

June 30, 2014

Consumer Financial Protection Bureau
Attention: PRA Office
1700 G Street, NW
Washington, DC 20552

Re: *Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements, Office of Management and Budget (OMB), Control Number 3170-XXXX, Docket No: CFPB-2014-0011*

To Whom It May Concern:

The American Financial Services Association (“AFSA”) welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB”) proposed information collection, titled *Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements*¹ (“Survey”). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) requires the CFPB to conduct a study of, and provide a report to Congress concerning, the use of pre-dispute agreements providing for arbitration of any future dispute between covered persons (entities offering or providing certain consumer financial products or services) and consumers in connection with the offering or providing of consumer financial products or services. The Dodd-Frank Act does not specify how the CFPB should conduct such a study. The CFPB proposes, as part of the study, to conduct a national telephone survey of credit card holders exploring the role of dispute resolution provisions in consumer card acquisition decisions and consumers’ default assumptions regarding their dispute resolution rights vis-à-vis their credit card issuers.

We appreciate the changes the CFPB has made to the Survey from the previously proposed version (2013 Survey).² The Survey is shorter, less complicated, and includes less hypothetical questions. However, AFSA still strongly believes that the Survey will not yield useful information. We ask the Office of Management and Budget (OMB) to deny approval for the Survey because the Survey is designed to demonstrate predetermined conclusions – specifically that respondents are often not aware of arbitration clauses in their consumer account agreements.

¹ *Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements*, 79 F.R. 30825. (May 29, 2014).

² *CFPB Information Request: Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements*, 78 F.R. 34352. (June 7, 2013).

We emphasize the fact that even if consumers do not focus on the dispute resolution provisions in their card agreements when making credit card acquisition decisions, that does not mean that arbitration is harmful to consumers or should be prohibited. Instead of proceeding with the Survey, the CFPB should focus on other lines of inquiry in its study of arbitration.

I. The Survey is unnecessary, as the results are predetermined by the questions being asked.

One of the goals of the Survey is to explore the role of dispute resolution provisions in consumer card acquisition decisions. As we stated in our letter³ in response to the 2013 Survey, AFSA believes that the proposed Survey is unnecessary for the completion of the CFPB's arbitration study. The results the CFPB will gather from the Survey are likely apparent from the outset – consumers generally do not focus on dispute resolution provisions in their credit card agreements when making decisions about credit. Conducting a Survey with a known result is not a good use of the CFPB's limited resources.

In its Information Collection Request, the CFPB justifies the need for the Survey by stating, "... the CFPB has been unable to identify prior empirical studies exploring the role of dispute resolution provisions in consumer credit card acquisition decisions or consumer default assumptions regarding dispute resolution vis-à-vis their credit card issuers."⁴ The reason that studies exploring the role of dispute resolution provisions in consumer credit card acquisition have not been done is because the outcome of such a study is likely already known. Few consumers reject a certain card because of the dispute resolution terms.

As many studies have shown, consumers are more likely to choose cards based on rewards, annual fees, or interest rates, as the CFPB notes in its reference to the September 2001 report by Mercator Advisory Group. The report explored consumer card acquisition decisions, but did not report on dispute resolution provisions as a potential factor. The CFPB states that "some other reason" was the third-largest category for applications.⁵ Just because "some other reason" was a popular response, that does not mean that consumers choose cards – or do not chose cards – because of the dispute resolution provisions. Consumers simply do not put as much importance on dispute resolution at the time of contracting because it does not have anything to do with the day-to-day use or "performance" of the product, as compared to considerations such as interest rate, grace period, annual fees, transaction fees, rewards, and protections (fraud, buyers' protection, etc.).

In fact, the Federal Trade Commission⁶ ("FTC"), Federal Reserve Board⁷ ("Board"), and the Federal Deposit Insurance Corporation⁸ ("FDIC") all have websites for consumers about credit cards. These websites identify many factors to consider when choosing a credit card. The FDIC's

³ AFSA, Aug. 6, 2013

⁴ *CFPB Information Request – Supporting Statement A: Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements*, 79 F.R. 30825. (May 29, 2014). p. 5

⁵ *Ibid.* p. 5

⁶ <https://www.consumer.ftc.gov/articles/0332-credit-debit-and-charge-cards#>

⁷ <http://www.federalreserve.gov/creditcard/default.htm>

⁸ http://www.fdic.gov/consumers/consumer/news/cnspr05/five_credit.html

advice is, “Don’t choose a credit card just to get freebies (T-shirts or sports items) or because there’s no annual fee. Look for a card that’s best for your borrowing habits. Example: If you expect to carry a balance on your card from month to month, which means you’ll be charged interest, it’s more important to look for a card with a low interest rate or a generous ‘grace period’ (more time before your payments are due).”⁹ The Board’s website contains a detailed explanation of interest rates, interest charges, and fees. It does not mention dispute resolution provisions. The FTC’s website contains a discussion on the “fine print” that may be included in credit card agreements, such as the Annual Percentage Rate, a grace period, annual fees, transaction fees and other charges, customer service, and unauthorized charges. It too does not include a mention of dispute resolution provisions. If dispute resolution was a critical item in a consumer’s purchase decision, or should be a critical item, the FTC’s, FDIC’s, or Board’s websites educating consumers about credit cards would include and discuss dispute resolution provisions.

Given that the Survey is likely to show that consumers generally do not focus on whether or not there is an arbitration provision in their credit card agreement, AFSA is concerned that the CFPB will use the results of the Survey to improperly prohibit or restrict the use of arbitration agreements. It is not important for consumers to memorize the dispute resolution provisions in their card agreements. Consumers can find the dispute resolution procedures when they need to, as evidenced by the number of arbitrations brought by consumers. Furthermore, the CFPB has made it very easy for consumers to find their card agreements. The CFPB provides copies of card agreements by issue on its website: <http://www.consumerfinance.gov/credit-cards/agreements>.

II. The Survey is designed to produce meaningless results.

The second goal of the Survey is to explore consumers’ default assumptions regarding their dispute resolution rights vis-à-vis their credit card issuers, including their awareness of their ability to opt-out of mandatory pre-dispute arbitration agreements. Very few respondents would be in a position to answer questions regarding the dispute resolution provisions in their card agreements. Most consumers do not focus on, for example, whether they have the right to sue a bank in court (Question #9) or whether they have the right to bring their dispute to a decision maker other than a judge or jury (Question #10.2). Respondents will likely answer “I don’t know” in response to many of the questions.

Asking questions about matters that respondents have not focused on is not a statistically valid, empirically derived method of obtaining data. Thus, the Survey results will not be valid. Floyd Jackson Fowler, Jr., a Senior Research Fellow at the Center for Survey Research, wrote, “Researchers who do not adequately test respondent understanding of questions must assume that ambiguity will not have a large or systemic effect on their results.”¹⁰ Those who make such assumptions generally produce invalid and very misleading surveys. Fowler goes on to explain, “Seven questions that were drawn from questions used in national health surveys were subjected to special pretest procedures and found to contain one or more poorly defined terms. When the

⁹ *Ibid.*

¹⁰ Fowler, Floyd Jackson, Jr. *How Unclear Terms Affect Survey Data*. Public Opinion Quarterly, Vol. 56, Issue 2 (Summer 1992).

questions were revised to clarify the definition of key terms, significantly different estimates resulted. The implication is that unclear terms are likely to produce biased estimates. The results indicate that evaluation of survey questions to identify key terms that are not consistently understood and defining unclear terms are ways to reduce systematic error in survey measurement.”¹¹

Even in circumstances where the consumer may not fully understand an arbitration provision at the outset of the transaction, there are many ways and points in time in which consumers are informed of arbitration clauses and provided the opportunity to either opt-out of the arbitration provision or terminate the transaction. Consumers enter into credit transactions in a variety of ways, including: online credit card applications, paper credit card applications, mortgage loans, car leases, car purchases, etc. Each of these *may* have an arbitration clause and the ways the agreement is presented to consumers are all different. For online applications, terms and conditions are sometimes provided after a consumer signs up and generally provide an opt-out or cancellation grace period. The point is whether consumers are afforded meaningful, easily accessible, easily understandable information to know if arbitration is a term of the agreement.

Moreover, the consumers’ ability to understand how to pursue a dispute resolution process that calls for arbitration is easier than the consumer attempting to figure out how to initiate and prosecute a litigation. Along that same line, the costs of initiating dispute resolution are lower than initiating litigation. This is especially true since many, if not most, consumer finance arbitration agreements have some language limiting a consumer’s out of pocket costs to initiate arbitration.

III. The Survey should not include hypothetical questions.

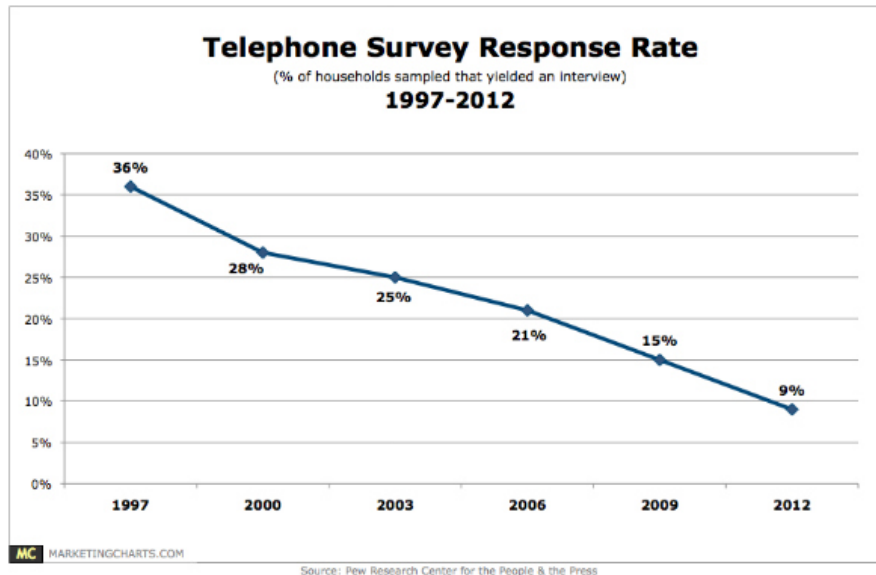
Even though the Survey has been shortened and simplified, it still includes a hypothetical question that should be removed. Hypothetical questions do not necessarily generate responses that predict what a consumer would do in a real world situation. The questions are trying to predict what action a consumer would take, but consumers answer the questions aspirationally, rather than practically. This is especially true for questions about which the respondent does not have the knowledge to answer validly.

For example, Question #7 asks respondents to respond to a situation where the respondent is being charged a fee for a service for which the respondent did not sign up. The Survey asks what the respondent would do. A respondent may say she would sue the bank; but in reality, she may decide that it is easier to do nothing, call customer service, or submit a complaint to the CFPB. Also, the respondent’s answer would depend on the amount of money involved. If one respondent thought the question referred to \$5, the answer may be different than if the respondent thought \$500 was being charged to his account. Thus, the CFPB cannot draw any useful conclusion from the answers to this hypothetical question. Additionally, it could be difficult to code the responses to this open-ended question.

¹¹ *Ibid.*

IV. The CFPB has overestimated the response rates.

The CFPB's estimate of response rates is too high. Below is a chart from the Pew Research Center on Telephone Survey Response Rates.



Completion rates vary greatly, but could be much closer to 1-2%. To gather n=1000 complete responses could take 100,000 phone numbers, even calling each one several times. Even then, the sample of respondents is likely not going to be nationally representative. For example, it will likely be answered more by older people who stay at home, than by younger people. Furthermore, the sampling size for anyone that actually knows anything about consumer arbitration is going to be too small to be statistically valid.

V. AFSA has some suggestions to improve the Survey, should OMB grant its approval.

- The Survey should not be limited to credit cards. In the Dodd-Frank Act, Congress directed the CFPB to study consumer arbitration agreements for “covered persons,” not just for credit cards. A study limited to credit cards may skew results and have no other general application. Arbitration agreements in credit cards can be very different than arbitration agreements in other types of consumer lending. (See the Appendix for examples of dispute resolution provisions.) There are a multitude of ways that consumers contract for financial credit, and so there are many different types of arbitration agreements that are presented to consumers in many different ways. For example, when a consumer signs an auto lease agreement or a retail installment sales contract, the dispute resolution provision is often reviewed with the consumer. The CFPB should not use results from a survey on arbitration agreements in credit cards to write a rule that will affect arbitration agreements in retail installment sales contracts.

- The Survey errs in assuming that all small claims courts around the country operate in the same manner. Small claims courts vary extremely in how they operate.¹² Many are not even called “small claims court.” For example, in Georgia and South Carolina “small claims court” is called “Magistrate Court.” In Tennessee, it is called “Court of General Sessions.” And in Texas, it is called “Justice Court.” The dollar limits in each state vary widely as well. South Carolina has a jurisdictional limit of \$7,500, while Tennessee has a limit of \$25,000. The survey should use the word “court” instead of “small claims court.”
- Even though the CFPB is limited by the Paperwork Reduction Act (PRA), we still ask the CFPB to do a thorough pretest if it receives approval from OMB. A pretest would help determine if respondents would even be willing to participate in this Survey.
- We appreciate that the CFPB has said that it will make the data from the Survey available, but we ask that the full transcripts from the calls be made public. “Failure to record every part of the exchange in the order in which it occurs raises questions about the reliability of the survey.”¹³ A record of the calls also allows for the possibility of expert analysis and a critique of claimed results.
- We suggest that instead of surveying a sample of card holders, the CFPB use a sample of consumers who have had billing disputes. The survey questioner should inform the respondent that a “dispute” is a “complaint that was not otherwise successfully addressed through the issuer’s customer service department.” The survey could ask those consumers how they tried to resolve those disputes and if they would go through that process again. What they did in the past is vastly more indicative of what they would do in the future than answers to hypothetical questions. Survey results with information about real behavior are more beneficial than survey results based on hypothetical information.

VI. The CFPB should focus on other lines of inquiry in its study of arbitration.

Instead of conducting an expensive telephone survey, the CFPB should focus on other lines of inquiry in its overall study of mandatory arbitration provisions. We support the CFPB’s efforts to study what happens to claims in formal disputes, how long proceedings take to resolve, and at what cost. As mentioned above, many consumer finance arbitration agreements limit consumers out of pocket costs to initiate arbitration. We also support the CFPB’s intention to review filings in certain federal courts, and where possible, selected state courts. The CFPB should not be spending time and money asking questions to which the answers are predetermined.

We also suggest that the CFPB examine the consumer complaints it has received over the past year. According to the CFPB’s consumer complaint database, only less than one percent of the credit card complaints in the CFPB’s database relate to arbitration.¹⁴ Looking into the details of

¹² Information on “small claims courts” in different states is available here: <http://www.nolo.com/legal-encyclopedia/small-claims-court-in-your-state-31016.html>

¹³ Diamond, Shari Seidman. *Reference Guide on Survey Research*. Reference Manual on Scientific Evidence 359-423, 3rd edition. Federal Judicial Center/National Academy of Sciences, 2011. [http://www.fjc.gov/public/pdf.nsf/lookup/sciman04.pdf/\\$file/sciman04.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/sciman04.pdf/$file/sciman04.pdf).

¹⁴ <http://www.consumerfinance.gov/complaintdatabase>. Accessed on June 11, 2014.

the complaints might provide insight as to whether consumers are complaining about the results of arbitrations or something else (e.g., the consumer was not aware that a card agreement had an arbitration clause). This information might inform the CFPB as to whether pre-dispute arbitration agreements need to be restricted or could be improved, possibly by more explicit disclosures.

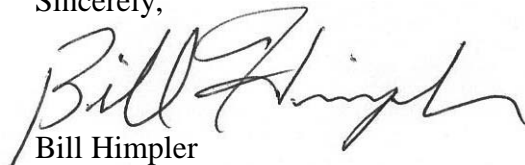
Additionally, we believe that it would be useful for the CFPB to study the impact on the courts if consumer arbitration is shifted to litigation (including whether a shift from arbitration to litigation would cause an increase in costs and a delay in resolution for covered persons), and whether eliminating consumer arbitration in financial sector transactions would reduce U.S. corporations' competitiveness in the global arena by increasing their costs. Court congestion is relevant to the CFPB's study as it affects access to courts for the resolution of other disputes. Along those lines, we suggest that the CFPB study the cutbacks in the funding of the judiciary in light of the budgetary constraints faced by state and local governments.

VII. Conclusion

AFSA asks that the OMB deny the CFPB's request to conduct a national telephone survey of credit card holders exploring the role of dispute resolution provisions in consumer card acquisition decisions and consumers' default assumptions regarding their dispute resolution rights vis-à-vis their credit card issuers. It is easy to anticipate that consumers often do not focus on the dispute resolution provisions in their credit card agreements, so such a study is not a good use of the CFPB's resources. A telephone survey of consumers' perceptions of provisions that they are not aware of can only yield meaningless results. Additionally, we emphasize that the fully expected conclusion that many consumers are generally not aware of the dispute resolution provisions in their card agreements does not mean that arbitration should be prohibited.

We are happy to work with the CFPB as it explores alternative ways to complete its study on arbitration. Please feel free to contact me with any questions at 202-466-8616 or at bhimpler@afsamail.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Himpler", with a stylized, flowing script.

Bill Himpler
Executive Vice President
American Financial Services Association

APPENDIX

Examples of Dispute Resolution Provisions

Section ____ . ARBITRATION CONSENT

By signing below, I elect arbitration to resolve disputes. I have read and consent to the Arbitration provision (see Section ____). I waive the right to a jury trial and to bring class claims.

Lessee's Initials: _____

Co-Lessee's Initials: _____

Section ____ . ARBITRATION

PLEASE READ THIS ARBITRATION PROVISION CAREFULLY TO UNDERSTAND YOUR RIGHTS. BY ELECTING ARBITRATION, YOU AGREE THAT ANY CLAIM THAT YOU MAY HAVE IN THE FUTURE MUST BE RESOLVED THROUGH BINDING ARBITRATION. YOU UNDERSTAND THAT DISCOVERY AND APPEAL RIGHTS ARE MORE LIMITED IN ARBITRATION.

Arbitration is a method of resolving any claim, dispute or controversy without filing a lawsuit. By agreeing to arbitrate, **YOU** and **COMPANY** waive the right to go to court and agree instead to submit any claims, disputes or controversies to binding arbitration. This provision sets forth the terms and conditions of our agreement to binding arbitration. **YOU** and **COMPANY** agree and acknowledge that this Lease affects interstate commerce and the Federal Arbitration Act ("FAA") applies to this provision.

By signing the Arbitration Consent in Section ____ of this Lease, **YOU** elect to have disputes resolved through arbitration. **YOU, COMPANY** or any involved third party may pursue a Claim. "Claim" means any dispute between **YOU, COMPANY**, and/or any involved third party relating to your account, this Lease, or our relationship, including but not limited to any application, the vehicle, its performance and any representations, omissions or warranties related thereto. "Claim" does not include personal injury or wrongful death claims. **YOU** or **COMPANY** may seek remedies in small claims court or provisional judicial remedies without arbitrating.

YOU or **COMPANY** may select arbitration before the American Arbitration Association (AAA), JAMS or National Arbitration and Mediation (NAM). Contact these sponsors to obtain their rules. The hearing will be in the federal district where **YOU** reside. It may be held by telephone or by written submissions if **YOU** and **COMPANY** agree. The filing and arbitrator fees will be paid according to the sponsor rules. You may contact the sponsor about a fee waiver. If it does not provide fee waivers, **COMPANY** will pay the filing and arbitrator fees up to \$5,000, unless the law requires more. Each party is responsible for other fees (e.g., attorneys, experts, documents, etc.). The arbitrator may award costs or fees to a prevailing party, but only if the law expressly allows it. **COMPANY** will not seek fees, unless the arbitrator finds your claims to be frivolous.

The arbitrator shall be an attorney familiar with automotive or consumer finance issues or be a current or retired judge. The arbitrator shall follow the substantive law and statute of limitations and decide all issues relating to the interpretation, construction, enforceability and applicability of this provision. The arbitrator may order any relief if permitted by law. This provision is governed by and enforceable under the FAA. Any award shall include a written opinion and shall be final, subject to appeal under the FAA.

This provision survives termination of this Lease or relationship, bankruptcy, assignment or transfer. If part of this provision is unenforceable, the remainder shall remain in effect. If any unenforceability would allow arbitration to proceed as a class action, then this provision shall be unenforceable in its entirety. **COMPANY** reserves the right to make material changes to this provision after providing **YOU** written notice and an opportunity to opt out. **YOU** may opt out of this provision within 30 days of signing this Lease by sending a signed, written notice to **COMPANY** at [address].

For purposes of this Section __, Arbitration provision, **COMPANY** means [define "Company"], their parents, subsidiaries, predecessors, successors, assignees, and their officers, employees, representatives and agents. **YOU** means Lessee and each Co-Lessee to this Lease.

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TO STOP PAYMENT ON AN ITEM, OR PAY AN ITEM BEARING AN UNAUTHORIZED SIGNATURE, FORGED SIGNATURE, OR FORGED ENDORSEMENT OR ALTERATION, OUR LIABILITY, IF ANY, WILL BE LIMITED TO THE FACE AMOUNT OF THE ITEM.

If this agreement conflicts with any statements made by one of our employees or our affiliates' employees, this agreement will control.

7. Sub-accounts

For accounting purposes, all checking accounts consist of two sub-accounts: i) a transaction sub-account where all deposits, withdrawals, and fees are posted, and ii) a holding sub-account, where available balances above a certain level are transferred daily. Funds will be retransferred to your transaction sub-account to meet your transactional needs; however, all balances in the holding sub-account will be transferred to the transaction sub-account with the sixth transfer in any calendar month or monthly statement period.

Both sub-accounts are treated as a single account for purposes of your deposits and withdrawals, earning interest, access and information, tax reporting, fees, etc.

8. Research, legal process and requests for information

If we receive any legal process relating to you or your account, you authorize us to comply with it. "Legal process" means any document that appears to have the force of law that requires us to hold or pay out funds from your account, including a garnishment, attachment, execution, levy, or similar order. We do not have to determine whether the legal process was validly issued or enforceable. As permitted by law, we will charge your account a Legal Processing fee or costs and expenses we incur in complying with the order, or both.

If any action, including administrative proceedings, garnishment, tax levies, restraining orders, or another action is brought against you or your account, you will be liable to us for any loss, cost, or expense (including attorneys' fees) resulting from our compliance with any legal process.

If we receive any subpoena, court order, or request for information or documents relating to your account from a governmental entity or arbitration panel, we are authorized to comply with it. If we are required to answer a subpoena or similar order requesting records of your account, we may charge you a Research fee, less any amount we are paid by the person issuing the subpoena before we deliver our response.

9. Permitted time for filing a lawsuit

You must file any lawsuit or arbitration against us within 2 years after the cause of action arises, unless state law or an applicable agreement provides for a shorter time. This limit is in addition to limits on notice as a condition to making a claim, as described in Section E.2 above. If applicable state law does not permit contractual shortening of the time during which a lawsuit must be filed to a period as short as 2 years, you and we agree to the shortest permitted time under that state's laws.

We abide by federal and applicable state record retention laws and may dispose of any records that have been retained or preserved for the period set forth in these laws. Any action against us must be brought within the period that the law requires us to preserve records, unless applicable law or this agreement provides a shorter limitation period. Any action against us on an automatically renewable CD must be brought within the time that the law requires us to preserve records based on the stated maturity date in the most recent record of the CD.

10. Location of legal proceedings

If you file any lawsuit or other legal proceeding against us that's connected in any way to your accounts or services, you agree to do so in an appropriate court in the state where your account is located (see section I.6 above). In addition, if we file any lawsuit or legal proceeding that is connected in any way to your accounts or services, you consent to jurisdiction and venue in an appropriate court in the state where your account is located. If either party chooses to have disputes determined under the section entitled "Arbitration," that section rather than this section governs the process and location of the arbitration proceedings.

11. Pre-judgment interest rate

If either you or we are awarded a judgment against the other in connection with your account, the rate of interest earned before judgment on the judgment amount will be the rate of interest the account earned during that period unless state law requires a different rate. If the account is not interest-bearing, the rate will be the lowest generally available rate for a personal interest-bearing checking account.

12. Arbitration

You and we agree that upon the election of either of us, any dispute relating in any way to your account or transactions will be resolved by binding arbitration as discussed below, and not through litigation in any court

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(except for matters in small claims court). This arbitration agreement is entered into pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA").

YOU HAVE A RIGHT TO OPT OUT OF THIS AGREEMENT TO ARBITRATE, AS DISCUSSED BELOW. UNLESS YOU OPT OUT OF ARBITRATION, YOU AND WE ARE WAIVING THE RIGHT TO HAVE OUR DISPUTE HEARD BEFORE A JUDGE OR JURY, OR OTHERWISE TO BE DECIDED BY A COURT OR GOVERNMENT TRIBUNAL. YOU AND WE ALSO WAIVE ANY ABILITY TO ASSERT OR PARTICIPATE ON A CLASS OR REPRESENTATIVE BASIS IN COURT OR IN ARBITRATION.

ALL DISPUTES, EXCEPT AS STATED BELOW, MUST BE RESOLVED BY BINDING ARBITRATION WHEN EITHER YOU OR WE REQUEST IT.

What claims or disputes are subject to arbitration?

Claims or disputes between you and us about your deposit account, transactions involving your deposit account, safe deposit box, and any related service with us are subject to arbitration. Any claims or disputes arising from or relating to this agreement, any prior account agreement between us, or the advertising, the application for, or the approval or establishment of your account are also included. Claims are subject to arbitration, regardless of what theory they are based on or whether they seek legal or equitable remedies. Arbitration applies to any and all such claims or disputes, whether they arose in the past, may currently exist, or may arise in the future. All such claims or disputes are referred to in this agreement as "Claims."

The only exception to arbitration of Claims is that both you and we have the right to pursue a Claim in a small claims court instead of arbitration, if the Claim is in that court's jurisdiction and proceeds on an individual basis.

Can I (the customer) cancel or opt out of this agreement to arbitrate?

You have the right to opt out of this agreement to arbitrate if you tell us within 60 days of opening your account. If you want to opt out, call us at 1-800-935-9935, or see a banker. Otherwise this agreement to arbitrate will apply without limitation, regardless of whether 1) your account is closed; 2) you pay us in full any outstanding debt you owe; or 3) you file for bankruptcy.

What about class actions or representative actions?

Claims in arbitration will proceed on an individual basis, on behalf of the named parties only.

YOU AND WE AGREE NOT TO:

- 1) SEEK TO PROCEED ON ANY CLAIM IN ARBITRATION AS A CLASS CLAIM OR CLASS ACTION OR OTHER COMPARABLE REPRESENTATIVE PROCEEDING;
- 2) SEEK TO CONSOLIDATE IN ARBITRATION ANY CLAIMS INVOLVING SEPARATE CLAIMANTS (EXCEPT FOR CLAIMANTS WHO ARE ON THE SAME ACCOUNT), UNLESS ALL PARTIES AGREE;
- 3) BE PART OF, OR BE REPRESENTED IN, ANY CLASS ACTION OR OTHER REPRESENTATIVE ACTION BROUGHT BY ANYONE ELSE; NOR
- 4) SEEK ANY AWARD OR REMEDY IN ARBITRATION AGAINST OR ON BEHALF OF ANYONE WHO IS NOT A NAMED PARTY TO THE ARBITRATION.

If these terms relating to class or representative procedures are legally unenforceable for any reason with respect to a Claim, then this agreement to arbitrate will be inapplicable to that Claim, and the Claim will instead be handled through litigation in court rather than by arbitration. No arbitrator shall have authority to entertain any Claim on behalf of a person who is not a named party, nor shall any arbitrator have authority to make any award for the benefit of, or against, any person who is not a named party.

Does arbitration apply to Claims involving third parties?

Arbitration applies whenever there is a Claim between you and us. If a third party is also involved in a Claim between you and us, then the Claim will be decided with respect to the third party in arbitration as well, and it must be named as a party in accordance with the rules of procedure governing the arbitration. No award or relief will be granted by the arbitrator except on behalf of, or against, a named party. For purposes of arbitration, "you" includes any person who is listed on your account, and "we" includes [REDACTED], all its affiliates, and all third parties who are regarded as agents or representatives of ours in connection with a Claim. (If we assign your account to an unaffiliated third party, then "we" includes that third party.)

The arbitration may not be consolidated with any other arbitration proceeding.

How does arbitration work?

The party filing a Claim in arbitration must select either: JAMS or the American Arbitration Association ("AAA") as the arbitration administrator. That organization will apply its code of procedures in effect at the

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time the arbitration claim is filed. If there is a conflict between that code of procedures and this arbitration provision and/or this agreement, this arbitration provision and this agreement will control. In the event that JAMS or the AAA is unable to handle the Claim for any reason, then the matter shall be arbitrated instead by a neutral arbitrator selected by agreement of the parties (or, if the parties cannot agree, selected by a court in accordance with the FAA), pursuant to the AAA rules of procedure.

The arbitrator will decide the Claim in accordance with all applicable law, including recognized principles of equity and statutes of limitations, and will honor all claims of privilege recognized by law. The arbitrator will have the power to award to a party any damages or other relief provided for under applicable law. A single arbitrator will conduct the arbitration and will use applicable substantive law, including the Uniform Commercial Code, consistent with the FAA and the applicable statutes of limitations or conditions precedent to suit, and will honor claims of privilege recognized at law. The arbitrator can award damages or other relief provided for by law to you or us, but not to anyone else. The arbitrator's authority is limited to the Claims between you and us.

Is the arbitrator's decision final? Is there an appeal process?

The arbitrator's decision will be final and binding on the parties. A party can file a written appeal to the arbitration administrator within 30 days of award issuance. The appeal must request a new arbitration in front of three neutral arbitrators designated by the same arbitration administrators. The panel will reconsider all factual and legal issues, following the same rules of procedure, and will make decisions based on majority vote. Any final arbitration award will be binding on the named parties and enforceable by any court having jurisdiction.

Who will pay for costs?

We will pay any costs that are required to be paid by us under the arbitration administrator's rules of procedure. Even if not otherwise required, we will reimburse you up to \$500 for any initial arbitration filing fees you have paid. We will also pay any fees of the arbitrator and arbitration administrator for the first two days of any hearing. If you win the arbitration, we will reimburse you for any fees you paid to the arbitration organization and/or arbitrator. All other fees will be allocated according to the arbitration administrator's rules and applicable law. If you consider that you are unable to afford any fees that would be yours to pay, you may request that we pay or reimburse them, and we will consider your request in good faith.

How do I (the customer) file an arbitration claim?

Rules and forms may be obtained from, and Claims may be filed with, JAMS at 620 Eighth Avenue, 34th Floor, New York, New York 10018, or jamsadr.com; or the AAA at 335 Madison Avenue, Floor 10, New York, New York 10017, or www.adr.org. Arbitration hearings will take place in the federal judicial district that includes your address at the time the Claim is filed, unless the parties agree to a different place.

13. Assignment of agreement and successors


This agreement will be binding on your personal representative, executors, administrators, and successors, and on our successors and assigns.

You may not grant a security interest in, transfer, or assign your account to anyone other than us without our written consent. No assignment will be valid or binding on us, and we won't be considered to have "knowledge" of it, until we consent and the assignment is noted in our records. However, by noting the assignment, we do not have any responsibility to assure that the assignment is valid. Any permitted assignment of your account is subject to our setoff rights.

14. Authorization to share information

You authorize us to share information about you and your account with affiliates and third parties, unless the law or our Privacy Notice prohibits us from doing so. Please see our Privacy Notice for your choices about information sharing.

15. Referrals

If you request it, our employees may at times provide contact information about third parties, such as lawyers, accountants, or contractors, who offer products or services to the public. Some of these third parties may be our customers. We provide this information only as a courtesy and convenience to you and the third party, but in some cases we may be compensated for a referral. We do not make any warranties or representations about the third parties or their products or services. If you choose to do business with any third party, that decision is yours alone, and we are not responsible for the third party's performance or to help resolve any dispute between you and the third party. Our employees may also receive compensation when you purchase a  product based on their referral.

CONTRACT ADDENDUM**ARBITRATION AGREEMENT: PLEASE REVIEW, THIS AGREEMENT AFFECTS YOUR LEGAL RIGHTS**

This contract addendum modifies the retail installment sales contract dated _____
for motor vehicle VIN# _____.

This Arbitration Agreement ("Arbitration Agreement" or "Arbitration Clause" or "clause") is an addendum to the retail installment sales contract referenced above ("contract") and fully incorporated herein, that was executed between you, the buyer (and Co-Buyer or Guarantor, if any) and the Creditor - Seller ("we" or "us" in this addendum).

1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this clause and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Clause shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a class action. You may choose one of the following arbitration organizations, and its applicable rules, to conduct the arbitration: JAMS, 1920 Main St., Ste. 300, Irvine, CA 92614 (www.jamsadr.com), the American Arbitration Association, 1633 Broadway, 10th Floor, New York, NY 10019 (www.adr.org), or any other organization subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statutes of limitation. Unless applicable law provides otherwise, the arbitration hearing shall be conducted in the federal district in which you reside unless the seller of the vehicle is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. We will pay your filing, administration, service and case management fee, your arbitrator and hearing fee and any arbitration appeal fees you incur all up to a maximum of \$5,000, unless the law requires us to pay more. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims are frivolous under applicable law. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this clause, then the provisions of this clause shall control. The arbitrator's award shall be final and binding on all parties, except that you may appeal any arbitrator's award pursuant to the rules of the arbitration organization, and we may only appeal an award against us exceeding \$100,000. Any arbitration under this Arbitration Clause shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et. seq.) and not by any state law concerning arbitration.

You retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, and we agree to reimburse your filing fees for such proceedings. You and we retain any rights to self-help remedies, such as repossession. You also retain the right to seek individual injunctive relief in court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Clause shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Clause shall be unenforceable.

BY SIGNING BELOW YOU ACKNOWLEDGE THAT IF EITHER YOU OR WE CHOOSE TO ARBITRATE A CLAIM OR DISPUTE, THE CLAIM OR DISPUTE WILL BE RESOLVED BY BINDING ARBITRATION AS DESCRIBED ABOVE.

Date

Buyer Name

Co-Buyer/Guarantor Name

Buyer Signature

Co-Buyer/Guarantor Signature

Seller Name

By