

# DELL BUSINESS CREDIT AGREEMENT

Following is the DELL BUSINESS CREDIT AGREEMENT (“Credit Agreement”) that governs the Dell Business Credit Account (the “Account”) of the business in whose name the Account was opened (the “Borrower”). Authorized representatives of the Borrower may use the Account to finance present and future equipment, software and services (“Products”) ordered from Dell Inc. or its affiliates (“Dell”), or other vendors approved by Lender (each, a “Participating Merchant”).

**Please review the terms and conditions of the Credit Agreement carefully as it describes the obligations of the Borrower, including any individual jointly and severally liable for the Account, and any personal guarantor(s) (“Guarantor”) of the Account. IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS. UNDER THIS CREDIT AGREEMENT YOU MAY BE REQUIRED TO RESOLVE DISPUTES WITH WEBBANK (“LENDER”), DELL FINANCIAL SERVICES (“DFS”), AND OTHERS THROUGH ARBITRATION ON AN INDIVIDUAL BASIS RATHER THAN A COURT PROCEEDING. We recommend retaining a copy of the Credit Agreement for your records.**

The Credit Agreement is sent to the Borrower to the attention of the person who applied for the Account as an authorized representative of the Borrower, and to the Guarantor, if any. **If the terms and conditions of the Credit Agreement, including any joint and several liability or personal guarantee, are acceptable, then the Credit Agreement will be deemed accepted and no further action is required from either the Borrower or the Guarantor.**

**TO DECLINE THE TERMS AND CONDITIONS CONTAINED IN THE CREDIT AGREEMENT, THE BORROWER, ANY INDIVIDUAL JOINTLY AND SEVERALLY LIABLE OR ANY GUARANTOR MUST CALL 1-866-413-3355 WITHIN 1 BUSINESS DAY OF RECEIPT OF THIS CREDIT AGREEMENT BY U.S. MAIL. A business day is any day (except Saturday, Sunday or a legal holiday) that commercial banking institutions in Salt Lake City, Utah are open for business.**

When calling to cancel the Account, please be ready to provide:

1. The Account Number, the Dell Customer Number and/or the order number(s).
2. If you made a purchase from Dell, the phone representative will either cancel your order or obtain another method of payment. If you made a purchase from a Participating Merchant, you should return the items purchased to the Participating Merchant.

If you decide to cancel the Products order as well as the Account, the Products may have been shipped or even been delivered before you canceled. If the shipment arrives after you cancel your order, simply refuse the shipment. If the shipment is delivered to Borrower’s shipping address without a signature, do not open the boxes. Call the carrier, inform them shipment is refused, and arrange a time for the carrier to pick up the shipment and return it to Dell or Participating Merchant.

If you do not contact DFS to cancel your Account and fail to return your purchase to Dell or Participating Merchant within the applicable return period, your acceptance of any Products you purchased from Dell or a Participating Merchant constitutes use of the credit offered and acceptance of the terms and conditions of the Credit Agreement. Your acceptance of the Credit Agreement will authorize DFS and/or its affiliates to request an advance of funds pursuant to the Credit Agreement to pay for your purchase from Dell or Participating Merchant.

## **DELL BUSINESS CREDIT AGREEMENT**

**Offered by WebBank, member FDIC, and serviced by Dell Financial Services.**

**Definitions.** In this **DELL BUSINESS CREDIT AGREEMENT** (“Credit Agreement”), the following defined terms are used. “Account” means the Dell Business Credit Account, which will be governed by this Credit Agreement. “You,” “Your” or “Borrower” mean the business in whose name the Account was opened, and each individual who agrees to be jointly and severally liable for this Account. With the exception of the arbitration provision, the words “we,” “us,” “our,” or “Lender” mean WebBank. “Guarantor” means the person or persons who agreed to personally guarantee the Account. “DFS” means Dell Financial Services L.L.C., the servicer of the Account for the Lender.

**Acceptance of the Account.** As noted above, the Borrower (or any Guarantor, if applicable) must contact us to cancel the Account and this Credit Agreement within 1 business day after its receipt by U.S. mail. Borrower’s failure to cancel the open-end credit offered pursuant to this Credit Agreement, or use by anyone Borrower authorizes, shall constitute acceptance of the terms of this Credit Agreement. Borrower agrees that this Account shall be used for purchases of equipment, software and services (“Products”) to be used for commercial or business purposes, and not primarily for personal, family, or household purposes. Borrower further agrees that the person who applied for the Account in the name of the Borrower signing the application on behalf of a business is an authorized representative of the Borrower. Borrower agrees that they are not a government or public entity or a business located and organized outside of the United States.

**Account Custodian.** Borrower has designated an Account Custodian to be the primary contact person for the Account and as an Authorized User of the Account. The Account Custodian will designate all Authorized Users and Pin Codes (described below). It is the responsibility of the Account Custodian to notify DFS of changes to the named Authorized Users or to the Pin Codes. The Account Custodian may designate a representative of Borrower to be the new Account Custodian, subject to approval by DFS.

**Authorized Users and Pin Codes.** The Account Custodian, and others that the Account Custodian designates that can use the Account on behalf of the Borrower (“Authorized Users”), may use the Account. Borrower agrees to be liable for all Account uses by the Account Custodian or any Authorized User and to pay all amounts incurred by them under this Credit Agreement.

The Account Custodian will designate a Pin Code for each Authorized User. The Account Custodian is responsible to report any addition and removal of Authorized Users or Pin Codes and any misuse of the Account. After notice of any change in Authorized Users or Pin Codes, DFS will update Account records accordingly. You agree that Lender may accept use of the Account by an Authorized User in effect prior to the notice until a reasonable time after DFS receives notice of change either to a Pin Code or Authorized User.

**Statements; Billing Period.** A Statement for amounts due under the Account ("Statement") will be issued monthly; a Billing Period is the interval between monthly billing Statements. The Statement Closing Date is the last day of the Billing Period for that Statement.

**Payment.** Borrower agrees to pay Lender for all purchases charged to the Account plus any Finance Charges (defined below) and any other charges that may be assessed as provided in this Credit Agreement. Borrower promises to pay at least the Total Minimum Payment Due by the Payment Due Date as shown on the monthly Statement. The Total Minimum Payment Due will include a minimum payment of the greater of \$15 or 3% of the New Balance shown on the Statement, rounded up to the next dollar plus all past due amounts. At any time Lender can require Borrower to pay all amounts by which the New Balance exceeds the Credit Limit (as shown on the Statement). Borrower may pay all or any part of the New Balance (as shown on the Statement) without penalty prior to any Payment Due Date.

**When Periodic Finance Charge is Imposed.** The Finance Charge on purchases under the Account will accrue from the date the transaction posts to your Account until the date we receive payment in full of the balance on the Account. When you make a purchase in a Billing Period where the beginning balance is \$0, Finance Charges on the amount of the purchased Products will accrue from the date the transaction is posted to your Account (accrued Finance Charges), but will not be shown on the first billing Statement after the new purchase. Accrued Finance Charges will be shown on the next billing Statement if the New Balance shown on the prior billing Statement was not paid in full by the Payment Due Date. In addition, from time to time Lender may offer special promotions, such as some of those described below, which would let you repay certain purchases over a longer period of time and avoid Finance Charges.

**Periodic Finance Charge.** Lender calculates the Finance Charge on the Account for any Billing Period by applying the Daily Periodic Rate to the Average Daily Balance of the Account (including new purchases) and multiplying the result by the number of days in the Billing Period. To determine the "Average Daily Balance," Lender first calculates a new balance each day of the Billing Period for each separate credit plan that is part of the Account. Next, for each credit plan, Lender calculates: the sum of the previous balance each day, (which includes any billed, but unpaid Finance Charges, Late Payment Fees and other fees) plus any new purchases or charges, and subtracts any payments or other credits. Then, Lender adds up all the Daily Balances in the Billing Period, and divides the total by the number of days in the Billing Period to determine the Average Daily Balance for each separate credit plan that is part of the Account. The Average Daily Balance computation results in the compounding of interest and fees on the Account. You

agree that Lender may compound interest on the Account. The minimum Finance Charge in a Statement for which a periodic Finance Charge is imposed is \$1.

**Periodic Rate.** The Daily Periodic Rate and corresponding Interest Rate are variable rates and may change each month. The Interest Rate that applies to the Account is determined by adding a Margin to the Index, which is described below.

The Daily Periodic Rate is determined by multiplying the Interest Rate by 1/365th (1/366th in a leap year).

Variable Rates are calculated by adding together an Index and a Margin. The Index is the Prime Rate published in the "Money Rates" table by *The Wall Street Journal*. Any change in the Index will cause the corresponding Interest Rate to be adjusted as of the first day of the Billing Period that begins no later than 90 days after the change. An increase in the Index means that you will pay higher interest charges and have a higher Total Minimum Payment Due.

The current Interest Rate and Margin appear on the Pricing Addendum that accompanies and is a part of this Credit Agreement.

**Promotional Credit Plans.** In addition to purchases that accrue Finance Charges and require monthly payments as described previously in this Credit Agreement, Promotional Credit Plans may be offered from time to time on specific purchases. Purchases made under these Promotional Credit Plans may have different Finance Charge calculations and required minimum payments. A Promotional Credit Plan is strictly limited by its terms and the terms and conditions of the promotion to which it relates. In addition, the benefits of a Promotional Credit Plan will expire and all accrued Finance Charges in these plans will be added to the Account if the Account is placed in default. During the last 2 months of any Promotional Credit Plan, payments in excess of the Total Minimum Payment Due will be applied to the remaining balance of the Promotional Credit Plan about to expire.

**Credit Limit.** The Borrower's Credit Limit on the Account will be shown on the billing Statement. The Borrower is responsible to keep the balance on the Account from exceeding the Credit Limit. Accordingly, the Borrower agrees to only use the Account to make purchases that do not cause the unpaid balance on the Account to exceed the Credit Limit. If the Credit Limit is exceeded, Lender may require Borrower to immediately pay the excess, plus related Finance Charges. Borrower also agrees that Lender may increase or lower the Credit Limit at any time.

**Charges.** The following fees, when imposed, will be added to the Account balance. The following amounts are the current schedule of fees. Lender reserves the right to change the fee schedule from time to time. You may call Customer Service for a current fee schedule.

A Late Payment Fee will be imposed for failure to pay the Total Minimum Payment Due in full by the Payment Due Date shown on the billing Statement. Account balance less than \$100 = \$15

Late Payment Fee; Account balances equal to or greater than \$100 but less than \$250 = \$29  
Late Payment Fee; Account balances equal to or greater than \$250 = \$39 Late Payment Fee.

Returned Payment Fee in the amount of \$29 will be imposed if your bank returns a check or payment instrument unpaid, or refuses to honor your direct debit, or we cannot process such payment, for any reason. You will incur this Returned Payment Fee even if your payment is later honored by your bank upon subsequent presentment.

Miscellaneous Fees may be imposed, including a charge for copies of billing Statements that we are not required by law to furnish without charge. The rates are: research time \$15 per hour and copies of billing Statements \$4 per copy.

A Convenience Payment Fee of up to \$15 per payment may be imposed for authorizing us to write a check or process a payment through the use of Automated Clearing House procedures or other electronic funds transfers on your checking account. This fee does not apply if you sign up for an ongoing automatic payment plan where payments are deducted routinely from a designated account.

**Form of Payment.** All payments must be in U.S. Dollars, and be made by check, money order, electronic funds transfer, or such other means as Lender may expressly permit. Do not send cash. **Payments made via a credit card will not be accepted.** Any payment made using a check or draft may not be processed or applied to the Account if it is: postdated; incomplete (such as when a signature is missing); the numeric amount is different than the written amount; or it is not made payable in accordance with the instructions on the billing Statement.

**Please remit payments to: Dell Business Credit, Payment Processing Center, P.O. Box 5275, Carol Stream, IL 60197-5275.**

All credits for payments on the Account are subject to final payment by the institution on which the item of payment was drawn. If you send a check as payment, you authorize Lender to clear your check electronically. These checks are not returned with your bank statement.

Lender may charge you any bank collection fees that are incurred in processing your payment and you agree that Lender may accept late or partial payments, and payments that are marked with restrictive endorsements such as "payment in full," without losing any of its rights.

**Application of Payments.** Lender will apply payments to the Account consistent with applicable law. Although Lender will apply payments as of the date of receipt of them if they are paid in accordance with this Credit Agreement and the instructions on the Statement, your Credit Limit may not immediately reflect credit for your payment to allow for payment processing and clearance of funds. In some circumstances, restoring your Credit Limit may be further delayed.

**Default.** The Account will be in default due to Borrower: (1) exceeding the Credit Limit in effect on the Account; (2) failing to pay when due any amount owed under this Credit Agreement; (3) failing to pay any of Borrower's debts to other creditors as they become due; (4) making any

misrepresentations in applying for credit or breaching any obligation under this Credit Agreement; (5) paying by a check or similar instrument that is not honored or that Lender must return because it cannot be processed; (6) paying by phone or an automatic debit that is returned unpaid; or (7) defaulting under any other lease or loan obligation of Borrower with DFS or WebBank. Following a default, Borrower will owe the total outstanding balance on the Account immediately without notice or demand from Lender. In addition, Lender may repossess any Products at Borrower's expense (to the extent permitted by law) that have not been paid for in full under the Account and cancel or suspend the ability to charge additional purchases on the Account at any time.

**Personal Guaranty.** If the Account was established with a Personal Guaranty, every Guarantor agrees to unconditionally, absolutely and irrevocably personally guarantee payment of all amount due and performance of Borrower under the terms of this Credit Agreement. In the event of a default under this Credit Agreement, Guarantor agrees to pay the total outstanding balance under this Credit Agreement upon demand, and without requiring Lender to proceed first to enforce payment against the Borrower. The Guarantor waives all notices regarding the Credit Agreement or this guaranty, and agrees that this guaranty shall remain in full force and effect until the Credit Agreement has terminated and all amounts due have been paid in full. Guarantor agrees that Lender may report the personal liability of Guarantor for the Account and the status of the Account to credit bureaus and others who may lawfully receive such information. The Guarantor agrees that his or her personal credit history may be used in making credit decisions, and authorizes Lender to obtain consumer reports on the Guarantor from time to time.

**Joint and Several Liability.** If the Account was established with Joint and Several Liability, both the business in whose name the Account was opened and any individual who agreed to be jointly and severally liable shall be the Borrower on the Account and will be jointly and severally liable to Lender for all obligations under this Credit Agreement. Lender may collect from or sue any one or more of these parties without giving up any rights against the other parties. This Credit Agreement is also binding upon heirs, personal representatives, successors and assigns. Lender may report the personal liability of any individual who agreed to be jointly and severally liable for the Account and the status of the Account to credit bureaus and others who may lawfully receive such information. Any individual who agreed to be jointly and severally liable further agrees that his or her personal credit history may be used in making credit decisions and authorizes Lender to obtain consumer reports on him or her from time to time.

**Collection Costs and Attorney Fees.** Borrower and Guarantor are responsible to pay all reasonable attorney fees, court costs and other collection costs actually incurred by Lender and its agents and assigns (including DFS) in the collection of any amounts owed under this Credit Agreement or in the event of bankruptcy or insolvency or dissolution of Borrower.

**Security Interest.** Borrower hereby grants Lender a first priority, purchase money security interest under the Uniform Commercial Code in all Products purchased using the Account and agrees that Lender may file financing Statements to perfect its security interest.

**Account Cancellation.** The Account Custodian or Guarantor may cancel the Account at any time by notifying DFS in writing. Upon cancellation no further purchases will be made with the Account, and the Account Custodian will notify each Authorized User that the Account has been cancelled. Lender may, at any time, for any reason, without prior notice, cancel the Account, refuse to authorize any purchase on the Account, or suspend the Account and the right to use the Account. Upon cancellation of the Account by either Borrower or Lender, Lender may require payment of the full outstanding balance of the Account. No cancellation or suspension of the Account will affect Borrower's (or any Guarantor's) obligation to pay all amounts owed under this Credit Agreement.

**Final Agreement.** This Credit Agreement is the final agreement between Lender and Borrower regarding the Account and may not be contradicted by evidence of any oral agreement.

**Amendments.** Lender may change or terminate the terms in this Credit Agreement or the services or features of the Account (including increasing the Finance Charges) at any time. Lender may also add new terms to this Credit Agreement or services and features to the Account. Any change in terms or any new terms may apply to any outstanding balance as well as on subsequent transactions and balances. To the extent required by law, Lender will notify Borrower in advance of any changes in terms or any new terms by mailing a notice to your address as shown on our records at the time.

**Assignment of Account.** Lender may sell or transfer your Account and any amounts owed on the Account to another party at any time and without notice. If Lender assigns the Account, this Credit Agreement will still be in effect and any assignee of Lender will have Lender's rights in this Credit Agreement to the extent assigned. Following an assignment, the words "we", "us", and "our" in this Agreement shall refer to any assignee. Borrower may not transfer or assign the Account or Credit Agreement to anyone.

**Telephone Monitoring.** Telephone communications with Lender or its assigns or service providers (including DFS) may be monitored and recorded, in accordance with applicable law.

**Change of Address.** If Borrower or Guarantor moves or changes its billing address or e-mail address, the Account Custodian will be responsible to send a notice of the new address in writing by mail or online to [www.dellfinancialservices.com](http://www.dellfinancialservices.com).

**Liability for Unauthorized Use.** Borrower (and Guarantor if any) will be liable for the unauthorized use of the Account unless Lender receives immediate written notice of the possible or actual unauthorized use of the Account. Please send the notice of unauthorized use of the Account to:

Dell Business Credit  
Attn: Investigations  
P.O. Box 81565  
Austin, TX 78708

Notice of unauthorized use of the Account may also be given by the Account Custodian or Guarantor by calling the telephone number indicated on the monthly billing Statement or online at [www.dellfinancialservices.com](http://www.dellfinancialservices.com).

**Credit Investigation and Reporting.** The business credit of the Borrower and the personal credit of any individual jointly and severally liable (or any Guarantor) for the Account will be used in making credit decisions. In the event that the Account is not paid, Lender may report the liability of the Borrower; the personal liability of any individual jointly and severally liable or any Guarantor; and the status of the Account to credit bureaus and others who may lawfully receive such information.

**Delay in Taking Action.** Lender will not lose any of its rights under this Credit Agreement due to delay in taking action for any reason. To the extent allowed by law, Lender may take other action not described in this Credit Agreement, and by doing so will not lose its rights under this Credit Agreement.

**Severability.** If any provision of this Credit Agreement is found to be unenforceable, all other provisions shall remain in full force and effect.

**Applicable Law.** The laws of the United States of America, including the Electronic Signatures In Global And National Commerce Act ("E Sign") and the Federal Arbitration Act, 9 U.S.C. Sections 1-16 (the "FAA"), and the laws of the State of Utah apply to and govern this Credit Agreement and use of the Account.

**Limitation on Product Claims.** Borrower agrees that with respect to any Product financed by the use of this Account: (1) Borrower has and will select the Product; (2) Lender is only financing the Products at Borrower's request; (3) Lender does not directly or indirectly offer, sell, select, or provide any Products; and (4) Lender is not a seller, supplier, merchant, or warrantor of the Products. Accordingly, Borrower agrees that it will not assert any claims that it may have with respect to the Products against the Lender (or any assignee of Lender), Borrower's obligation to pay Lender (including its assigns) under this Credit Agreement is unconditional and Borrower may not withhold, set off or deduct payments due under this Credit Agreement for any reason.

## **ARBITRATION NOTICE**

**THIS CREDIT AGREEMENT CONTAINS AN ARBITRATION PROVISION. PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY CLAIM RELATING TO YOUR ACCOUNT MAY BE RESOLVED BY BINDING INDIVIDUAL ARBITRATION. YOU ARE ENTITLED TO A FAIR HEARING, BUT THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT, AND ARBITRATION DECISIONS ARE SUBJECT TO VERY LIMITED REVIEW BY A COURT. CLAIMS MAY BE**



**ARBITRATED ONLY ON AN INDIVIDUAL BASIS. IF EITHER PARTY CHOOSES TO ARBITRATE A CLAIM, NEITHER PARTY WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR TO HAVE A JURY TRIAL ON THAT CLAIM, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO SUCH CLAIM.**

**Arbitration.** Except as expressly provided herein, any claim, dispute or controversy (whether based upon contract, tort, intentional or otherwise, constitution, statute, common law, or equity and whether pre-existing, present or future, including initial claims, counter-claims, cross-claims and third-party claims), arising from or relating to the Credit Agreement or the relationships which result from this Credit Agreement, including the validity or enforceability of this arbitration provision, any part thereof or the entire Credit Agreement (“Claim”) shall be decided, upon the election of you or us, by binding arbitration pursuant to this arbitration provision and the applicable rules and procedures of the arbitration administrator in effect at the time the Claim is filed, including any applicable procedures for consumer-related disputes. **NEVERTHELESS, WE RETAIN THE RIGHT TO USE JUDICIAL OR NON-JUDICIAL RELIEF TO ENFORCE THE MONETARY OBLIGATION UNDER THIS CREDIT AGREEMENT AND THE GUARANTY, TO RECOVER THE PRODUCTS AND TO ENFORCE OUR SECURITY INTEREST IN THE PRODUCTS.** The party initially requesting arbitration shall select either the American Arbitration Association (“AAA”) or JAMS (originally, Judicial Arbitration and Mediation Services) as the arbitration administrator. If the organization selected is unacceptable to you, you have the right to select the other organization listed within 30 days after you receive notice of an election to arbitrate. If a selected arbitration administrator does not agree to arbitrate a Claim, the remaining arbitration administrator shall be selected. Claims may be referred to an administrator other than the AAA or JAMS only upon the express written consent of all parties to the arbitration. We agree not to invoke our right to arbitrate any individual Claim you bring in small claims court or an equivalent court so long as the Claim is pending only in that court.

It is the intent of the parties to require Claims to be submitted to arbitration on an individual basis only. **Claims subject to this arbitration provision may not be joined or consolidated in arbitration with any Claim of any other person or be arbitrated on a class basis, in a representative capacity on behalf of the general public or on behalf of any other person, unless otherwise agreed to by the parties in writing.** Notwithstanding any other provision herein, this arbitration provision shall not apply to any Claim as to which the foregoing limitations on consolidated, class action or representative arbitration are not permitted by applicable law.

For the purposes of this arbitration provision, the terms, “we” and “us” shall mean WebBank and Dell Financial Services L.L.C., their parents, direct and indirect subsidiaries, affiliates, licensees, predecessors, successors, assigns and any purchaser of the Account or any receivables arising from the use of the Account, and each of their respective employees, directors and representatives. In addition, for the purposes of this arbitration provision, “we” and “us” shall mean any third party providing any products or services to you or us in connection with the Account (including but not limited to any credit bureau, debt collector or vendor, Participating Merchant, and including their parents, direct and indirect subsidiaries, affiliates, licensees, predecessors, successors and assigns, and each of their respective employees, directors and representatives)

if such third party is a co-defendant with us in any Claims asserted by you or if any Claims asserted by you against such third party arise from or are related to the Account or any products or services provided to you or us in connection with the Account. For the purposes of this arbitration provision, the term “you” shall mean the person or entity that applied for this Account, any individual jointly and severally liable for the Account, any Guarantor, any person authorized to use the Account, and each of their respective successors and assigns. The foregoing shall not limit any existing rights at law or equity of any other persons under this arbitration provision.

Any arbitration pursuant to this provision may be resolved without a hearing if permitted by the rules of the arbitration administrator. If a hearing is held, it shall take place within the federal judicial district either in which your mailing address is located or where any Guarantor lives, or at such other reasonably convenient location as agreed by the parties.

If you initiate arbitration and the amount of your claim is less than \$5,000, you must pay the lesser of one-half of any required arbitration fees or \$125, unless the applicable rules and procedures of the arbitration administrator or this arbitration provision provides for a lesser amount, and we will pay the remaining amount of any fees, including any required deposit. In all other cases, each party shall be responsible for paying its own share of arbitration fees in accordance with the applicable rules and procedures of the arbitration administrator. You may seek a waiver of any required arbitration fees under the applicable rules of the arbitration administrator. If you seek but do not qualify for such a waiver, upon written request we will consider an advance of part of all of any arbitration fees required to be paid by you.

The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitation and shall honor all claims of privilege and confidentiality recognized at law. The arbitrator shall be empowered to grant whatever relief would be available in court under law or in equity. Each party shall be initially responsible for payment of its own attorney fees, witness fees and similar expenses. At the conclusion of the arbitration, the arbitrator may allocate arbitration fees as costs of court in accordance with applicable law; however, the total arbitration costs paid by you may not exceed the costs of court you would have incurred if your Claim had been brought in a state or federal court with jurisdiction over the Claim. Where authorized by applicable law, the arbitrator’s award may also include attorney fees, witness fees and similar expenses. At the request of any party, the arbitrator will provide a written explanation of the basis for the award and the disposition of each Claim, including written findings of fact and conclusions of law. Judgment upon the award may be entered in any court having jurisdiction. The non-prevailing party may appeal under the applicable rules of the arbitration administrator to a three-arbitrator panel.

This arbitration provision shall survive termination of your Account as well as the repayment of all amounts you owe under the Credit Agreement. If any portion of this arbitration provision is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this arbitration provision, provided, however, that if any provision of this arbitration agreement forbidding arbitration on a consolidated, class-action or representative basis is deemed invalid or unenforceable with respect to a Claim, then this arbitration provision shall, upon the election of

either party, be invalidated and unenforceable in its entirety with respect to that Claim. In the event of a conflict or inconsistency between the rules and procedures of the arbitration administrator and this arbitration provision, this arbitration provision shall govern.

**YOU ACKNOWLEDGE THAT IF A CLAIM ARISES YOU MAY BE REQUIRED TO SETTLE THE CLAIM THROUGH ARBITRATION AND ARE GIVING UP YOUR RIGHTS TO LITIGATE THAT CLAIM IN A COURT OR BEFORE A JURY OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO SUCH A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT, SUCH AS ACCESS TO DISCOVERY, MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.**

You may contact the arbitration administrators and obtain their arbitration rules or learn how to file a Claim with the AAA or JAMS as follows:

American Arbitration Association  
(800) 778-7879  
[www.adr.org](http://www.adr.org)

JAMS  
(800) 352-5267  
[www.jamsadr.com](http://www.jamsadr.com)

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