

## VISA® CARDHOLDER AGREEMENT

Please read this agreement carefully and save it for future reference. It contains Regulation Z disclosures and your rights in case of errors or inquiries about your bill.

This is the Agreement that covers your VISA® Cardholder Account with First Bank & Trust (“Account”). In this Agreement, the words “you” and “your” refer to the person who applied for the Account and any Joint Accountholder, if applicable. “We”, “us”, and “our” refer to First Bank & Trust, Brookings, South Dakota. The word “Card” means your VISA® Card.

This Agreement is effective when you use the Card or the Account or if you fail to cut your Card in half and return it to us within 30 days after the date it is issued to you.

To avoid unauthorized use of your Card, please sign the back of your Card immediately.

- Using Your Card.** You may use your Card or Account to purchase or lease goods or services (“Purchases”) to obtain cash loans (“Cash Advances”) from any financial institution that accepts the Card. Any cash equivalents obtained with the Card will also be treated as Cash Advances. Cash equivalent transactions include but are not limited to wire transfers, money orders travelers cheques, tax payments, gold bullion purchase, and gaming transactions or services. If you use your Card or Account, you agree to us paying the amount owed to each merchant or financial institution which honored your Card.

If you give your Account number to make a purchase or obtain a Cash Advance without presenting your Card (such as for a mail order, telephone, or Internet purchase), the legal effect will be the same as if the Card itself was used by you.

If we, at our option, give you a Personal Identification Number (PIN), you may use your Card to obtain a Cash Advance from any Automated Teller Machine (ATM) that bears the VISA®, or PLUS® logo. All ATM transactions are treated under terms of this Agreement the same as Cash Advances. We have the right to restrict your access to any qualified ATM at any time. You should not keep your PIN with your Card. If you believe that anyone has gained unauthorized access to your PIN, you should advise us immediately, following the procedures under the heading “Lost or Stolen Card.”

- Joint Account.** If this is a Joint Account, each person (a) may obtain Purchases and Cash Advances (but the total of these cannot exceed the credit line); (b) will be responsible for paying all amounts owed; and (c) can close the Account.

- Credit Line.** Your credit line is shown on the folder containing your Card. Since we may change your credit line from time to time, your latest credit line will appear on your monthly billing statement. You agree not to make any Purchases or obtain any Cash Advances that would cause the unpaid balance of your Account to exceed your credit line. We may honor Purchases and Cash Advances in excess of your credit line at our sole discretion. If we do this Agreement also applies to that excess and you agree to pay the excess immediately if we demand that you do so. You agree that we may change or cancel your credit line at any time without affecting your obligation to pay amounts that you owe under this Agreement.

Interest Rates and Interest Charges	
<b>Annual Percentage Rate (APR) for Purchases</b>	<b>13.9%</b>
<b>APR for Balance Transfers</b>	<b>13.9%</b>
<b>APR for Cash Advances</b>	<b>13.9%</b>
<b>How to Avoid Paying Interest on Purchases</b>	Your due date is at least 25 days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance by the due date each month.
<b>Minimum Interest Charge</b>	If you are charged interest, the charge will be no less than \$.50.
<b>For Credit Card Tips from the Consumer Financial Protection Bureau</b>	To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at <a href="http://www.consumerfinance.gov/learnmore">http://www.consumerfinance.gov/learnmore</a> .
Fees	
<b>Annual Fee</b>	<b>None</b>
<b>Transaction Fees</b> <ul style="list-style-type: none"><li>Balance Transfer</li><li>Foreign Transaction Fee</li></ul>	<b>None</b> <b>Up to 1%</b> of each transaction converted to U.S. dollars. Either <b>\$5 or 3%</b> of the amount of each cash advance, whichever is greater.
<ul style="list-style-type: none"><li>Cash Advance</li></ul>	
<b>Penalty Fees:</b> <ul style="list-style-type: none"><li>Late Fee</li><li>Returned Payment</li></ul>	<b>Up to \$25</b> <b>Up to \$25</b>
<b>Other Fees</b> <ul style="list-style-type: none"><li>Account Handling Fee</li></ul>	<b>\$25</b> -If it is necessary to place restrictions on account <b>\$2.50</b> per page <b>\$5</b> <b>\$25</b> <b>\$30</b> <b>\$5</b>
<ul style="list-style-type: none"><li>Statement Copy Fee</li><li>Pay By Phone Fee</li><li>Reinstatement Fee</li><li>Rush Card Fee</li><li>Lost/Stolen Replacement Card Fee</li></ul>	

**How We Will Calculate Your Balance:** We use a method called “average daily balance (including new purchases).”

**Billing Rights:** Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement

The information about costs of the card described in this application is accurate as of 8/15. The information may have changed after this date. To find out what may have changed, write us at: PO Box 6000, Brookings, SD 57006.

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including Interest charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any Interest charges related to any questioned amount. If we didn’t make a mistake, you may have to pay Interest charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don’t follow these rules, we can’t collect the first \$50.00 of the questioned amount, even if your bill was correct.

### Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

- You must have made the Purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and
- The Purchase price must have been more than \$50.00.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

such transactions is generally either a government mandated rate or a wholesale rate determined by Visa® for the processing cycle in which the transaction is processed, and may be increased by an adjustment factor established from time to time by Visa®, The rate used on the processing date may differ from the rate that would have been used on the purchase or cardholder statement posting.

If you effect a transaction at a merchant that settles in a currency other than U.S. dollars, VISA® will convert the charge into a U.S. dollar amount. Visa® will use its currency conversion rate used to determine the transaction amount in U.S. dollars for such transactions is generally either a government mandated rate or a wholesale rate determined by Visa® for the processing cycle in which the adjustment factor established from time to time by Visa®. The currency conversion rate used on the processing date may differ from the rate that would have been used on the purchase or cardholder statement posting date.

For each purchase transaction in a foreign currency that has been converted into a U.S. dollar amount by Visa, we may pass along the Foreign Transaction Fee in the amount provided to us by Visa.

- Illegal Transactions.** Your Card and Account may be used only for valid and lawful purposes. If you use, or allow someone else to use your Card and Account for any other purpose you will be responsible for such use and may be required to reimburse us for all amounts or expenses we pay as a result of such use.

### YOUR BILLING RIGHTS KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

#### Notify Us In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

#### Your Rights and Our Responsibilities After We Receive Your Written Notice

**Applicable Law and Judicial Review.** The arbitrator will apply applicable federal and South Dakota substantive law and the terms of this Agreement. The arbitrator must apply the terms of this arbitration agreement, including without limitation the waiver of class-wide arbitration. The arbitrator will make written findings and the arbitrator’s award may be filed with any court having jurisdiction. The arbitration award will be supported by substantial evidence and must be consistent with this Agreement and applicable law or may be set aside by a court upon judicial review. Either party may seek judicial review of the arbitrator’s decision according to applicable law.

**Small Claims Court.** All parties, including related third parties, shall retain the right to seek adjudication in a small claims court for disputes within the scope of such court’s jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims court, shall be resolved by binding arbitration.

**Other Provisions.** This arbitration provision will survive: (i) termination or changes in this Agreement, the Card or the relationship between you and us concerning the Card; (ii) the bankruptcy of any party; and (iii) any movement, sale or assignment of your Card, the Card Value or any amounts you owe to us, to any other person or entity. If any portion of this arbitration agreement is subsequently deemed unenforceable, the enforceability of any other provision of this arbitration agreement shall not be affected and the unenforceable term shall be amended such that it is enforceable to the maximum extent permitted by law.

**Right to Opt Out.** *If you do not wish your Card to be subject to this arbitration agreement, you must advise us in writing by contacting us at P.O. Box 6000, Brookings, SD 57006. Clearly print or type your name and Card number and state that you reject arbitration. You must give written notice, and it is not sufficient to telephone us. Send only your notice to reject arbitration; do not include the notice with other correspondence to us. We must receive your letter at the above address within sixty (60) days after the date this Agreement was provided to you or your rejection of arbitration will not be effective.*

- Venue and Jurisdiction.** You consent to be subject to the jurisdiction and venue of the Circuit Court for the Third Judicial Circuit, State of South Dakota, and agree that such court shall be the sole and exclusive jurisdiction and venue of all court actions of disputes or claims arising from or relating to this Agreement or the Account relationship.

- Applicable Law.** This Agreement is entered into in the State of South Dakota where the decision to grant credit is made and in which payments will be received. Therefore, this Agreement will be governed by the laws of the State of South Dakota without giving reference to its conflict of law provisions. If there is any conflict between any of the terms and conditions of this Agreement and applicable law, this Agreement will be considered changed to the extent necessary to comply with the law. The other provisions of the Agreement shall not be affected.

- Binding Effect.** This Agreement is binding upon and enforceable against your heirs, legal representatives, or successors.

- Foreign Currency Transactions.** If you effect an international transaction at a merchant that settles in a currency other than U.S. dollars the rate used to determine the transaction amount for

4. **Billing Statements.** We will promptly send a Monthly Billing Statement at the end of each monthly billing cycle if your Account has a debit or credit balance greater than \$1.00. The Monthly Billing Statement will show the Previous Balance, Purchases and Cash Advances posted during the billing period, any Interest Charges, and all payments, debits, and credits to your Account through the Billing Cycle Closing Date. It will also show, among other things, your New Balance, the Minimum Payment Due, and the Payment Due Date (which will be at least 25 days after the Billing Cycle Closing Date).

5. **Lost or Stolen Card.** You may be liable for the unauthorized use of your Card. You will not be liable for unauthorized use that occurs after you notify us through our agent at 1-800-442-4757 orally of the loss, theft, or possible unauthorized use. You may also notify us in writing of loss, theft, or possible unauthorized use at CARD SERVICES, PO Box 498181, Cincinnati, OH 45249-9860. In either case, your maximum liability is \$50 for unauthorized charges to your Account made prior to receipt of your oral or written notification.

6. **Promise to Pay.** By applying for and obtaining credit on your Account, you agree jointly and severally, if more than one person applies for the Account, to be obligated and pay for all credit obtained on your Account by you or any person you authorize to use your Card, as well as our Interest charges and any other fees imposed by us, as provided for in the Agreement. You agree to pay us only in U.S. Dollars drawn on U/S/ financial institutions.

7. **Irregular Payment and Delay in Enforcement, Waivers and Releases.** We can accept late payments, partial payments, checks and money orders marked “paid in full” or language having the same effect without losing any of our rights under this Agreement. We can also delay enforcing our rights under this Agreement any number of times without losing them and can waive or delay enforcing a right against one of you without waiving or delaying it as to the other. No waiver by us of any default shall be effective unless in writing nor operate as a waiver of any other future default. We can release any one of you in whole or in part without affecting your obligation under this Agreement.

8. **Minimum Payments.** You may pay your New Balance each month, or you may pay in monthly installments. If you decide to pay in monthly installments, you must pay at least the Minimum Payment Due shown on your Monthly Billing Statement by the Payment Due Date. The Minimum Amount Due will also include any amount past due and any amount by which your Account exceeds its credit limit. You may pay more than the Minimum Payment Due and may at any time pay your total balance due. We will apply payments to amounts owed on your Account based on applicable laws.

If your New Balance is greater than \$15.00, then the Minimum Payment Due will be the greater of \$15.00 or 3% of your total outstanding balance, plus late fee and any amount that is delinquent. If the New Balance is less than \$15.00 you pay only the New Balance. When we calculate the Minimum Payment Due, it will be rounded to the next highest \$5.00 increment.

Your Account is not in good standing if at any time we do not receive at least the Minimum Payment Due by the 60<sup>th</sup> day after the Payment Due Date shown on the Monthly Billing Statement.

9. **INTEREST CHARGES.** Your Account is subject to the following Interest charges, each of which will be charged to your Account as a Purchase:

**Periodic Interest Charges.** An **INTEREST CHARGE** is imposed on Purchases beginning on the date the Purchase is posted to your Account. No **INTEREST CHARGE** will be imposed on your Purchases if the Previous Balance shown on your Monthly Billing Statement is zero and you pay your New Balance in full by the Payment Due Date shown on your Monthly Billing Statement. An **INTEREST CHARGE** is imposed on Cash Advances beginning on the date they are obtained and continues until the balance of your Account is paid in full. There is no time in which you can pay the balance of Cash Advances in order to completely avoid an **INTEREST CHARGE**.

THE **INTEREST CHARGE** is determined by multiplying the Average Daily Balance for Purchases and for Cash Advances outstanding during the monthly billing cycle by the monthly Periodic Rate. The monthly Periodic Rate for Purchases and Cash Advances is 1.158%, which is equivalent to an **ANNUAL PERCENTAGE RATE** of 13.9%.

The Average Daily Balance is computed by taking the beginning balance of your Account on each day calculated separately for Purchases and Cash Advances, adding new Purchases and Cash Advances and subtracting any payments and credits. Any resulting credit balance is treated as a zero (\$0.00) balance. This gives us the daily balance. The daily balances are then added together and divided by the number of days in the billing cycle to get the Average Daily Balance.

**Minimum Interest Charge.** The minimum Periodic **INTEREST CHARGE** each billing cycle, based on the Periodic Rate, is \$.50.

**Cash Advance Fee.** In addition to the **INTEREST CHARGE** on Cash Advances calculated by application of the Periodic Rate, there is an **INTEREST CHARGE** of 3% (minimum \$5.00), whichever is greater, for each Cash Advance posted to your Account that month.

**Replacement Card Fee.** If at any time you request a replacement credit card due to loss, damage, theft, or destruction of your current credit card, you may be charged a Replacement Card Fee of \$5.00. No replacement Card will be allowed on the third lost or stolen Card. This fee is an **INTEREST CHARGE**.

10. **FEES.** Your Account is subject to the following fees, each of which will be charged to your Account as a Purchase:

**Pay By Phone Fee – Pay By Phone is an Optional Payment Service.** You may pay your account online or you may request to make your payment by phone using our optional telephone payment service. Each time a representative of ours helps expedite your payment, you agree to pay us \$5.00. Our representatives are trained to tell you this amount if you decided to use this optional telephone payment service.

**Rush Card Fee.** If you request a rush delivery of your Card, you may be charged \$30.00.

**Late Fee.** If we do not receive a payment from you in at least the amount of your Minimum Payment Due by the Payment Due Date shown on any Monthly Billing Statement, you may be charged a Late Fee equal to the amount of the Minimum Payment Due up to a maximum of \$25.00.

**Returned Payment Fee.** If you make a payment on your Account and your check or other payment instrument is not honored for

any reason or cannot be processed, we may charge a Returned Payment Fee equal to the amount of the Minimum Payment Due up to a maximum of \$25.00.

**Account Handling Fee.** If you are in default of this Agreement and it is necessary for us to place restrictions on your Account, you may be charged an Account Handling Fee of \$25.00. If these restrictions cause your Card to be retained and returned to us, you agree to pay all charges associated with recovering your Card.

**Reinstatement Fee.** If we close your Account due to your default and we later reinstate your Account at your request, you may be a charged a Reinstatement Fee of \$25.00.

**Statement Copy Fee.** If you request a copy of a Monthly Billing Statement, you may be charged a Statement Copy Fee of \$2.50 per page.

11. **Default/Collection Costs.** Your Account will be in default and we may demand immediate payment of the entire amount you owe us without giving you prior notice, if: (a) your Minimum Payment Due is not received by the Payment Due Date; (b) you make Purchases or obtain Cash Advances in excess of your credit line; (c) you become insolvent or are a party to a bankruptcy proceeding; (d) in the case of an Account with co-obligors where either of you request termination of the other; (e) you or a co-obligor dies; (f) you provide false information to us, misuse the Account or Card or violate any term of this Agreement; (g) any judgment or lien is filed against you; or (h) we reasonably believe that your ability to repay your obligations to us has been materially impaired. We shall also have the right to all remedies provided by law including, without limitation, closing or refusing to renew your Account and demanding return of your Card(s). If we refer your Account for collections to an attorney who is not our regularly salaried employee, you agree to pay the reasonable fees of such attorney and, whether or not an attorney is retained, all court and other collection costs (including and amounts actually incurred by us in recovering your Card(s)).

12. **Refusals to Honor Card.** We are not responsible for refusals to honor your Card. And, except as otherwise required by law or regulations, we will not be responsible for merchandise or services purchased through use of your Card.

13. **Termination.** We may terminate your privileges under the Agreement or cancel or limit your privileges to make Purchases or obtain Cash Advances at any time, with or without cause, without notice or liability. If we ask, you must return your Card(s) to us, cut in half. You agree that you will not try to make any Purchases or obtain Cash Advances after you have been notified that your privileges to use your Account have been cancelled. You may cancel this Agreement by returning all Cards issued on your Account to us, cut in half. Your or our termination or cancellation will not affect your existing obligations under this Agreement.

14. **Notices.** We will send statements and any other notices to you at the address shown in our files. IF this is a Joint Account, we can notify one of you and the notice will be effective for both of you. Similarly, one of you can notify us and we will consider it to be notice from both of you. You promise to inform us promptly in writing of any change in your address. In determining your last known address, we can accept address corrections received from the U.S. Postal Service.

15. **Changes in Agreement Terms.** We can change any term of this Agreement, including the rate at which or manner in which Interest charges are calculated, at any time upon such notice to you as is required by law. At our option, any change will apply both to your new activity and to your outstanding balance when the change is effective. If you do not wish to be subject to the change, you must notify us in writing within 25 days of the effective date of the change and close your Account. Use of the Card after the effective date of the change is deemed acceptance of the new terms.

16. **Arbitration. PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. UNLESS YOU EXERCISE THE RIGHT TO OPT-OUT OF ARBITRATION IN THE MANNER DESCRIBED BELOW, YOU AGREE THAT ANY DISPUTE WILL BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO HAVE A JURY, TO ENGAGE IN DISCOVERY (EXCEPT AS MAY BE PROVIDED IN THE ARBITRATION RULES), AND TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR INSTEAD OF A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN COURT PROCEDURES. YOU ALSO AGREE ANY ARBITRATION WILL BE LIMITED TO THE DISPUTE BETWEEN YOU AND US AND WILL NOT BE PART OF A CLASS-WIDE OR CONSOLIDATED ARBITRATION PROCEEDING.**

**Agreement to Arbitrate.** You and we agree that any Dispute, except as provided below, will be resolved by Arbitration. This agreement is governed by the Federal Arbitration Act (FAA), 9 U.S.C.S. § 1 et seq. and the substantive law of the State of South Dakota (without applying its choice-of-law rules).

**Arbitration Defined.** Arbitration is a means of having an independent third party resolve a Dispute. A “Dispute” is any controversy or claim between you and us. The term Dispute is to be given its broadest possible meaning and includes, without limitation, all claims or demands (whether past, present or future, including events that occurred prior to any Card being provided to you), based on any legal or equitable theory (tort, contract or otherwise), and regardless of the type of relief sought (i.e. money, injunctive relief, or declaratory relief). A Dispute includes, by way of example and without limitation, any claim based upon the debt moved to your Card, marketing or solicitations to open the Card, and the handling of your Card whether such Dispute is based on a federal or state constitution, statute, ordinance, regulation, or common law, and including any issue concerning the validity, enforceability or scope of this arbitration agreement.

For purposes of this arbitration agreement, the terms “you” and “your” include any co-signor or Authorized User and also your heirs, guardian, personal representative, or trustee in bankruptcy. The terms “us,” “our,” and “we” include our employees, officers, directors, attorneys, affiliated companies, predecessors, and assigns, as well as our marketing, servicing, and collection representatives and agents.

**Choice of Arbitrator.** The party filing arbitration must choose either of the following arbitration firms for initiating and pursuing arbitration: the American Arbitration Association or the National Arbitration Forum. If you claim you have a Dispute with us, but you do not initiate arbitration or select an arbitrator, we may do so. You

may obtain copies of the current rules of each of the arbitration firms and forms and instructions for initiating arbitration by contacting them as follows:

American Arbitration Association  
335 Madison Avenue, Floor 10  
New York, NY 10017-4605  
Website: [www.adr.org](http://www.adr.org)

National Arbitration Forum  
P.O. Box 50191  
Minneapolis, MN 55405  
Website: [www.arbitration-forum.com](http://www.arbitration-forum.com)

If neither arbitration firm listed in this agreement is available to resolve the Dispute, you and we may each select a local arbitrator. The local arbitrators selected by you and us shall then agree upon the selection of another arbitrator who will hear and resolve the Dispute. The arbitrator selected to resolve the Dispute must be an attorney with at least ten (10) years’ experience, retired judge, or arbitrator registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator’s rule applicable to consumer disputes. Notwithstanding the foregoing, no party or local arbitrator may select an arbitrator who refuses to enforce an arbitration agreement containing a class-action waiver, because you and we have in this arbitration agreement waived any right to arbitrate a Dispute on a class-action, representative-action, or consolidated basis.

The policies and procedures of the selected arbitration firm will apply provided that these are consistent with this arbitration agreement. To the extent the arbitration firm’s rules or procedures are different than the terms of this arbitration agreement, the terms of this agreement will apply.

Cost of Arbitration. We will pay the filing fee and any costs or fees charged by the arbitrator regardless of whether you or we initiate the arbitration. Except where otherwise provided by applicable law, each party will be responsible for its own attorneys’ fees and other expenses. Unless prohibited by law, the arbitrator may award fees, costs, and reasonable attorneys’ fees to the party who substantially prevails in the arbitration.

**Place of Arbitration.** Unless you and we agree to a different location, the arbitration will be held in the same city as the U.S. District Court closest to your then current mailing address.

**Waiver of Rights.** You are waiving your right to a jury trial, to have a court decide your Dispute, to participate in a class action lawsuit, and to certain discovery and other procedures that are available in a lawsuit. The arbitrator has the ability to award all remedies available by statute, at law, or in equity to the prevailing party, except that you and we agree that the arbitrator has no authority to conduct class-wide proceedings and will be restricted to resolving the individual disputes between you and us. The validity, effect, and enforceability of this waiver of class action lawsuit and class-wide arbitration are to be determined solely by a court of competent jurisdiction and not by the arbitration firm or arbitrator. If the court refuses to enforce the class-wide arbitration waiver, or if an arbitration firm or arbitrator fails or refuses to enforce the waiver of class-wide arbitration, you and we agree that the Dispute will proceed in court and will be decided by a judge, sitting without a jury, under applicable court rules and procedures.