

## Choice Financial Group Consumer Debit Card Agreement

*Last Modified: March 7, 2025*

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU ACTIVATE YOUR CARD TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. **SECTION 10 OF THIS AGREEMENT CONTAINS A MANDATORY INDIVIDUAL ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.**

This agreement (the “**Agreement**”) applies to your use of the Mercury Consumer Debit MasterCard (the “**Card**”) issued by CHOICE FINANCIAL GROUP, an FDIC insured bank chartered under the laws of the State of North Dakota with a principal place of business of 4501 23rd Ave. S., Fargo ND 58104 the provider of your Deposit Account (your “**Banking Provider**”), and contains the terms and conditions between you, your Banking Provider, and Mercury Financial Technologies, Inc. (“**Mercury**”). As your Banking Provider’s agent, Mercury is responsible for providing and managing the account associated with your Card (your “**Card Account**”, or “**Account**”), and ensuring that you comply with the terms of this Agreement. This supplements the Mercury Terms of Use, the Mercury Privacy Policy, the Banking Provider Agreements, and all other applicable agreements between you, your Banking Provider, and Mercury. In the event of any conflict between this agreement and the Mercury Terms of Use, this agreement will govern and control.

The terms “**You**” and “**Your**” mean you and the users authorized by you (“**Authorized Users**”) to use the Card and your Card Account. The terms “**we**,” “**us**,” and “**our**” mean, with regard to our provision of banking services, your Banking Provider, and with regard to our provision of all other services, your Banking Provider and/or Mercury, and each of our respective successors, affiliates, assignees, and third-party service providers, as applicable. We may update this agreement at any time by posting a revised version to the Mercury website or to your Account, or by emailing it to you. Continuing to use the Card after you receive the revised agreement means you accept the new terms. The term “**business days**” refers to Monday through Friday, excluding federal holidays.

Any capitalized term that is not defined in this will have the meaning provided in the Mercury Terms of Use. By accepting and using the Card, you are signifying that you have read, understood, and agree to comply with all the terms and conditions in this Agreement, and that you consent to our use of any Information we collect from you in accordance with the Mercury Privacy Policy and your Banking Provider’s privacy policy (together, the “**Program Privacy Policies**”).

**1. Preventing Financial Crimes.** To help the government fight the funding of terrorism and money laundering activity, federal law requires all financial institutions to obtain, verify, and record personal information that identifies you and other associated persons before you open an account with us. We will use the information you provided to Mercury when you opened your Account and the results of any identity verification procedures to determine whether to issue you Cards.

### **2. Your Mercury Card.**

**A. Eligibility; Card Activation and Replacement.** You must have an Account in good standing to receive a Card. We may refuse to issue Cards to you in our sole discretion. To activate your Card, log in to your Account and follow the Card activation instructions, or follow the instructions you received with

your Card. Please sign the signature panel on the back of the Card as soon as you receive it (if applicable). When you activate your Card, you must select a personal identification number (“PIN”) to withdraw cash at automated teller machines (“ATM”) and for certain Transactions at merchant locations where a PIN is required. Keep your PIN a secret. If you need to replace your Card, please log into your Account to request a replacement Card. For more information on lost and stolen Cards, see Section 4(D), *Your Liability for Unauthorized Transfers*, of this Agreement.

**B. Virtual Cards.** We may issue you one or more virtual cards represented by a 16-digit Account number (“Virtual Card”) in addition to your Card. The Virtual Card may either be single-use, meaning the 16-digit Account number will expire after a single transaction, or recurring-use, meaning you may use your 16-digit Account number for multiple transactions. You may not use your Virtual Card to obtain cash.

**C. Authorized Users.** Only you and your Authorized Users have the authority to act on your behalf, to authorize secondary cardholders, to request new Cards, to suspend your Card and to close your Card Account. We are not responsible for fraudulent or erroneous transactions, or any other liabilities that may result from actions we take at the direction of your Authorized Users. You are also solely responsible for fees, charges, costs and any other liabilities that result from use of the Card by secondary cardholders, including Authorized Users or any other person you authorize to use the Card. The Card is nontransferable and we may cancel, repossess, or revoke it at any time without prior notice.

### **3. Using Your Card.**

**A. Authorized Use.** The Card allows you to spend the funds in your Deposit Account and to make electronic transfers. You may also use the Card for subscriptions or other recurring purchases; however, you are responsible for such transactions if you fail to cancel them in time. You agree to use the Card exclusively for lawful, personal, family or household purposes. The Card is not a credit card, and the funds available to spend using your Card are limited to the available funds in your Deposit Account. Each transaction is subject to the terms of your Deposit Account Agreement. We may decline to authorize or reverse a transaction if you violate the terms of this agreement, the Mercury Terms of Use or any other agreement between you and us if we suspect fraudulent activity, or for any other reason. We may also block categories of transactions at the request of you or your Authorized Users. You may use the Card to purchase goods or services everywhere MasterCard is accepted as long as you do not exceed your Deposit Account balance and where no other restrictions apply. Each time you use your Card, you authorize us to reduce the value available in your Deposit Account by the amount of the transaction and any applicable fees. We, you or your Authorized Users may impose geographic or high-risk merchant location restrictions, restrictions to comply with applicable laws or to reduce our liability; and other restrictions to prevent fraud and other losses. For security reasons, we may, with or without prior notice, limit the type, amount, or number of transactions you can make on your Card. We, you or your Authorized Users may increase, reduce, cancel, or suspend any of these restrictions or add new ones at any time.

**B. Fees; Spending Limits.** We do not charge any fees for initial issuance or use of your Card or Card Account, and we will not charge any fees if you use the Card to withdraw cash at an ATM machine. If you use your Card at an ATM, the ATM operator or network may charge you additional fees (and you may be charged a fee for a balance inquiry even if you do not complete a transaction). We may not offer Network ATMs for certain account types, customers, or whatsoever, at our discretion. We currently do not charge a fee for using your Card in a digital wallet, but we reserve the right to do so in future. Your digital wallet provider may charge you a separate fee. We, you or your Authorized Users may impose limits on individual transaction amounts, ATM withdrawal amounts, and daily or weekly spending limits

on your Card (“**Spending Limits**”). Your Spending Limits are subject to periodic review and to change based on your Card Account history, transaction activity, information from your Account, your Authorized Users, and other factors. ATM operators may impose their own limits on cash withdrawals. Log in to your Account to view or request adjustments to your Spending Limits.

**C. Cash Withdrawals.** You may use your Card to obtain cash at any ATM. All ATM transactions are treated as cash withdrawal transactions and are subject to your Spending Limits. You may also use your PIN to obtain cash at merchant locations, where permitted.

**D. Foreign Transactions.** If you make a purchase in a currency other than United States dollars (“**USD**”), the amount deducted from your Account will be converted into USD. The exchange rate between the transaction currency and the billing currency used for processing international transactions is a rate selected by MasterCard from the range of rates available in wholesale currency markets for the applicable central processing date, which may vary from the rate MasterCard itself receives, or the government-mandated rate in effect for the applicable central processing date. There are no additional fees for foreign transactions.

**E. Card-Not-Present Transactions.** If you use the 16-digit Card number without presenting the Card in person (such as for a mail order, telephone, or internet purchase), the legal effect will be the same as if you used the Card itself. For security reasons, we may limit the amount or number of such transactions you may make.

**F. Authorization Holds.** When you use your Card to purchase goods or services or to obtain cash from certain merchants, such as a hotel or a car rental agency, the merchant may request authorization from us in advance. In the event of such a request, we may place a hold on your Deposit Account for up to seven (7) days for the amount of the request, which will limit the availability of the preauthorized amount in your Deposit Account during the hold period. In some cases, a merchant may request pre-authorization for a transaction, which are subject to a hold on your Deposit Account for up to thirty (30) days. Merchants may decide to increment the pre-authorized amount if the amount is insufficient for the final purchase, or, they may request to extend the same authorization amount if the final purchase date will be in the future. These events may result in a hold for that amount of funds for up to another thirty (30) days from the adjustment date. We will not be responsible for any transactions not completed because of the hold. If the preauthorization request varies from the amount of the actual transaction, we will debit the actual transaction amount from your Deposit Account, even if this results in a negative balance in your Deposit Account.

**G. Receipts.** You should get or request a receipt at the time you make a transaction or obtain cash using your Card. You agree to retain your receipts to verify your transactions. You can get a receipt at the time you make any transfer from your Deposit Account using the Mercury mobile app (“**Mobile App**”).

#### **4. Electronic Funds Transfer Disclosures.**

**A.** This Section 4 (Electronic Funds Transfers Disclosures) includes provisions that apply to electronic fund transfers to or from consumer Accounts only. These transfers are governed by Regulation E, which implements the federal Electronic Fund Transfer Act. These provisions do not apply to any fund transfer (including a wire transfer) that is a remittance transfer as defined in Regulation E, Subpart B. Remittance transfers are transfers sent outside of the U.S. that are initiated by consumers primarily for personal, family or household purposes and are governed by federal law that may provide certain rights and obligations that differ from the rights and obligations that apply to other types of payment orders.

**B. Types of Electronic Fund Transfers Available.** You may use your Card to:

- i. Make Cash Withdrawals.
- ii. Pay for purchases at places that have agreed to accept the Card or Account number.
- iii. Make purchases at merchants that accept the Card or to obtain cash at ATMs, Over The Counter cash and, subject to availability, cash back at Point-of-Sale (“POS”) terminals.

**C. Limitations on Transfers, Amounts, and Frequency of Transactions.**

- i. You may make cash withdrawals and POS purchases, not to exceed the established limits for your Deposit Account.
- ii. If your Deposit Account is closed, blocked, or suspended for any reason, you will not be able to transact using your Card (including at an ATM) or other features of your Deposit Account.

**D. Right to Receive Documentation of Electronic Fund Transfers.** You will have access to an electronic monthly statement that can be viewed on the Mercury website (“Site”) or Mobile App. As referenced above in Section 3(G), you can also get a receipt at the time you make any transaction at an ATM or a POS payment terminal. If there is a conflict between the receipt and our records, our records will be deemed to be correct.

**E. Right to Stop Payment of Preauthorized Transfers and Procedures.** If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Please email the third party to request the cancellation of the payment. If the third party is unable or unwilling to stop the transfer, please call us at (415) 878 - 1068, email us at help@mercury.com, or write us at 333 Bush Street Suite 1900, San Francisco, CA 94104 to stop the payment. You agree to provide a copy of the third-party request email, if requested by us. We must receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. If these regular payments may vary in amount, we will tell you, 10 days before each payment, when it will be made and how much it will be. If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

**F. Your Liability for Unauthorized Transfers.** Tell us AT ONCE if you believe your Card, PIN or Account number has been lost or stolen, or if you believe that an electronic fund transfer has been or may be made without your permission. Telephoning us at (415) 878 - 1068 is the best way of keeping your possible losses down. You may also write us at 333 Bush Street Suite 1900, San Francisco, CA 94104. You could lose all the money in your Account, if applicable. If you tell us within two (2) business days after you learn of the loss or theft of your Card, PIN or Account number, you can lose no more than \$50 if someone used your Card, PIN or Account number without your permission. If you do NOT tell us within two (2) business days after you learn of the loss or theft of your Card, PIN or Account number, and we can prove we could have stopped someone from using your Card, PIN or Account number without your permission if you had told us, you could lose as much as \$500. Also, if your statement shows transfers that you did not make, including those made by Card, code or other means, tell us at once. For procedures on reporting statement errors, see the section labeled “*Information About Your Right to Dispute Errors*”, below. If you do not tell us within sixty (60) days after the statement was made available to you, you may not get back any money you lost after the sixty (60) days

if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) keeps you from telling us, we will extend the time periods. If your Card or Account number has been lost or stolen, we may close your Account to keep losses down and send you a replacement Account number. Notwithstanding the above, pursuant to Mastercard Inc.'s Mastercard Rules and Mastercard Zero Liability Protection Policy, your liability for unauthorized Mastercard debit transactions on your Account is \$0 if you are not grossly negligent or fraudulent in the handling of your Card. This reduced liability does not apply to certain commercial card transactions, transactions not processed by Mastercard, or to ATM transactions outside the U.S. You must notify us immediately of any unauthorized use.

**G. Our Liability for Failure to Complete Transactions.** If we do not complete a transfer to or from your Account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- i. If through no fault of ours, you do not have enough funds available in your Account to make the transfer;
- ii. If a merchant refuses to accept your Card or Account number;
- iii. If an ATM where you are making a cash withdrawal does not have enough cash;
- iv. If an electronic terminal where you are making a transaction was not working properly, and you knew about the problem when you started the transfer;
- v. If access to your Card or Account has been blocked after you reported your Card or Account number lost or stolen;
- vi. If there is a hold or your funds are subject to legal or administrative process or other encumbrance restricting their use;
- vii. If we have reason to believe the requested transaction is unauthorized;
- viii. If circumstances beyond our control (such as fire, flood, or computer communication failure) prevent the transfer, despite reasonable precautions that we have taken; or
- ix. Any other exception stated in our agreement with you.

**H. Information About Your Right to Dispute Errors.** Telephone us at (415) 878 - 1068 or email us at [help@mercury.com](mailto:help@mercury.com) as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than sixty (60) days after we provided the FIRST statement on which the problem or error appeared.

- i. Tell us your name and Account number.
- ii. Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- iii. Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. If we decide to do this, we will credit your Account within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your compliance or question in writing and we do not receive it within ten (10) business days, we may not credit your account.

For errors involving new Cards, Accounts, point-of-sale, or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. For new Accounts, we may take up to twenty (20) business days to credit your Account for the amount you think is in error.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

If you would like to request copies of the documents on which we rely during our investigation, or have further questions, please telephone us at (415) 878 - 1068 or email us at [help@mercury.com](mailto:help@mercury.com).

**I. No Warranty Regarding Goods or Services as Applicable.** We are not responsible for the quality, safety, legality, or any other aspect of any goods or services you purchase using your Card or Account.

**J. Processing Order.** Please see your Card Account on the Site or Mobile App for the posting order of items clearing your Card Account. The processing order of these items is important because if there is not enough money in your Card Account to pay for the items in the order they are processed in accordance with the processing order, there may be an overdraft attempt on your Card Account which may result in non-sufficient fund fees or an increase in the amount of fees. By opening a Card Account pursuant to this Agreement, you are consenting to our authorizing and paying non-sufficient fund fees on your ATM and Card transactions.

#### **K. Member Services.**

For member service assistance or additional information regarding your Card Account, please contact:

Mercury Technologies, Inc.  
[help@mercury.com](mailto:help@mercury.com)  
333 Bush Street, Suite 1900  
San Francisco, CA 94104  
Customer Service Line: (415) 878 - 1068

Customer Service agents are available to answer your calls:

Monday through Friday, 7:30 a.m. to 5:30 p.m. PT.

#### **5. Responsibility For Transactions.**

**A. Your Liability.** You remain responsible for any negative balances in your Deposit Account. You and your Authorized Users are solely responsible for securing Cards, account numbers and Card security features; and for transactions, fees and penalties that result resulting from failure to safeguard Cards from loss or theft, to promptly report loss or theft, and for all other transactions on Cards issued to you.

To report a lost or stolen Card, or unauthorized access to your Account, contact us immediately through your Account, or by emailing us at [help@mercury.com](mailto:help@mercury.com).

**B. Our Liability.** If we deduct or transfer funds from your Deposit Account in error, we will be liable to you solely for the amount of our error, and not for any other losses. We will not be liable to you if: (i) you do not have enough funds available to complete your transaction; (ii) a merchant refuses your Card; (iii) an ATM does not have enough cash; (iv) a merchant's Card reader does not operate properly, and you knew about the problem when you initiated the transaction; (v) access to your Card has been blocked after you reported your Card lost or stolen; (vi) there is a hold or your funds due to a legal or administrative process or other encumbrance restricting their use; (vii) we believe the requested transaction is unauthorized; (viii) circumstances beyond our control (such as fire, flood or computer or communication failure) prevent the completion of the transaction; or (ix) any other exception stated in this agreement. We are not responsible for the quality, safety, legality, or any other aspect of any goods or services you purchase with your Card.

**C. Liability for Digital Wallets.** If you add your Card to a digital wallet, you are solely responsible for maintaining the security of your digital wallet credentials. By sharing your credentials with any other person, including but not limited to your Authorized Users, you are expressly authorizing them to access your personal information and your Account, and initiate transactions on your Card using the digital wallet service. We are not the provider of the digital wallet and we are not responsible for providing the digital wallet service to you. We are only responsible for supplying information securely to the digital wallet provider to enable usage of the Card in such digital wallet. We are not responsible for any failure of the digital wallet or the inability to use the digital wallet for any transaction. We are not responsible for the performance or non-performance of the digital wallet provider or any other third parties regarding any agreement you enter into with the digital wallet provider or their third-party service providers. WE ARE NOT RESPONSIBLE FOR THE QUALITY, PERFORMANCE, OR ACCURACY OF THE DIGITAL WALLET SERVICE. YOUR USE OF THE DIGITAL WALLET SERVICE IS AT YOUR OWN RISK.

## **6. Transaction History; Disputed Transactions; Errors or Questions.**

**A. Transaction History.** You may view your transaction history and Deposit Account balance by logging into your Account. You should do this regularly to verify the activity on your Deposit Account. If you discover an unauthorized or erroneous transaction, you will need to tell us: (i) your name and the name of any additional Authorized User (ii) why you believe there is an error, and the dollar amount involved, and (iii) approximately when the error took place. Without this information, we may not be able to process your request. We will determine whether an error occurred and will correct any errors promptly. If you need more information about our error resolution procedures, please contact us through your Account.

**B. Disputed Transactions.** You are solely responsible for the goods or services you purchase, and for a merchant's failure to honor purchases you make with a Card. If you have a dispute with a merchant, you agree to make a good faith effort to resolve it directly before contacting us. If you are entitled to a refund for any reason for goods or services you obtained with your Card, you agree to accept credits to your Deposit Account for refunds and agree to the merchant's refund policy. In any dispute with a merchant, you agree that any rights you may have against the merchant in the dispute may be transferred to us to satisfy any debts you owe us or to protect our rights. You may not assert any claims or defenses against us that you may have, or believe that you may have against any merchant in the dispute. We are

not responsible for the quality, safety, legality, or any other aspect of any goods or services you purchase with your Card.

**7. Closing or Suspending Your Card or Card Account.** You may close or suspend your Card by contacting us through your Account, or by emailing us at [help@mercury.com](mailto:help@mercury.com). You must pay any outstanding amounts you owe us before we or you close your Account.

**A. Confidentiality.** We may share information regarding you, your Card, your Deposit Account, and your transaction activity as necessary to provide customer service, service the Card or your Deposit Account, and investigate and act on claims on the Card or your Deposit Account in accordance with applicable law and the Program Privacy Policies. We may disclose information to third parties about your Account or the transfers you make:

- i. Where it is necessary for completing transfers;
- ii. In order to verify the existence and condition of your Account for a third party with whom you have transacted, such as a merchant;
- iii. In order to comply with government agency, court order, or other legal or administrative reporting requirements;
- iv. In order to investigate or enforce violations of this Agreement;
- v. In connection with suspected or actual illegal activity, or to prevent physical harm, as detected on your application, communications with us or your Card Account;
- vi. If you consent by giving us your written permission;
- vii. To our employees, auditors, affiliates, service providers, or attorneys as needed;
- viii. Otherwise as necessary to fulfill our obligations under this Agreement; or
- ix. As otherwise set forth in the Program Privacy Policies.

## **8. Limitation of Liability; Indemnification.**

**A. Limitation of Liability.** We are not liable to you for consequential, indirect, special, punitive, putative, or exemplary damages, lost profits, or lost revenues; whether or not we were advised of the possibility of such damage, and regardless of whether such damages were foreseeable. Our maximum liability to you under this agreement is limited to \$1000.00, not including any amounts we owe you under Section 4(B). This limitation applies regardless of the legal theory on which your claim is based.

**B. Indemnification.** You agree to defend, indemnify and hold harmless Mercury and your Banking Provider, and their respective subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, and our third-party service providers, from and against any and all claims brought against us by any third party for damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) made arising

out of, related to, or resulting from: (a) your use of and access to the Card and your Card Account, (b) your violation of any term of this agreement; (c) your violation of any applicable law, rule or regulation; (d) your intentional misconduct; or (e) any other party's access and use of the Card authorized by you.

## **9. Governing Law and Jurisdiction; ARBITRATION; Class Action Waiver; Jury Trial Waiver.**

**A. Governing Law and Jurisdiction.** Except to the extent governed by federal law, this agreement will be governed by the laws of the state of New York and will apply without respect to the internal principles of conflicts of laws. You agree that: (i) we are providing the Card and Card Account to you solely in the state of New York; and (ii) your user of the Card will be deemed to be a passive relationship that does not give rise to personal jurisdiction over us, either specific or general, in a jurisdiction other than New York. The parties acknowledge that this agreement evidences a transaction involving interstate commerce. Notwithstanding Section 9A with respect to governing law, any arbitration conducted pursuant to the terms of this agreement shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). You agree to submit to the personal jurisdiction of the federal and state courts located in Cass County, North Dakota for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. Subject to Section 9B, you agree that the federal or state courts located in Cass County, North Dakota is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the Arbitration provision below is found to be unenforceable.

**B. ARBITRATION. READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM MERCURY AND YOUR BANKING PROVIDER.** This Arbitration Provision sets forth the circumstances and procedures under which Claims (as defined below) will be arbitrated instead of litigated in court upon the election of any party. If you do not want to arbitrate all Claims as provided in this agreement, then you have the right to reject such arbitration provisions by delivering a written notice to at [legal@mercury.com](mailto:legal@mercury.com), Attention: Legal Department within thirty (30) days after the date you have entered into this agreement. Your rejection of any arbitration provisions does not affect any independent arbitration agreements with third parties, and you remain subject to any arbitration, class action or jury trial waiver or dispute resolution processes set out in those separate agreements. For any Claim, you agree to first email [legal@mercury.com](mailto:legal@mercury.com) and attempt to resolve the dispute with us informally. In the unlikely event that we have not been able to resolve a dispute it has with you after sixty (60) days, such dispute will be finally and exclusively resolved by binding arbitration governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as it may be amended (the "FAA"). Any election to arbitrate, at any time, will be final and binding on the other party.

**i. Definitions.** The term "Claim" means any claim, dispute or controversy between you and us, or between you and us and any of our agents or retailers, arising from or relating to the Card or this agreement as well as any related or prior agreement that you may have had with us or the relationships resulting from this agreement, including the validity, enforceability or scope of this Arbitration Provision or the agreement. "Claim" includes claims of every kind and nature, including but not limited to initial claims, counterclaims, cross-claims and third-party claims and claims based upon contract, tort, fraud and other intentional torts, statutes, regulations, common law and equity. The term "Claim" is to be given the broadest possible meaning that will be enforced and includes, by way of example and without limitation, any claim, dispute or controversy that arises from or relates to (i) your Card; (ii) the amount of available funds on your Card; (iii) advertisements, promotions or oral or written statements

related to your Card, goods or services purchased with your Card; (iv) the benefits and services related to with your Card; and

(v) your enrollment for any Card. We shall not elect to use arbitration under the Arbitration Provision for any Claim that you properly file and pursue in a small claims court of your state or municipality so long as the Claim is individual and pending only in that court; any appeals from that court shall be pursued only in arbitration. As used in this Arbitration Provision, the terms “we” and “us” shall for all purposes mean your Banking Provider, Mercury, and any wholly or majority owned subsidiaries, affiliates, licensees, predecessors, successors, and assigns or your Banking Provider or Mercury; and all of agents, employees, directors and representatives of your Banking Provider or Mercury. In addition, “we” or “us” shall include any third party using or providing any product, service or benefit in connection with your Card (including, but not limited to merchants who accept the Card, third parties who use or provide services, debt collectors and all of their agents, employees, directors and representatives) if, and only if, such third party is named as a co-party with us (or files a Claim with or against us) in connection with a Claim asserted by you. As solely used in this Arbitration Provision, the terms “you” or “yours” shall mean all persons or entities approved by us to have and/or use a Card, including but not limited to all persons or entities contractually obligated under any of the agreements.

**ii. Initiation of Arbitration Proceeding/Selection of Administrator.** Any Claim shall be resolved, upon the election by you or us, by arbitration pursuant to this Arbitration Provision and the code of procedures of the national arbitration organization to which the Claim is referred in effect at the time the Claim is filed. Claims shall be referred to either Judicial Arbitration and Mediation Services (“**JAMS**”) or the American Arbitration Association (“**AAA**”), as selected by the party electing to use arbitration. If a selection by us of one of these organizations is unacceptable to you, you shall have the right within thirty (30) days after you receive notice of our election to select the other organization listed to serve as arbitrator administrator. For a copy of the procedures, to file a Claim or for other information about these organizations, contact them as follows: (i) JAMS at 1920 Main Street, Suite 300, Los Angeles, CA 92614; website at [www.jamsadr.com](http://www.jamsadr.com); and (ii) AAA at 335 Madison Avenue, New York, NY 10017; website at [www.adr.org](http://www.adr.org).

**iii. Significance of Arbitration.** IF ARBITRATION IS CHOSEN BY ANY PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED FOR IN THE CODE OF PROCEDURES OF JAMS OR AAA, AS APPLICABLE (THE “**CODE**”). FURTHER, YOU WILL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. THE ARBITRATOR SHALL NOT CONDUCT A CLASS ARBITRATION OR A JOINT ARBITRATION EXCEPT AS SET FORTH BELOW. THE ARBITRATOR’S DECISION WILL BE FINAL AND BINDING. NOTE THAT OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

**iv. Restrictions on Arbitration.** If either party elects to resolve a Claim by arbitration, that Claim shall be arbitrated on an individual basis. There shall be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Cardholders or other persons similarly situated. The arbitrator’s authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator’s authority to make awards is limited to you and us alone. Furthermore, Claims brought by you against us or by us against you may not be joined or consolidated in arbitration with Claims brought by or against someone

other than you, unless otherwise agreed to in writing by all parties.

**v. Arbitration Procedures.** This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the FAA. The arbitration shall be governed by the applicable Code, except that (to the extent enforceable under the FAA) this arbitration Provision shall control if it is inconsistent with the applicable Code. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law and, at the timely request of either party, shall provide a brief written explanation of the basis for the decision. In conducting the arbitration proceeding, the arbitrator shall not apply the Federal or any state rules of civil procedure or rules of evidence. Either party may submit a request to the arbitrator to expand the scope of discovery allowable under the applicable Code. The party submitting such a request must provide a copy to the other party, who may submit objections to the arbitrator with a copy of the objections provided to the request party, within fifteen (15) days of receiving the requesting party's notice. The granting or denial of such request will be in the sole discretion of the arbitrator who shall notify the parties of his/her decision within twenty (20) days of the objecting party's submission. The arbitrator shall take reasonable steps to preserve the privacy of individuals, and of business matters. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision will be final and binding, except for any right of appeal provided by the FAA. However, any party can appeal that award to a three-arbitrator panel administered by the same arbitration organization, which shall consider anew any aspect of the initial award objected to by the appealing party. The appealing party shall have thirty (30) days from the date of entry of the written arbitration award to notify the arbitration organization that it is exercising the right of appeal. The appeal shall be filed with the arbitration organization in the form of a dated writing. The arbitration organization will then notify the other party that the award has been appealed. The arbitration organization will appoint a three-arbitrator panel which will conduct arbitration pursuant to its Code and issue its decision within one hundred twenty (120) days of the date of the appellant's written notice. The decision of the panel shall be by majority vote and shall be final and binding.

**vi. Continuation.** This Arbitration Provision shall survive termination of your Card as well as voluntary payment of the debt in full by you, any legal proceeding by us to collect a debt owed by you, and any bankruptcy by you or us. If any portion of this Arbitration Provision is deemed invalid or unenforceable under any principle or provision of law or equity, consistent with the FAA, it shall not invalidate the remaining portions of this Arbitration Provision, the agreement or any prior agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

**C. CLASS ACTION WAIVER.** To the fullest extent permitted by applicable law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Claim to be arbitrated or resolved on a class action basis or to utilize class action procedures; and (iii) there is no right or authority for any Claim to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

**D. JURY TRIAL WAIVER.** YOU, YOUR BANKING PROVIDER, AND MERCURY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM ARISING OUT OF THIS AGREEMENT OR ANY OTHER DISPUTE OR CONTROVERSY BETWEEN YOU AND US.

**10. Telephone Monitoring/Recording.** We may monitor and/or record telephone calls between you and

us to assure the quality of our customer service or as required by applicable law.

**11. General Terms.** You may not transfer or assign your rights or obligations under this agreement or your Card to any other person. Your Banking Provider or Mercury may transfer their rights and obligations under this agreement to a third party. Use of your Card is subject to the MasterCard rules and applicable law. Neither your Banking Provider nor Mercury will be deemed to waive their rights by delaying or failing to exercise them at any time. If any provision of this agreement is deemed invalid or unenforceable under any rule, law, or regulation of any governmental agency, local, state, or federal, the validity or enforceability of any other provision of this agreement will not be affected. This agreement constitutes the entire understanding between you and us for your use of Cards and your Card Account. No other agreements, representations, or warranties other than those provided in this agreement are binding unless in writing and signed by us. Your Card is issued by Choice Financial Group (Member FDIC), pursuant to a license from MasterCard International Incorporated. "Choice Financial Group" is a registered trademark of Choice Financial Group. MasterCard is a registered trademark, and the MasterCard® design is a trademark of MasterCard.