FIRST NIAGARA BUSINESS-USE CREDIT CARD AGREEMENT

SECTION 11 OF THIS AGREEMENT IS AN ARBITRATION PROVISION. UNLESS YOU HAVE REJECTED OR PROMPTLY REJECT THE ARBITRATION PROVISION (SEE SECTION 11(n)), THE ARBITRATION PROVISION WILL HAVE A SUBSTANTIAL EFFECT ON YOUR RIGHTS IN THE EVENT OF A DISPUTE, INCLUDING YOUR RIGHT TO BRING OR PARTICIPATE IN ANY CLASS PROCEEDING.

1.General; Certain Definitions; Rate and Fee Disclosures. This Agreement governs the terms of your Credit Card ("Card") and Credit Card Account ("Account") from First Niagara Bank, N.A., a national bank headquartered in New York (the "Bank"). As used in this Agreement, the words "we," "us" and "our" mean the Bank, the Bank's successors and assigns, and, for purposes of the Arbitration Provision (Section 11), the other persons identified in the Arbitration Provision. "Our Notice Address" means P.O. Box 928, Lockport, NY 14095-0928, or such other address as we subsequently specify by notice to you. The words "you," "your," "yours" and "Cardholder" mean each and every person liable as a holder of the Card.

We have previously provided or are currently providing you with certain "Rate and Fee Disclosures," which are a part of this Agreement. Most of the Rate and Fee Disclosures were or are in the form of a chart meeting those requirements of the Federal Truth in Lending Act ("TILA") and Regulation Z under TILA that apply to credit cards used for personal, family and household purposes. (For the most part, TILA and Regulation Z do not apply to this Agreement and the Account.) The Rate and Fee Disclosures include information about the interest rate on your Account, including the Index and Margin for determining the interest rate and a current or recent Annual Percentage Rate ("APR") and Daily Periodic Rate as of a specified time. They also include information about certain fees we charge, as referenced in Section 6(a). For Cardholders who, prior to May 18, 2012, had a credit card and account replaced by a Card and Account under this Agreement ("Initial Cardholders"), the Rate and Fee Disclosures have been supplemented over time by one or more Change in Terms Notices, including a Change in Terms Notice delivered in the Spring of 2012 (the "2012 Spring Notice"). All such Change in Terms Notices are part of the Rate and Fee Disclosures (and, hence, are part of this Agreement). For Cardholders who are not Initial Cardholders, the Rate and Fee Disclosures may be provided in or with a Card carrier (the "Card Carrier"), which is also part of this Agreement. At any time, you can obtain a copy of your entire Agreement, without charge, including updated Rate and Fee Disclosures, as amended, by writing us at Our Notice Address, calling us toll-free at 800-626-0900 or otherwise contacting us using the Customer Service contact information shown on the front of your monthly statements.

For Initial Cardholders, this Agreement is dated and is effective on May 18, 2012. For other Cardholders, this Agreement is dated and effective on the date set forth on your Rate and Fee Disclosures. The effective date of this Agreement is the "Effective Date." You should retain and carefully review the entire Agreement and should sign your Card before using it. You and we are legally bound to all the terms of this Agreement.

2. Purchases, Cash Advances and Balance Transfers. You may use your Account to purchase or lease goods or services (each such transaction, a "Purchase") by presenting your Card or providing your Card number and additional information to participating merchants and establishments that honor the Card. You may also receive "Cash Advances" on your Account: (a) to obtain cash or cash-like equivalents (for example, money orders, traveler's checks, stamps or other instruments convertible into cash) from any bank or other person that accepts the Card for such purpose; (b) to make a withdrawal of cash from an automated teller machine ("ATM"); (c) to make a person-to-person transfer conducted through the Internet or otherwise (unless we tell you we will treat the transfer as a Purchase); (d) to transfer funds into

a deposit account you have with us, including for at least some Cardholders and deposit accounts, automatic fund transfers to cover overdrafts that would otherwise occur on the deposit account (an "Account Transfer"); (e) to cash or make a payment using any check we provide to access the Account (a "Convenience Check"); and/or (f) to obtain a "Balance Transfer" by using other procedures we establish for making a Balance Transfer. For all purposes of this Agreement, and no matter how they are implemented, Balance Transfers and Account Transfers are treated as Cash Advances. Purchases and Cash Advances (including Account Transfers and Balance Transfers) are collectively referred to as "Transactions." We will not be liable to you (or anyone else) if any ATM, merchant or other person cannot or will not process a Transaction permitted under this Agreement. Unless prohibited by applicable law, we may from time to time limit the type, number and dollar amount of any Transaction, even if you have sufficient available credit to complete the Transaction, and may terminate or suspend your use of the Card or the Account, with or without notice to you before or at the time we take such action. You agree not to post-date any Convenience Check or attempt to stop payment on any Convenience Check. You further agree that we may honor any Convenience Check regardless of whether you have post-dated or attempted to stop payment on the Convenience Check.

3. Prohibited Uses of Account; Authorized Users. You agree that you will only use the Account for business purposes (not for personal, family and household purposes) and will not use the Account for any unlawful purpose, to engage in or facilitate internet gambling, to buy "margin stock" or to pay any amount owed to us. You further agree not to use the Account to conduct Transactions in any country or territory, or with any individual or entity, that is subject to economic sanctions administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). However, if you do engage in Transactions in violation of this paragraph, you will still be liable to us with respect to such Transactions. If you authorize or allow any other person to use your Account (an "Authorized User"), to the extent permitted by applicable law such authorization will be deemed to extend to all Transactions by such Authorized User, even if not intended by you, and will continue until you have taken all steps necessary to prevent any further use of the Account by such Authorized User and/or have advised us that such Authorized User is no longer authorized to use the Account. If you voluntarily provide your Card and/or any related Personal Identification Number (PIN) to any other person, that person is an Authorized User.

4. Credit Limit; Transaction Limits. You may engage in repeated Transactions under the Account, and the amount of credit available to you will generally be replenished to the extent that you repay any outstanding balance. The "Credit Limit" equals the total amount you are permitted to have outstanding under the Account at any time. We may establish at any time a separate credit limit (the "Cash Advances Credit Limit") on the total outstanding balance of Cash Advances. The Credit Limit and Cash Advances Credit Limit are disclosed on your Card Carrier, and the Credit Limit will also be shown each month on your monthly statement. You agree not to engage in any Transaction if the outstanding balance of your Account is in excess of the Credit Limit or would exceed the Credit Limit after the Transaction or if the outstanding balance of Cash Advances on your Account is in excess of the Cash Advances Credit Limit or would exceed the Cash Advances Credit Limit after the Transaction. You agree that we are not required to honor any such Transaction. However, if you engage in such a Transaction and we honor such a Transaction, you agree to pay all amounts exceeding the Credit Limit (and the amount of all Cash Advances exceeding the Cash Advances Credit Limit) immediately upon our demand. When you make any payment, we may delay increasing your available credit until the payment has cleared. We may decrease your Credit Limit and/or Cash Advances Credit Limit, suspend or terminate your credit privileges, limit the number or dollar amount of Transactions that can be charged to your Account or close your Account at any time, with or without prior notice, subject to any limitations under applicable law. We will promptly notify you in writing if we take any such action. We may increase your Credit Limit and/or Cash Advances Credit Limit at any time or from time to time, whether or not you request an increase, provided that any increase will be subject to our underwriting approval in our absolute

discretion. You agree to provide us from time to time with any financial or other information we reasonably request to determine your appropriate Credit Limit and/or Cash Advances Credit Limit.

5. Interest Charges.
(a) *General; Minimum Interest Charges*. Each billing cycle, we separately determine the interest charges on standard Purchases, standard Cash Advances and each separate kind of promotional Transaction. For each such "Balance Type," we determine interest charges each billing cycle by multiplying the Balance Subject to Interest Rate for such Balance Type by the Daily Periodic Rate for such Balance Type and by then multiplying the result by the number of days in the billing cycle. For each Balance Type, the Balance Subject to Interest Rate is the average daily balance (including new Transactions), as calculated pursuant to Section 5(c) below. To get the total interest charges each billing cycle, we add together the interest charges for all Balance Types. However, if there are any interest charges in a billing cycle, the minimum interest charge equals $0.50 or, if less, any minimum interest charge set forth in the Rate and Fee Disclosures. (If there is no reference to a minimum interest charge in the Rate and Fee Disclosures, there will be no minimum interest charge.)

(b) *Interest Rates*.
(i) In connection with a special promotion, we may charge a fixed rate of interest (which could be as low as a 0% Annual Percentage Rate ("APR")), and we may charge interest based on an index of our choice. Otherwise, all interest rates may vary based on the "Prime Rate," as defined below, plus a margin. The Daily Periodic Rate will equal the APR divided by 365.

(ii) For each billing cycle, the "Prime Rate" is determined as of the first day of the calendar month ended before the beginning of the billing cycle (the "Determination Date"). The "Prime Rate" is the highest U.S. Prime Rate published in the "Money Rates" section of *The Wall Street Journal* on the Determination Date (or if *The Wall Street Journal* does not publish such rate on such day, the previous day it does publish such rate). (If *The Wall Street Journal* stops publishing the U.S. Prime Rate in its "Money Rates" section, then we may substitute another index and margin, in our sole discretion, subject to any notice and other requirements of applicable law.) Each billing cycle, the APR for each Balance Type will equal the Prime Rate as of the most recent Determination Date plus the applicable margin set forth in your Rate and Fee Disclosures. However, we will not increase the APR for any billing cycle if we have increased or decreased the APR within three months prior to the beginning of such billing cycle. For example, if we increase or decrease your APR for a billing cycle beginning July 1 in a given year, we will not increase your APR for any billing cycle beginning prior to October 1 of the same year.

(iii) If and when the APR for a Balance Type increases, more interest charges will accrue and more of each payment will be applied to interest charges and less to principal. This will result in higher and/or more payments if you make the minimum required payment (the "Minimum Payment Due") each month. If and when the APR decreases, less interest charges will accrue and less of each payment will be applied to interest charges and more to principal. This will result in lower and/or fewer payments if you pay the Minimum Payment Due each month.

(c) *Balance Subject to Interest Rate; Grace Period on Purchases*. For each Balance Type, the Balance Subject to Interest Rate is the total of the closing daily balances for such Balance Type for all the days in the billing cycle (we treat any negative balance as $0), divided by the number of days in such cycle. Normally, the closing daily balance for each Balance Type equals the balance at the beginning of the day, plus any new Transactions of such type and less any payments or credits applied to such Transactions. However, this is subject to certain adjustments: (i) At the beginning of each billing cycle, we add to the Cash Advances balance any interest on Cash Advances and Cash Advance Fees from the prior billing cycle, and we add to the Purchases balance any interest on Purchases and any other fees from the prior billing cycle not yet added to the Purchases balances. This results in the monthly compounding of

interest. (ii) When a promotional period for a particular promotion ends, as of the beginning of the next billing cycle we will transfer the remaining promotional balance to the regular Purchases balance or regular Cash Advances balance, as applicable. (iii) If your Account balance is $0 at the beginning of a billing cycle or you pay the entire Account balance as of the beginning of the billing cycle by the Payment Due Date that falls in such billing cycle, the billing cycle is a "grace period" and your Balance Subject to Interest Rate on Purchases and your interest charge on Purchases for the billing cycle are both $0. (iv) If the billing cycle is not a grace period but immediately follows a grace period, all payments and credits that are made by the Payment Due Date and are applied to Purchases will first be applied to Purchases from prior billing cycles as of the first day of the billing cycle and will then be applied to prior Purchases in the current billing cycle as of the day of such Purchases (and will not be applied as of the day such payments or credits were actually made or posted). (v) If you get a grace period on Purchases for a billing cycle on account of a payment check that is dishonored in the next billing cycle or a credit that is reversed in the next billing cycle due to the resolution of a billing dispute, we will charge you as of the beginning of the next billing cycle the interest charges you avoided in the prior billing cycle due to the dishonored or reversed payment or credit.

(d) *Interest Accrual Periods*. On each Cash Advance, we start charging interest charges from the later of the date of the Cash Advance or the first day of the billing cycle in which it is posted to your Account. On each Purchase: (i) If you get a grace period for the billing cycle in which the Purchase is posted to the Account (the "Purchase Cycle") and for the next billing cycle (the "Next Cycle"), we charge no interest charges at all. (ii) If you get a grace period for the Purchase Cycle but not for the Next Cycle, we start charging interest charges from the first day of the Next Cycle. (iii) If you do not get a grace period for the Purchase Cycle, we charge interest charges from the later of the date of the Purchase or the first day of the billing cycle in which it is posted to your Account.

(e) *Classification of Fees as Purchases or Cash Advances*. For purposes of computing interest charges, Cash Advance Fees are treated as Cash Advances and all other Fees are treated as Purchases.

6. Fees.

(a) *Set-up and Maintenance, Transaction and Penalty Fees.* Subject to subsection (c), you agree to pay the following fees, in the amounts, at the rates and pursuant to the formulas set forth in the Rate and Fee Disclosures: (i) *Annual Fee*; (ii) *Cash Advance Fee* for each Cash Advance that is not a Balance Transfer or Account Transfer; (iii) *Account Transfer Fee* for each Account Transfer; (iv) *Balance Transfer Fee* for each Balance Transfer; (v) *Late Fee* for each Minimum Payment Due that is not paid in full within five days after the Payment Due Date; and (vi) *NSF Fee* each time a check, instrument or other payment on your Account is returned to us unpaid for any reason and each time we must return any payment check or instrument you send us because it is not signed or is otherwise incomplete.

(b) *Additional Fees*. Subject to subsection (c), we may charge an *Expedited Card Delivery Fee* of $25 if you request us to expedite the delivery of a Card. Additionally, if you request a special service – for example, if you ask for an additional copy of a statement or have a customer service representative of ours process a payment by phone on an expedited basis – we may charge a fee for such service in accordance with applicable law. We will tell you about the fee before you become liable to pay the fee.

(c) *Fee Limitations.* The fees set forth in subsections (a) and (b) are subject to the following limitations, regardless of any inconsistent language in the Rate and Fee Disclosures: (i) We do not intend to charge and you are not obligated to pay any fee (or any amount) prohibited by applicable law. (ii) If you are an Initial Cardholder, we do not charge any Annual Fee in any of the first twelve billing cycles commencing on or after the Effective Date.

7. Monthly Statements. We will generally send you a monthly statement if you have an Account balance or incur any interest or fee during a monthly billing period. Your monthly statements will show, among other matters: Transactions; payments, credits and adjustments; interest charges and fees; the Previous Balance and New Balance on your Account; your Credit Limit and Available Credit; and the Minimum Payment Due and Payment Due Date.

8. Payments.
(a) Each month, you must pay at least the Minimum Payment Due shown on your monthly statement by the "Cut-Off Time" on the Payment Due Date shown on your monthly statement. The Payment Due Date will be at least 25 days after the date of the monthly statement, typically on the same day of each calendar month. If the Payment Due Date falls on a day we do not receive mail (a "non-business day"), we will not treat your payment as late for any purpose if we receive it by the Cut-Off Time on the next day we receive mail (a "business day"). The "Cut-Off Time" is 5:00 p.m. local time at the payment address specified on the monthly statement (or closing time of any office of ours you use to make payment in-person).

(b) The Minimum Payment Due will always equal at least $25 or the New Balance shown on your monthly statement, whichever is less. Subject to this limitation, your minimum payment will equal the sum of the following amounts, rounded up to the nearest dollar: (1) 1% of either the New Balance shown on your statement or the Credit Limit, whichever is less; (2) any interest and fees shown on your statement; (3) any Past Due Amount shown on your statement; and (4) any amount by which the outstanding balance of your Account exceeds the Credit Limit at the end of the statement date.

(c) You agree to make all payments by check or other negotiable instrument drawn on a financial institution located in the U.S., by money order, by electronic transfer of funds to an account we designate pursuant to separate instructions we give you or by some other method we expressly permit. Payments must be made in U.S. dollars. All payments, except disputed payments, must be mailed or delivered to us at the payment address shown on the front of your monthly statement (the "Payment Address") or must be given to us in person at one of our branches. Any payments received after the Cut-Off Time on a business day will be credited on the next business day. However, credit to your Account may be delayed for up to five (5) days if we accept a payment that is: (i) not received by mail or messenger service at the Payment Address or in-person at one of our offices; (ii) not made in U.S. dollars by a check or other negotiable instrument drawn on a financial institution located in the U.S. or by money order; or (iii) not accompanied by the top portion of your monthly statement. Delayed crediting may cause you to incur additional fees and interest charges, subject to applicable law.

(d) Subject to applicable law, we may apply payments and other credits to your Account in any manner we choose in our sole discretion.

(e) **At any time, you may pay all or any part of your outstanding Account balance.** Payment of more than the Minimum Payment Due in one billing cycle will not relieve you of the obligation to pay the entire Minimum Payment Due in subsequent billing cycles.

9. Default. Subject to applicable law, we may declare you to be in default under this Agreement if any one or more of the following events occurs: (a) you fail to pay any Minimum Payment Due on or before your Payment Due Date; (b) you exceed your Credit Limit; (c) you use a check or instrument for payment which is dishonored; (d) you die or are declared legally incompetent; (e) any other creditor tries by legal process to take money of yours in our possession; (f) a petition is filed or other proceeding is commenced by or against you under the Federal Bankruptcy Code or any other applicable federal or state insolvency laws; (g) you become generally unable to pay your debts; (h) you provide us with any false or misleading information; (i) you breach any of your other obligations under this Agreement; or (j) you are in default of any other agreement you have with us or any of our affiliates.

10. Our Rights Upon Default. Upon any default, we may take any of the following actions, subject to applicable law (including any applicable notice requirement and/or right to cure): (a) either declare all or any portion of your outstanding Account balance to be immediately due and payable or, without waiving any rights, allow you to repay your Account balance by paying the Minimum Payment Due each billing cycle; (b) terminate or suspend your Account privileges and/or cancel your Card; (c) reduce your Credit Limit or otherwise limit your ability to make Transactions; or (d) commence an action against you to collect all amounts owed in connection with this Agreement. We also may charge you court costs and reasonable attorneys' fees that we actually incur (including court costs and attorneys' fees in connection with appeals and/or bankruptcy proceedings), as permitted by applicable law, if your Account is sent for collection to an attorney who is not our salaried employee. **You understand and agree that, subject to applicable law, if you are in default under this Agreement, we or any agent of ours may make collection calls to your business, home or cell phone and may use an automatic dialer and/or prerecorded messages with respect to such calls, even if the message is left on an answering machine.** You agree that such calls will not be considered "unsolicited" calls or telemarketing calls for purposes of state or federal law.

11. Arbitration Provision. **Unless you have exercised or exercise your right to reject arbitration under subsection (n) below, the following Arbitration Provision will apply:**

(a) *General:* Either you or we may elect to arbitrate or require the other party to arbitrate any Claim (as defined below) under the following terms and conditions. If you or we elect to arbitrate a Claim, neither you nor we will have the right to: (i) have a court or a jury decide the Claim; (ii) participate in a class action in court or in arbitration, either as a class representative or a class member; (iii) act as a private attorney general in court or in arbitration; or (iv) join or consolidate your Claim(s) with claims of any other person. The right to appeal and the right to pre-arbitration discovery are more limited in arbitration than in court. Other rights that you would have if you went to court may also not be available in arbitration.

(b) *Definitions:* The following definitions apply to this Arbitration Provision, even if terms defined in this Arbitration Provision are defined differently elsewhere in this Agreement:

(i) "We," "us" and "our" mean the Bank, together with any subsequent holder of this Agreement. Also, these terms include the parents, subsidiaries, affiliates and successors of such companies, as well as the officers, directors, agents and employees of any of the foregoing. These terms also include any party named as a co-defendant with us in a Claim asserted by you, such as marketing companies, credit bureaus, credit insurance companies, credit card servicers and debt collectors. "You," "your" and "yours" include each and every Cardholder or Authorized User.

(ii) "Administrator" means the American Arbitration Association ("AAA"), 1633 Broadway, 10th Floor, New York, NY 10019, www.adr.org, 800-778-7879; JAMS, 620 Eighth Avenue, 34th Floor, New York, NY 10018, www.jamsadr.com, 800.352.5267; or any other company selected by mutual agreement of the parties. If both AAA and JAMS cannot or will not serve and the parties are unable to select an Administrator by mutual consent, the Administrator will be selected by a court. The party initiating an arbitration selects the Administrator. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any Administrator that has in place a formal or informal policy that would purport to override subsection (d) below, captioned "No Class Actions" (the "Class Action Waiver").
(iii) "Claim" means any claim, dispute or controversy between you and us that in any way arises from or relates to this Agreement or the Account, including disputes arising from actions or omissions prior to the date of this Agreement. "Claim" has the broadest reasonable meaning, and includes initial claims,

counterclaims, cross-claims and third-party claims. It includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity (including any claim for injunctive or declaratory relief). However, it does not include disputes about the validity, enforceability, coverage or scope of this Arbitration Agreement or any part thereof (including, without limitation, the Class Action Waiver, the final sentence in subsection (j) under the caption "Survival, Severability, Primacy" and/or this sentence); all such disputes are for a court and not an arbitrator to decide. However, any dispute or argument that concerns the validity or enforceability of the Agreement as a whole is for the arbitrator, not a court, to decide.

(c) *Starting or Demanding Arbitration:* To start an arbitration, the party asserting the Claim (the "Claimant") must commence the arbitration in accordance with the Administrator's rules. To require arbitration of a Claim, the party defending the Claim (the "Defending Party") must give the Claimant a written demand for arbitration. This demand may be given after a lawsuit has been filed and may be given in papers or motions in the lawsuit. If an arbitration is commenced or an arbitration demand is given, the Claim shall be resolved by arbitration under this Arbitration Provision and the applicable rules of the Administrator then in effect. We will not elect to arbitrate any collection action we initiate or any individual action brought by you in small claims court or your state's equivalent court, except if such action is transferred, removed, or appealed to a different court

(d) *No Class Actions:* **Notwithstanding any language herein to the contrary, if you or we elect to arbitrate a Claim, neither you nor we will have the right to: (i) participate in a class action in court or in arbitration, either as a class representative, class member or otherwise; (ii) act as a private attorney general in court or in arbitration; or (iii) join or consolidate Claims by or against you with claims by or against any other person, and the arbitrator shall have no authority to conduct any such class, private attorney general or multiple-party proceeding.**

(e) *Location and Costs:* Any arbitration hearing that you attend will take place in a location that is reasonably convenient for you. If you cannot obtain a waiver of the Administrator's or arbitrator's filing, administrative, hearing and/or other fees, we will consider in good faith any request by you for us to bear such fees. We will pay for our own attorneys, experts and witnesses and will pay the reasonable fees and charges of your attorneys, experts and witnesses if you win the arbitration. Even if you do not win the arbitration, we will pay any of the Administrator's or arbitrator's filing, administrative, hearing and/or other fees, and the fees and charges of your attorneys, experts and witnesses, if and to the extent we are required to pay such fees and charges by law or in order to make this Arbitration Provision enforceable.

(f) *Arbitrator Selection:* The arbitrator will be appointed by the Administrator in accordance with the rules of the Administrator. However, unless the parties agree otherwise, the arbitrator must be a retired or former judge or a lawyer with at least 10 years of experience.

(g) *Discovery; Getting Information*: In addition to the parties' rights under the Administrator's rules to obtain information prior to the hearing, either party may ask the arbitrator for more information from the other party. The arbitrator will decide the issue in his or her sole discretion, after allowing the other party the opportunity to object.

(h) *Effect of Arbitration Award:* Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's award will be final and binding, except for: (1) any appeal right under the Federal Arbitration Act, 9 U.S.C. §1 *et seq.* (the "FAA"); and (2) Claims involving more than $50,000. For Claims involving more than $50,000, any party may appeal the award toa three-arbitrator panel appointed by the Administrator, which will reconsider anew any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. The costs of any appeal will be borne in accordance with subsection (e) above, captioned "Location and Costs."

(i) *Governing Law:* This Agreement governs transactions involving interstate commerce and accordingly this Arbitration Provision shall be governed by the FAA and not by any state law concerning arbitration. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA, applicable statutes of limitation and privilege rules that would apply in a court proceeding, and shall be authorized to award all remedies available in an individual lawsuit under applicable substantive law, including, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings), declaratory, injunctive and other equitable relief, and attorneys' fees and costs. Upon the timely request of either party, the arbitrator shall write a brief explanation of the basis of his or her award. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and the Administrator's rules.

(j) *Survival, Severability, Primacy:* This Arbitration Provision shall survive the termination of this Agreement, your fulfillment or default of your obligations under this Agreement and/or your or our bankruptcy or insolvency (to the extent permitted by applicable law). In the event of any conflict or inconsistency between this Arbitration Provision and the Administrator's rules or this Agreement, this Arbitration Provision will govern. If any portion of this Arbitration Provision, other than the Class Action Waiver, is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. If a determination is made with respect to any Claim that the Class Action Waiver is unenforceable, only this sentence of the Arbitration Provision will remain in force and the remaining provisions shall be null and void, provided that the determination concerning the Class Action Waiver shall be subject to appeal.

(k) *Amendment/Termination*: Notwithstanding any provision of this Agreement to the contrary, we will not amend this Arbitration Provision in a manner that adversely affects your rights or responsibilities in a material manner unless we give you a right to reject the amendment and/or the Arbitration Provision in its entirety.

(l) *Notice and Cure*. Prior to initiating a lawsuit or arbitration regarding a legal dispute or claim relating in any way to this Agreement (as more fully defined in the Arbitration Provision, a "Claim"), the Claimant shall give the Defending Party written notice of the Claim (a "Claim Notice") and a reasonable opportunity, not less than 30 days, to resolve the Claim on an individual basis. Any Claim Notice to you shall be sent in writing by mail to the address for you maintained in our records. Any collection letter we send to this address shall be deemed to be a Claim Notice. Any Claim Notice to us shall be sent to us by certified mail, return receipt requested, at the Notice Address, Attn: Legal Claim (or such other address as we subsequently provide you). Any Claim Notice you send must provide your Account Number and telephone number. Any Claim Notice must explain the nature of the Claim and the relief that is demanded. The Claimant must reasonably cooperate in providing any information about the Claim that the Defending Party reasonably requests. Upon receipt of a Claim Notice, we will credit your Account for the standard cost of a certified letter.

(m) *Special Payment:* If (i) you submit a Claim Notice on your own behalf (and not on behalf of any other party) in accordance with subsection (l), captioned " Notice and Cure" (including the timing requirements thereof); (ii) we refuse to provide you with the relief you request; and (iii) an arbitrator subsequently determines that you were entitled to such relief (or greater relief), the arbitrator shall award you at least $7,500 in addition

(n) ***RIGHT TO REJECT ARBITRATION.*** **You may reject this Arbitration Provision by sending us a written rejection notice in accordance with this subsection (n). We must receive the rejection notice prior to the Effective Date or within 45 days after the Effective Date. You may not reject arbitration by phone or by any method other than the method described in this subsection (n). In order for a rejection notice to be valid and effective, it must: (i) state that you (or both or all of you, if more than one) wish to reject the Arbitration Provision; (ii) state your name, address and**

Account number; (iii) be signed by you (or both or all of you, if more than one); and (iv) be sent by certified mail, return receipt requested, to First Niagara Bank, N.A., P.O. Box 558, Harleysville, PA 19438 Attn: Arbitration Rejection. Upon receipt of this notice, we will credit your Account for the standard cost of a certified letter.

12. Miscellaneous

(a) *Changes to this Agreement.* Subject to the Arbitration Provision and applicable law: (i) You agree that we may, in our sole discretion, from time to time change any of the terms and conditions of, or add new terms and conditions to, this Agreement, including changing the formula used to compute interest charges or increasing or adding fees. (ii) Any such changes will generally be effective immediately unless we are required by applicable law or elect, in our discretion, to provide you with advance written notice of the changes (and/or the reasons for the changes), afford you the right to reject the change and/or obtain your consent to the change (whether by written agreement, through the initiation of a Transaction after a specified date or through some other means). In such instances, those changes will be effective if, when and as stated in such notice. (iii) Any changes may apply to your outstanding Account balance on the effective date of the change and to any future balances created after that date. (iv) No change to any term of this Agreement will excuse your obligation to pay all amounts owing under this Agreement.

(b) *Governing Law*. Except as set forth to the contrary in the Arbitration Provision, any claim, dispute or controversy arising from or relating to your Account or this Agreement, whether based in contract, tort, fraud or otherwise and regardless of the place of your residence, is governed by, and construed in accordance with, federal law and, to the extent state law applies, New York law (without regard to New York conflict of laws principles). However, the applicable statute of limitations period for all purposes under this Agreement (including the right to collect debt) will be the longer period provided by the law of New York or the jurisdiction where you live or where your business is located.

(c) *Correspondence*. All notices to us must be sent to Our Notice Address, with such attention as may be specified in this Agreement. To the extent permitted under applicable law, any notice you send us will not be effective until we receive and have had a reasonable opportunity to act on such notice. Any written or electronic correspondence we send to you will, however, be effective and deemed delivered when mailed to you at your mail address (or your email address if you have authorized electronic communications) as it appears on our records.

(d) *Reporting Information to Credit Bureaus; Identity Theft*. We may report information about your Account to other creditors, other financial institutions and credit bureaus. **Late payments, missed payments or other defaults on your Account may be reflected in your credit report.** You have the right to dispute the accuracy of information we have reported. If you believe that any information about your Account that we have reported to a credit bureau is inaccurate, or if you believe that you have been the victim of identity theft in connection with your Account or in connection with any other loan or extension of credit made by us, write us at Our Notice Address, Attn: Fraud/Dispute. Please include your name, address, Account number, telephone number and a brief description of the problem. If available, please include a copy of the credit report in question. If you believe that you have been the victim of identity theft, you should send us a police report or written statement in a form we provideyou alleging that you are the victim of identity theft for a specific debt. Once we receive such documentation, we will cease all debt collection activity until we have reviewed the materials, determined that the debt is still collectible and sent you a written notice describing the basis for our determination.

(e) *Bankruptcy Notification*. All bankruptcy notices and related correspondence to us must be sent to us at Our Notice Address, Attn: Bankruptcy Notice.

(f) *Notices of Change in Circumstances.* You must notify us of any changes to your name, mailing or email address, home, cell or business phone number, employment or income within 15 days. You can notify us by calling us toll-free at 800-626-0900 (888-781-3634 from outside the country), or by writing us at Our Notice Address. We will rely on your mail and email addresses as they appear on our records for any and all Account communications we send you unless and until either you or, in the case of your mailing address, the U.S. Postal Service, notifies us of a change of address and we have had a reasonable opportunity to act on such notice.

(g) *Partial Payments Marked Payment in Full.* **Any check or other payment you send us for less than the total outstanding balance on your Account that is marked "payment in full" or with any similar language or that you otherwise tender as full satisfaction of a disputed amount must be sent to Our Notice Address, Attn: Payment of Disputed Amount. We may deposit any such payment without such deposit effecting a satisfaction of the disputed amount.**

(h) *Inadvertent Overcharges*. It is not our intention to charge any interest charges, Fees or other amounts in excess of those permitted by applicable law or this Agreement. If any interest charge, Fee or other amount is finally determined to be in excess of that permitted by applicable law or this Agreement, the excess amount will be applied to reduce the outstanding balance in your Account or, if there is no outstanding balance, will be refunded to you.

(i) *Delay in Enforcement*. We may at any time and in our sole discretion delay or waive enforcing any of our rights or remedies under this Agreement or under applicable law without losing any of those or any other rights or remedies. Even if we do not enforce our rights or remedies at any one time, we may enforce them at a later date.

(j) *Unauthorized Use of Your Card or Account*. You agree to promptly notify us if you believe that your Card has been lost or stolen or that someone has used or may use your Card or Account without your permission by calling us toll-free at 800-626-0900 (888-781-3634 from outside the country), or by writing to Our Notice Address, Attn: Fraud/Dispute. **TO HELP PROTECT AGAINST THE UNAUTHORIZED USE OF YOUR CARD OR ACCOUNT, YOU SHOULD NEVER WRITE YOUR PERSONAL IDENTIFICATION NUMBER (PIN) ON YOUR CARD OR KEEP ANY WRITTEN RECORD OF IT ON ANY MATERIAL THAT IS KEPT WITH YOUR CARD.** You agree to assist us in determining the facts, circumstances and other pertinent information related 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, including the filing of one or more reports with the appropriate law enforcement authorities. Subject to applicable law, you acknowledge and agree that we may terminate our investigation if you fail to provide us with any such assistance or to comply with such procedures, and we otherwise have no knowledge of facts confirming the unauthorized use of your Card or Account. In such circumstances, we will deem any such use as having been authorized by you and you will be liable for the amount of any Transactions plus interest charges and fees incurred with any such use. Subject to applicable law, you also acknowledge and agree that unauthorized Card or Account use does not include use of your Card or Account by any person to whom you have given authority to use your Card or Account, even if you have attempted to limit the scope of the authority you have granted to any Authorized User and such Authorized User has exceeded his or her authority. You will be liable for all use of the Account or any Card by any such Authorized User, even if that person uses the Account or Card in ways you did not intend.

(k) *Verifications*. We verify your age, social security number, residence and other identifying information as required by applicable law.

(l) *Credit Reports; Evaluation of Financial Condition and Credit History*. **You understand and agree that we may obtain credit and other reports about you and your business in connection with your request for credit and in connection with any updates, renewals or extensions of any credit as a result of your request. 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 understand and agree that we may obtain a credit report in connection with the review or collection of any Transaction made by you or for other legitimate purposes related to such Transactions.**

(m) *Account Settlements.* Any settlement of your Account balance for less than what is owed requires our written agreement.

(n) *Telephone Monitoring and Recording*. You agree that we may monitor, record, retain and reproduce your telephone calls and any other communications you provide to us, regardless of how transmitted to us, for training, quality control, evidentiary and other purposes. However, we are not under any obligation to monitor, record, retain or reproduce such items, unless required to do so by applicable law.

(o) *Third-Party Claims or Defenses*. Except as otherwise provided in this Agreement or as required by applicable law, we will not be responsible for any claim or defense you may have against any third party that arises out of or in connection with any Transaction.

(p) *Assignment*. You may not sell, assign or transfer your Account or Card or any of your rights and obligations under this Agreement. However, we may sell, assign or transfer your Account, or any balance due thereunder, and/or any of our rights and obligations under this Agreement, to another bank or other third party without prior notice to or consent by you. Should we do so, then to the extent of any such sale, assignment or transfer, that bank or third party will take our place in this Agreement.

(q) *Severability*. Except as provided otherwise in the Arbitration Provision, if any provision of this Agreement is deemed to be void or unenforceable by a court of competent jurisdiction or any governmental agency, that provision will continue to be enforceable to the extent permitted by that court or agency, and the remainder of that provision will no longer be considered as part of this Agreement. All other provisions of this Agreement will, however, remain in full force and effect.

(r) *Section Headings*. The section headings used in this Agreement are for convenience of reference only and do not in any way limit or define your or our rights or obligations hereunder.

(s) *Entire Agreement*. You acknowledge that this Agreement (which includes the Card Carrier and the Rate and Fee Disclosures) constitutes the entire agreement between you and us with respect to the Account and the Card, and supersedes and may not be contradicted by evidence of any prior or contemporaneous written or oral communications and understandings between you and us concerning the Account and the Card. If we offer or provide rewards in connection with the Account, the agreement and/or disclosures relating to such rewards are separate and not part of this Agreement.

(t) *Security.* Notwithstanding any language in any other agreement to the contrary, the Account and your performance under this Agreement are not secured.

(u) *Multiple Cardholders and/or Guarantors*. If there are more than one of you and/or one or more guarantors of your obligations under this Agreement: (i) Each of you may engage in any permitted Transaction, without any furtherauthorization from any other of you. (ii) Each of you and each guarantor is jointly and individually liable for all of your obligations under this Agreement. We may proceed against any or all of you and/or any or all guarantor(s), and may choose not to proceed against any or all of you and/or any or all guarantor(s), without losing any of our rights against any or all of you and/or any

or all guarantors. (iii) You agree not to give conflicting instructions to us. If you do, however, we may ignore all conflicting instructions or instead determine in our discretion to honor any instruction of our choice. (iv) Any of you may terminate the Account at any time.
(v) *Termination of Account.* We may close or suspend your Account and/or revoke your Card at any time without prior notice, whenever permitted by applicable law. We may do this at any time and for any reason permitted by law, even if you are not in default. In the event we give you notice that the Account has been terminated or you give us notice that you desire to terminate the Account, upon our request you must return to us all Cards and all unused Convenience Checks. We may either honor or dishonor any request by you to terminate the Account if you fail to return all Cards and unused Convenience Checks. You will remain liable for all Transactions on the Account, including previously authorized recurring Transactions, that are paid after you or we give notice of termination.

(w) *Formal Requirements to Collect Debt.* You agree that we are not obligated to: (i) make a formal demand for payment under this Agreement; (ii) provide formal notice that any amount due under this Agreement has not been paid; and/or (iii) provide a certification that any amount due under this Agreement was not paid by the due date. To the extent permitted by applicable law, you agree that, in any collection proceeding by the Bank or a direct or indirect purchaser of the Bank's rights in your Account, unless you provide affirmative evidence, sufficient to the finder of fact, that our business records are incorrect, the records we maintain in the ordinary course of business, including monthly statements and/or summaries of information in our computer records, certified by any custodian of our records as accurate reflections of statements or information in our business records, provide adequate proof of the amounts due hereunder.

(x) *Refunds and Allowances.* Any refund or allowance provided to you with respect to any Transaction shall be provided in the form of an Account credit and not a cash payment.

(y) *Security at ATM Facilities.* You should take precautions when using your Card (or any other credit or debit card) at an automated teller machine ("ATM"). **(i) Under New York law, the activity of each ATM facility must be recorded by a surveillance camera or cameras. (ii) You should close the entry door completely upon entering and exiting an ATM facility. (iii) You should not permit any unknown persons to enter an ATM facility after regular banking hours. (iv) You should place withdrawn cash securely upon your person before exiting the ATM facility. (v) Complaints concerning security in the ATM facility should be directed to the banking institution's security department (our phone number for such complaints is 716-625-7500) or the New York State Department of Financial Services at 877-226-5697. The nearest available public telephone should be used to call the police if emergency assistance is needed.**

(z) *Credit Card Information.* **You may contact the New York State Banking Department to obtain a comparative listing of all credit card rates, fees and grace periods. (New York State Banking Department – 877-226-5697)**