fees/service charges.*
- **Enter Payment Amount** allows you to select any amount between \$0.01 and \$2,500.00.
  - o *Selecting this option allows for the most flexibility in payment amount; however, if the payment amount of the loan increases above the amount you selected for recurring payments, only a partial payment would be made (the amount you selected), which could result in the loan becoming past due.*

When you have scheduled a payment, you authorize us to debit your Payment Account and remit funds on your behalf. You certify that your Payment Account is an account from which you are authorized to make payments and any payment you make will be debited from this account. You also authorize the credit of returned payments from using the Service.

We will incur no liability if we are unable to complete any payments initiated because of any of the following:

1. You did not provide us with complete and correct payment or transfer information;
2. You did not properly follow the instructions for use of the Service;

3. The Service is not working properly and you know or have been advised about the malfunction before you execute the transaction;
4. If your Payment Account does not contain sufficient funds to complete the transaction or the transaction would exceed your credit limit or overdraft limit;
5. Your Payment Account is closed or has been frozen;
6. You, or anyone you allow, commits fraud or violates any law or regulation in connection with the Service;
7. Circumstances beyond our control (such as fire, flood, postal delay or improper transmission or handling by a third party) prevent, hinder or delay the transaction, despite reasonable precautions that we have taken; and/or
8. A legal order prohibits withdrawals from your Payment Account.

You agree to have funds available in the Payment Account you designate in amounts sufficient to pay for all Loan Payments requested as well as any other payment obligations you have to us. We reserve the right, without liability, to reject or reverse a Loan Payment if you fail to comply with this requirement or any other terms of this Agreement. If you do not have sufficient funds in the Payment Account and we have not exercised our right to reverse or reject a Loan payment, you agree to pay for such payment obligations on demand.

Any Loan Payment that is not a recurring Loan Payment can be changed or canceled, provided you access the Service prior to the cut-off time on the business day prior to the business day the Loan Payment is going to be initiated.

### **Overpayment**

You agree that you shall not intentionally schedule a payment greater than the total balance owed on your account. You acknowledge that we may refuse to process any overpayment, or we may adjust the payment amount down to the balance owed at time of payment processing to avoid overpayments.

### **Returned Transactions**

In using the payment service, you understand that payments may be returned for various reasons, such as, but not limited to, the payment account number is not valid; we are unable to locate your payment account; or your service account is paid in full. You may be assessed fees by us or your financial institution as the result of any returns or insufficient funds related to the use of this service.

### **Cancelled Transactions**

Same day payments cannot be cancelled or edited. You may be permitted to cancel or edit a future-dated or recurring payment until such time as the processing of the payment instruction starts. There is no charge for canceling or editing a payment prior to the processing of the payment instruction.

### **Stored Pay Accounts**

The stored pay accounts feature allows you to save your source account for use in making future payments. If you elect to use a stored pay account, the following applies:

- You authorize the addition of source accounts to your profile when you add each account.
- It is your responsibility, and you agree to ensure that the information maintained in your profile including source account information is accurate.

- If your source account number changes or your debit card expiration date changes, you agree to make updates to your source account.
- You also authorize us to acquire such new or additional information regarding your accounts from our financial services partners and authorize the update of your source account information accordingly.
- All changes made by you or acquired by us will be effective for future payments paid using the source account.

**Consent to Electronic Communications.**

You agree and consent to electronically receive all communications, agreements, documents, notices and disclosures (collectively, “Communications”) that we provide in connection with your Service Account and your use of the Service. Communications include:

1. This Agreement and any amendments, modifications or supplements to it.
2. Your records of any payment transactions through the Service, including monthly statements and confirmations of individual transactions and related fees (e.g. receipts).
3. Any disclosures or notices provided in connection with the Service, including those required by federal or state law (such as initial disclosures, periodic statements, periodic and annual error resolution notices, initial and annual privacy notices, opt-out notices, and change-in-terms notices).
4. Any member service communications, including communications with respect to claims of error or unauthorized use of the Service.
5. Any other communication related to the Service.

Although we reserve the right to provide Communications in paper format at any time, you agree that we are under no obligation to do so. All Communications in either electronic or paper format will be considered to be “in writing.” You should print a paper copy of this Agreement and any electronic Communications that are important to you and retain the copy for your records.

You have the right to request paper copies of any Communication. Paper copies can be requested by calling 800-272-6003 ext. 1492 during our operating hours of 8:30 am – 4:30 pm EST, Monday through Friday, excluding holidays. You must request the paper copy within 180 days of the date of the Communication. If you request one or more paper copies, you understand and agree that we may charge you \$10 for each paper copy requested.

It is your responsibility to keep the e-mail address and mobile phone number that are registered with the Service up to date, so that we can communicate with you electronically. You agree to promptly update your account records with us if your e-mail address, mobile phone number, or other information changes.

In order to access and retain electronic Communications, you will need: a computer with an Internet connection; a current Web browser that includes at least 128-bit encryption and with cookies or other local storage enabled; a valid e-mail address; and sufficient storage space to save past Communications or an installed printer to print them. You confirm that you have access to the necessary equipment and software to receive and save/print Communications.

Communications may be posted on the Service and/or delivered to the e-mail address or mobile phone number associated with your Service Account. Each electronic Communication will be deemed to have been received by you no later than five (5) business days after we send it to you by e-mail, SMS,

or post the Communication on the Service, whether or not you have received the e-mail or SMS, or retrieved the Communication. An electronic Communication by e-mail or SMS is considered to be sent at the time that it is directed by our e-mail server or SMS gateway to the e-mail address or mobile phone number you provided. An electronic Communication by posting to the Service is considered to be sent at the time it is available to you. You agree that these are reasonable procedures for sending and receiving electronic Communications.

You may withdraw your consent to receive Communications electronically by calling 800-272-6003 ext. 1492 during our operating hours of 8:30 am – 4:30 pm EST, Monday through Friday, excluding holidays, or writing to us at “Attn: Electronic Services,” 788 N State Route 2, New Martinsville, WV 26155. If you fail to provide or if you withdraw your consent to receive Communications electronically, we may either restrict or deactivate your access to the Service or charge you \$10 for each paper Communication sent.

### **Consent to Receive E-mail and SMS Messages**

By associating an e-mail address or mobile phone number with your Service Account, you represent that you are the owner of that e-mail address and/or mobile phone number. You consent to receive e-mails and or SMS messages from us and our designees. You agree that we and our designees may use automatic telephone dialing systems in connection with SMS messages sent to any mobile phone number that is associated with your Service Account. You further acknowledge and agree: (i) you are responsible for any fees or other charges that your wireless carrier may charge for any related data, SMS or other message services; (ii) you will immediately notify us if you change or cancel any e-mail address or mobile phone number associated with your Service Account; (iii) neither we nor your wireless carrier is liable for any delay or failure to deliver any message sent to or from us; and (iv) to stop receiving SMS messages from us, change your settings within the Service, reply STOP to the most recent SMS message from us, or call 800-272-6003 ext. 1492 during our operating hours of 8:30 am – 4:30 pm EST, Monday through Friday, excluding holidays.

### **Periodic Statements**

We will not send a periodic statement listing transactions that you make using the Service. The transactions will appear only on the statement issued by your bank or other financial institution. **SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE THE SERVICE AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION.** You agree to promptly review your monthly statement from your financial institution and to notify us immediately if there are any suspected unauthorized payments or errors related to the Service.

### **Securing Credentials**

You agree not to give or make available your access or access credentials to the payment product or service to any unauthorized individuals. You are responsible for all payments you authorize using the payment service or that are made using your access credentials. If you permit authorized users or other persons to use the payment service, you are responsible for any transactions they authorize.

### **Contact Information for Unauthorized Transactions, Errors or Questions About Your Electronic Transfer**

You should notify Electronic Service at 800-272-6003 ext. 1492 as soon as you can if you suspect an unauthorized transaction or error or if you need more information about a transfer on the statement or receipt. When you contact us, please: (i) tell us your name and Service Account number; (ii) describe the error or the transaction you are unsure about, and explain why you believe it is in error or what

additional information you need; and (iii) tell us the dollar amount of any suspected error. We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If you notify us verbally, we may require that you send us your complaint or question in writing or electronically within 10 business days. If you fail to provide your complaint or question in writing within 10 business days of a request from us to do so, we reserve the right to not credit your account.

### **Liability**

You are solely responsible for controlling the safekeeping of, and access to, the credentials used to access your Service Account. You are liable for all transactions made using your Service credentials. You will be responsible for any Service payment request you make that contains an error or is a duplicate of another Service payment. We are not responsible for a Service payment that is not made if you did not properly follow the instructions for making a Service payment. We are not liable for any failure to make a Service payment if you fail to promptly notify us after you learn that you have not received credit for a Service payment. We are not responsible for your acts or omissions or those of any other person, including, without limitation, any transmission or communications facility, and no such party shall be deemed to be our agent. We are not liable for any act, failure to act or delay in acting if it is caused, in whole or in part, by any cause beyond our reasonable control. We make no representation or warranty that any information, material or functions included in the Service are appropriate for use by you in your jurisdiction. If you choose to use the Service, you do so on your own initiative and are solely responsible for compliance with applicable local laws and regulations.

EXCEPT AS OTHERWISE PROVIDED HEREIN, AND SUBJECT TO APPLICABLE LAW, IN NO EVENT WILL WE OR OUR SUPPLIERS, VENDORS, AND SERVICE PROVIDERS, OR OUR OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS (COLLECTIVELY, "RELEASED PARTIES") BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES ARISING OUT OF (I) ANY TRANSACTION CONDUCTED THROUGH OR FACILITATED BY THE SERVICE; (II) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE SERVICE DESCRIBED OR PROVIDED, (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR PAYMENT INSTRUCTIONS, OR (IV) ANY OTHER MATTER RELATING TO THE SERVICE DESCRIBED OR PROVIDED, EVEN IF WE OR THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH THE SERVICE OR WITH THE TERMS OF THIS AGREEMENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE.

IN THOSE STATES WHERE THE EXCLUSION OR LIMITATION OF LIABILITY MAY NOT APPLY, ANY LIABILITY OF THE RELEASED PARTIES IN THOSE STATES IS LIMITED AND WARRANTIES ARE EXCLUDED TO THE GREATEST EXTENT PERMITTED BY LAW, BUT SHALL, IN NO EVENT, EXCEED ONE HUNDRED DOLLARS (\$100.00).

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE RELEASED PARTIES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICE, INCLUDING ITS FITNESS FOR A PARTICULAR PURPOSE, ITS QUALITY, ITS MERCHANTABILITY, OR ITS NON-INFRINGEMENT. THE RELEASED PARTIES DO NOT

WARRANT THAT THE SERVICE IS COMPLETELY SECURE OR IS FREE FROM BUGS, INTERRUPTIONS, ERRORS, OR OTHER PROGRAM LIMITATIONS.

**Confidentiality of Information**

Information submitted to us or our suppliers is our property or the property of our suppliers, and we and our suppliers are free to use and disclose that information (other than the Service Account, Payment Account or transactions), or any ideas, concepts, know-how or techniques contained in that information to any third party for any purpose whatsoever, except as specifically agreed to by us or our suppliers or prohibited by law. We will disclose information to third parties about your Service Account, Payment Account or the transactions you made (i) where it is necessary for completing transactions; (ii) in order to comply with government agency or court orders; or (iii) if you give us your written permission. We shall be free to disclose the tax treatment or tax structure of any transaction under this Agreement.

**Change in Terms; Termination**

We have the right to change this Agreement at any time. For any change that results in: (i) increased fees, (ii) increased liability to you; (iii) fewer types of available electronic fund transfers, or (iv) stricter limitations on the frequency or dollar amount of transfers, we will provide 21 days prior written notice to your e-mail account at the last address shown for the account in our records, by posting notice on our Service website, or as otherwise permitted by law. We may, however, change this Agreement without prior notice if necessary to maintain or restore the security of the Service or your Service Account.

We have the right to terminate this Agreement at any time. You may terminate this Agreement by written notice to 788 N State Route 2, New Martinsville, WV 26155. We are not responsible for any payment made before we have a reasonable opportunity to act on your termination notice. You remain obligated for any payments made by us on your behalf.

**Virus Protection**

We are not responsible for any electronic virus that you may encounter using the Service. We encourage you to routinely scan your computer and diskettes using reliable virus protection products to detect and remove viruses. If undetected and not repaired, a virus can corrupt and destroy your programs, files and hardware.

**Indemnification**

You shall indemnify, defend and hold harmless the Released Parties, against any claims, losses, costs expenses, attorney's fees, interest, damages, and other liabilities, whether direct, indirect, special, punitive, incidental or consequential, arising out of or relating to: (i) your negligence or more culpable conduct; (ii) your failure to comply with applicable law; (iii) your failure to comply with this Agreement; or (iv) your use of the Service.

**Applicable Laws**

This Agreement shall be governed by the laws of the State of West Virginia, U.S.A., including its conflicts of law rules. The United Nations Convention for the International Sale of Goods does not apply.

**Arbitration**

To the extent permitted by law, you agree to the following:

(i) Any and all Disputes (as defined below) involving you and the Released Parties will be resolved through individual arbitration. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court. This section (the “Arbitration Provision”) will be broadly interpreted.

(ii) The term “Dispute” means any claim or controversy related to the Service or this Agreement, including but not limited to any and all: (a) claims for relief and theories of liability, whether based in contract, tort, fraud, negligence, statute, regulation, ordinance, or otherwise; (b) claims that arose before this Agreement or any prior agreement; (c) claims that arise after the expiration or termination of this Agreement; and (d) claims that are currently the subject of purported class action litigation in which you are not a member of a certified class.

(iii) The party initiating the arbitration proceeding may open a case with the American Arbitration Association (“AAA”) by visiting its website ([www.adr.org](http://www.adr.org)) or calling its toll-free number (1-800-778-7879). You may deliver any required or desired notice to us by mail to 788 N State Route 2, New Martinsville, WV 26155.

(iv) Notwithstanding anything in this Arbitration Provision to the contrary, either you or us may bring an individual action in a small claims court in the area where you access the Service, if the claim is not aggregated with the claim of any other person and if the amount in controversy is properly within the jurisdiction of the small claims court.

(v) This Arbitration Provision shall be governed by the Federal Arbitration Act. Arbitrations shall be administered by AAA pursuant to its Consumer Arbitration Rules (the “AAA Rules”) as modified by the version of this Arbitration Provision that is in effect when you notify us about your Dispute. You can obtain the AAA Rules from the AAA by visiting its website ([www.adr.org](http://www.adr.org)) or calling its toll-free number (1-800-778-7879). If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern. If there is a conflict between this Arbitration Provision and the AAA rules, this Arbitration Provision shall govern. If the AAA will not administer a proceeding under this Arbitration Provision as written, the parties shall agree on a substitute arbitration organization. If the parties cannot agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this Arbitration Provision as written applying the AAA Consumer Arbitration Rules. A single arbitrator will resolve the Dispute. Unless you and us agree otherwise, any arbitration hearing will take place in a city and state of our choosing. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect member account information and other confidential or proprietary information. The arbitrator shall issue a reasoned written decision that explains the arbitrator’s essential findings and conclusions. The arbitrator’s award may be entered in any court having jurisdiction over the parties only if necessary for purposes of enforcing the arbitrator’s award. An arbitrator’s award that has been fully satisfied shall not be entered in any court.

(vi) THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SERVICE USERS, OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY’S CLAIM. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS, AND

MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.

(vii) If your claim seeks more than \$75,000 in the aggregate, the payment of the AAA's fees and costs will be governed by the AAA rules. If your claims seek less than \$75,000 in the aggregate, the payment of the AAA's fees and costs will be our responsibility. However, if the arbitrator finds that your Dispute was frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), the payment of the AAA's fees and costs shall be governed by the AAA Rules and you shall reimburse us for all fees and costs that were your obligation to pay under the AAA Rules. You may hire an attorney to represent you in arbitration. You are responsible for your attorneys' fees and additional costs and may only recover your attorneys' fees and costs in the arbitration to the extent that you could in court if the arbitration is decided in your favor. Notwithstanding anything in this Arbitration Provision to the contrary, we will pay all fees and costs that it is required by law to pay.

(viii) If any part of clause (vi) of this Arbitration Provision is found to be illegal or unenforceable, the entire Arbitration provision will be unenforceable and the Dispute will be decided by a court. WHETHER IN COURT OR IN ARBITRATION, YOU AND US AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY TO THE FULLEST EXTENT ALLOWED BY LAW. If any other clause in this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision and the remainder of this Arbitration Provision will be given full force and effect.

(ix) This Arbitration Provision will survive the termination or expiration of this Agreement.

### **General Provisions**

This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement, and all prior agreements, understandings and representations concerning such subject matter are canceled in their entirety. Notwithstanding the foregoing, this Agreement is in addition to any other agreements between you and us. If there is a conflict between the terms and conditions of this Agreement and one or more terms contained in another agreement between you and us, this Agreement will control. We shall not, by the mere lapse of time, without giving notice or taking other action, be deemed to have waived any of our rights under this Agreement. No waiver by us of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement. This Agreement shall be construed equally against the parties regardless of who is more responsible for its preparation. If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law. We may assign our rights and/or delegate all or a portion of our duties under this Agreement to a third party. If any provision of this Agreement is for any reason determined to be invalid, such provision will be deemed modified so as to be enforceable to the maximum extent permitted by law consistent with the intent of the parties as herein expressed, and such invalidity shall not affect the remaining provisions of this Agreement, which shall continue in full force and effect.

I HAVE READ AND UNDERSTAND THE FOREGOING AGREEMENT AND AGREE TO BE BOUND BY ALL ITS TERMS.