

**Commerce Bank mySpending Card®**  
**Cardholder Agreement and Electronic Fund Transfer Act Disclosure**

This Cardholder Agreement (“Agreement”) governs the issuance and use of your Commerce Bank mySpending Card® issued by Commerce Bank (“Card”). Please read this Agreement carefully and keep it for your records. In this Agreement, the words “you”, “your” and “Cardholder” mean the person who has purchased the Card (“Primary Cardholder”) and any person who has received or is authorized to use the Card as set forth below. “We”, “us”, “our”, and “Commerce” mean Commerce Bank, its successors, affiliates and assigns. “Account” means any Commerce Bank mySpending Card®, both issued to the Primary Cardholder and any Secondary Cardholder(s). By signing the back of the Card, activating, loading, or using the Card, or permitting anyone else to use the Card, you agree to the terms of this Agreement. The Card is a prepaid debit card access device that can be used at retail establishments that have agreed to accept Visa® branded debit cards. The Card is a reloadable prepaid debit card and is NOT a credit card. There is no credit card, credit line, overdraft protection, or deposit account associated with your Card. There is a limited purpose host-based account at Commerce in which the funds that are stored on the Cards are maintained. You have no rights to these funds, except to access funds you have loaded on the Card by using the Card in accordance with this Agreement. Commerce does not pay any interest on the funds stored on the Card. The underlying funds on deposit with Commerce are FDIC insured.

**This Agreement contains an arbitration provision, a class action waiver, and a jury trial waiver. Please read the entire section titled “DISPUTE RESOLUTION - ARBITRATION” and the section titled “DISPUTE RESOLUTION – JURY TRIAL WAIVER.**

**A. Terms of Purchase and Fees**

**1. Knowing Our Customer**

The USA Patriot Act is a federal law that requires all financial institutions to obtain, verify, and record information that identifies a prospective Cardholder. Commerce is required to request your name, current address, social security number (or other government issued identifying numbers) and date of birth as part of our Customer Identification Program (CIP). You may also be asked to provide proof of your identity, such as a valid driver’s license, or other government issued photo identification that proves residency and nationality.

**2. Access to Funds**

You may access the funds in the Account only with your Card in accordance with this Agreement. You may not make any deposit, withdrawal or any other transaction with the Card or the Account, except for the Card transactions described in this Agreement. You may add funds to your Account at any time.

**3. Certain Card Restrictions**

The Card is the property of Commerce and we grant you use of the Card solely for the purposes outlined in this Agreement. To the extent permitted by law, we may terminate your right to use the Card and/or to access the funds loaded onto the Card at any time without notice or liability (whether or not you are in default of any part of this Agreement). You must surrender the Card, either upon direct request by us, or any other bank or merchant who is acting upon our instructions. Termination, whether by you or by Commerce, shall not affect prior transactions or obligations relating to your Card existing at the time of termination. Upon termination or surrender of the Card, any remaining balance, minus any applicable fees and transactions, will be refunded to you by check mailed to your address on file, unless we make other arrangements to do so. The Card is not for resale.

**4. Card Purchase and Residence Limitations**

You must be at least 18 years of age to purchase or use the Card, except that Secondary Cardholders (defined below) must be at least 13 years of age to use the Card. Commerce reserves the right to limit the states in which the Card may be sold and where Cardholder may reside. Currently, Cards may only be sold in, and Cardholders may only reside in, the following states: Kansas, Missouri, Illinois, Oklahoma, and Colorado. Cards may not be sold in or purchased by residents of any other state. Once purchased, Cards may be used throughout the United States and internationally.

**5. Cardholder Status and Liability**

The Card will be issued in your name only, and only you may fund (or have your employer by Direct Deposit (defined below) fund) and use the Card. You will provide us with your name as part of the “Cardholder Information” during the enrollment (or application process). The name you provide will be deemed the purchaser of the Card and the Primary Cardholder and owner of the Account. Your name will be embossed on the Card. Card transactions, including purchases and cash withdrawals, can only be completed by the Cardholder whose name appears on the Card. You hereby agree to be liable for all fees and for any Card transaction assessed against the Card to the extent that there are not sufficient funds on the Card to cover the Card transaction and/or fees. Except with respect to appointing up to two Secondary Cardholders as described below, you may not authorize any other person to use

your Card.

## 6. Secondary Cardholders

- (a) Upon Card purchase, or thereafter by visiting [commercebank.com/mySpendingCard](https://commercebank.com/mySpendingCard) and choosing “Secondary Cardholder” and following the prompts, you may elect to appoint up to two other persons as secondary cardholders (“Secondary Cardholder”) for your Account. A Card with a different Card number will be issued in the Secondary Cardholder’s name and will be sent to the Secondary Cardholder. A Card issued to a Secondary Cardholder is a “Card” as defined herein and such Card will have full access to the funds associated with the Account. If the Secondary Cardholder is of legal age, they will be considered a joint owner of the Card Account. If a Secondary Cardholder is a minor, they will be considered an authorized user.
- (b) The Primary Cardholder and the Secondary Cardholder(s) are each subject to the terms and conditions of this Agreement and the Account owner(s) are fully responsible for all of the transactions made using the Cards by any other owner or authorized user and for each such person’s compliance with this Agreement. As used herein, Secondary Cardholder includes both an authorized user of an Account or a joint owner of an Account appointed by the Primary Cardholder.

## 7. Additional Terms if Card is issued to Secondary Cardholder

- (a) Secondary Card Use. A Card may be used by a Secondary Cardholder in the same manner and to the same extent as the Primary Cardholder may use his or her Card, except that a Primary Funding Account (as described in Section B.5 (b)) cannot be designated for the Secondary Cardholder’s Card. The Secondary Cardholder’s name will be imprinted on the front of the Card.
- (b) Access to Cardholder Transactional Data. Each Primary Cardholder and Secondary Cardholder will have access to the transactional information associated with the Primary Cardholder’s and the Secondary Cardholder’s Cards by visiting our website at [commercebank.com/mySpendingCard](https://commercebank.com/mySpendingCard). You may also obtain transactional information or request a paper statement for the Secondary Cardholder’s Card by contacting our customer service department at 1-888-373-2883 or you may sign up for text alerts. Fees may apply.
- (c) Communications. All communications to be sent or given in accordance with this Agreement may be sent to the address our records show for the Primary Cardholder only. We are not required to provide notices to Secondary Cardholders. The Primary Cardholder is responsible for sharing all communications from us with the Secondary Cardholder. All communications sent or given to the Primary Cardholder are deemed to be given to both the Primary Cardholder and the Secondary Cardholder.
- (d) Bound by all Instructions. The Primary Cardholder and the Secondary Cardholder each agree to be bound by all instructions and requests made or purported to be made by any of them, jointly and severally.
- (e) Termination by Primary Cardholder or Secondary Cardholder. A Secondary Cardholder’s Card may be terminated at the request of the Primary Cardholder or the Secondary Cardholder at any time by returning the Secondary Cardholders Card to Commerce. Termination, whether by the Primary Cardholder, the Secondary Cardholder or by Commerce, shall not affect prior transactions or obligations relating to the Secondary Card existing at the time of termination. Upon completion of the processing of all outstanding transactions, disputes and fees, this Agreement will terminate with respect to the Secondary Card.
- (f) Responsibility for Secondary Cardholder Transactions. The Primary Cardholder shall be responsible for the Secondary Cardholder’s Card usage, including any fees and charges, by the Secondary Cardholder, or Card usage by any person authorized by the Secondary Cardholder. The Primary Cardholder and the Secondary Cardholder shall be jointly and severally liable for Card usage.
- (g) Liabilities not affected by Disputes of Cardholders. All obligations of the Primary Cardholder and the Secondary Cardholder under this Agreement to us shall not be affected by any dispute or counterclaim or right of set-off which the Primary or Secondary Cardholder may have against each other.

## 8. Legal Process

The funds loaded onto your Card are subject to any legal process, including, but not limited to, levies, garnishments, attachments or executions, served on Commerce in the name of any Cardholder.

## 9. Fees

The following fees apply to your purchase and use of the Card. Commerce reserves the right to add, subtract or modify these fees at anytime after notice if required by law.

### Detailed list of all fees for Commerce Bank mySpending Card®

All fees	Amount	Details
<b>Get started</b>		
Initial Value Load	\$5.95	This charge will be deducted from the first load made to the Card. The description will be displayed as 'Initial Value Load'.
Additional Card	\$2.00	Fee for additional Card on same Account (Up to two)
<b>Monthly usage</b>		
Monthly fee	\$0	Fee for monthly maintenance of the Account
<b>Add money</b>		
Direct deposit	\$0	
Cash reload	\$0	
Debit card reload	\$0	Fee associated with Commerce Bank debit card load through <a href="http://commercebank.com/mySpendingCard">commercebank.com/mySpendingCard</a> at time of load
Online Banking transfer	\$0	Fee associated with transferring funds from a Commerce Bank Checking or Savings account
<b>Get cash</b>		
ATM withdrawal (in-network)	\$0	"In-network" refers to the Commerce Bank ATM Network. Locations can be found at <a href="http://commercebank.com/locations">commercebank.com/locations</a>
ATM withdrawal (out-of-network)	\$2.50	This is our fee. "Out-of-network" refers to all the ATMs outside of the Commerce Bank ATM Network. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
In-person cash withdrawal	\$5.00	This is our fee for a teller-assisted cash withdrawal at U.S. and non-U.S. financial institutions. Other financial institution may also charge you a fee for in-person cash withdrawals made at their locations. Finally, you may be charged a fee by other third parties for cash withdrawals made at the point of sale (cash back).
<b>Information</b>		
Customer service (automated)	\$0.50	Per call. Fee may be charged each time you contact our automated customer service line, including for balance inquiries or loading funds. One call per week per Account at no charge; \$0.50 per call thereafter.
ATM balance inquiry (in-network)	\$0	"In-network" refers to Commerce Bank ATM Network. Locations can be found at <a href="http://commercebank.com">commercebank.com</a> .
ATM balance inquiry (out-of-network)	\$2.50	This is our fee. "Out-of-network" refers to all the ATMs outside of the Commerce Bank ATM Network. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
Text alert	\$0	You may elect to receive mobile text alert messages, including your Card balance, signing into your online account at <a href="http://commercebank.com/mySpendingCard">commercebank.com/mySpendingCard</a> and designating your preferences. Standard text rates and/or web access charges may apply. See your wireless phone carrier for details.
<b>Using your Card outside the U.S.</b>		
International transaction	2%	Of the U.S. dollar amount of each transaction.
Service Assessment Fee	2%	Fee for single currency international transaction done in U.S. Dollars
International ATM withdrawal	\$2.50	This is our fee. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
International ATM balance inquiry	\$2.50	This is our fee. You may also be charged a fee by the ATM operator.
International teller cash withdrawal	\$5.00	Fee for teller cash transaction from a non-U.S. financial institution.
<b>Other</b>		
Inactivity	\$0	Fee charged each month after you have not completed a purchase or withdrawal with your card for 12 months.
Card replacement	\$5.00	Per Card. In the event your Card is lost, stolen or damaged, you may request a replacement Card twice per year per Account at no cost. You will be charged \$5.00 per Card for subsequent replacement Cards within a calendar year.
Express delivery	\$25.00	You will be charged \$25.00 in the event that you request express delivery of a Card.
Unload and close	\$15.00	In the event that you request funds be unloaded and your Card closed, we will provide you with a check in the amount of the remaining balance, less any fees owed.

Your funds are eligible for FDIC insurance. Commerce Bank is an FDIC-insured institution and as such your funds are insured up to \$250,000 by the FDIC in the event Commerce Bank fails, if specific deposit insurance requirements are met. See [fdic.gov/deposit/deposits/prepaid.html](http://fdic.gov/deposit/deposits/prepaid.html) for details.

No overdraft/credit feature.

Contact Commerce Bank by calling 1-888-373-2883, by writing to Commerce Bank, P.O. Box 411036, Kansas City, MO 64141-1036 or by visiting [commercebank.com/mySpendingCard](http://commercebank.com/mySpendingCard).

For general information about prepaid accounts, visit [cfpb.gov/prepaid](http://cfpb.gov/prepaid). If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit [cfpb.gov/complaint](http://cfpb.gov/complaint).

## **B. Using and Funding Your Card**

### **1. Card Signature and Activation**

When you receive your Card in the mail, you will need to activate it and choose a Personal Identification Number (“PIN”) by calling 1-888-373-2883 and following the instructions or via the website at [commercebank.com/mySpendingCard](https://commercebank.com/mySpendingCard). You will need to provide identifying information that matches the information provided when the Card was purchased. You cannot use or reload your Card until you activate it and choose a PIN.

There is a panel on the back of the Card for your signature. **You should sign this panel on your Card as soon as you receive it to help protect your Card from unauthorized use.** However, your responsibility for transactions with the Card, as described in this Agreement, does not depend on whether or not you sign your Card.

You are responsible for all transactions made with your Card. We recommend you keep track of your Card balance and fees associated with Card usage. You may contact our customer service department at 1-888-373-2883 or visit our website at [commercebank.com/mySpendingCard](https://commercebank.com/mySpendingCard) to view your transactions and monthly statement or to request a paper statement, you may perform a balance inquiry at any Commerce ATM or ATM displaying the Visa® or Plus® logos, or you may sign up for text alerts. Fees may apply. If Card transactions are incurred that exceed the Card balance, or your Card balance becomes negative, you agree to promptly repay to Commerce the amount in full, including any fees and potential collection costs. We reserve the right to bill you for any negative balance. We also reserve the right to cancel the Card.

### **2. Using Your Card**

Provided funds are available on your Card, you may use your Card to perform the following types of transactions in accordance with this Agreement:

- At ATMs and tellers at financial institutions worldwide displaying the Visa® or Plus® logos, and subject to any applicable fees, you may use your Card to (i) make withdrawals of cash up to the lesser of the limits detailed in Section C-5 of this agreement or the amount of funds stored on your Card. Individual ATM limits may also apply. If you plan on traveling internationally, contact the Commerce Bank mySpending Card® Center at 1-888-373-2883 to inquire about using your Card abroad.
- At merchants accepting Visa® debit or Interlink® or STAR® transactions, you may use your Card to pay for purchases of goods and services and obtain cash up to the amount of funds stored on your Card (including any applicable fees). Any person honoring your Card may be required to obtain approval or authorization for any transaction. We may recognize the transaction even if it was not authorized, but that does not mean we will accept the same type of transaction again. You do not have the right to stop payment on any point-of-sale transaction originated by use of your Card. A PIN will not be needed in order to purchase goods or services using the “credit” transaction key at merchant locations that accept Visa® debit cards and allow transactions to be routed as “credit”, or when purchasing goods over the phone or on the Internet.

Some of these services may not be available at all terminals. We will not be liable or responsible for any merchant’s inability or refusal to honor your Card.

You agree that you will: (i) use the Card only as provided for in the Agreement; (ii) promptly notify us of any loss or theft of your Card; (iii) promptly notify us of the loss, theft, or unauthorized disclosure of any PIN, code, or numbers used to access Card funds; and (iv) not use your Card for any illegal purpose, including, but not limited to, online gambling merchants, whether or not online gambling is illegal in the state in which you use your Card. You agree not to use the Card for business purposes. We may refuse to process any transaction that may violate the terms of this Agreement or any applicable law, regulation or rule (including, but not limited to, any Visa rule). We may also limit the number of Cards issued to you in our sole discretion.

### **3. Refunds and Returns**

If you are entitled to a refund or perform a return transaction with a merchant for goods or services obtained with your Card, you agree to accept credits to your Card for such refunds.

### **4. mySpending Card® Site Services**

The Card services include certain services available only through the mySpending Card® website (“Site”). The terms of this Agreement, along with the Terms of Service posted at [commercebank.com/terms.asp](https://commercebank.com/terms.asp) apply to your use of the Site. In the event of a conflict, the terms of this Agreement will prevail.

### **5. Funding methods**

You may choose from the following methods to fund (add money to) your Card:

- (a) Transfer money from a Commerce-issued Debit card (Visa or MasterCard) using the Site. You may reload

your Card at our Site using a Commerce Debit card. Visit [commercebank.com/mySpendingCard](https://commercebank.com/mySpendingCard) and click on "Load my Card" in the navigation bar. Follow the directions provided. Please have your Card and your Commerce Debit card available when loading/reloading your Card on the Site.

- (b) **Designating a Primary Funding Account.** After you activate your Card, you may designate a primary funding account using the Site. You will be prompted to enter a Commerce Debit card number as a funding option. This card will be categorized as your "Primary Funding Account." The card information will be stored to ease your reload process on the Site. In addition, if you choose to reload your Card using the phone number on the back of your Commerce Debit card, this account will be the funding account used for reloads. Be sure to have the card available to provide security information. The Primary Funding Account information may be updated using the Site only. Primary funding is subject to program minimum and maximum load amounts.
- (c) **Direct Deposit Funding.** You may also reload your Card by signing up to have funds loaded directly to your Card ("Direct Deposit"). Direct Deposit information and instructions will be provided to you on the Card carrier (the paper your Card is attached to). You are responsible for providing the correct information to your employer or other originator of the Direct Deposit (the "Depositor"). The routing and Direct Deposit numbers may be used for Direct Deposit only. You cannot use the routing and/or Direct Deposit number to pay bills, move funds or take money off your Card. All transactions of this type will be declined. Your Card is not associated with a Checking or Savings account. Once the funds are received from your Depositor you may use the Card for the type of transactions described in this Agreement. Commerce has no obligation to you in the event your Direct Deposit funds are delayed or otherwise fail to fund your Card. Your Depositor may retain the right to deduct from the funds stored on the Card in order to correct a previous error or overpayment to you or for other reasons. You hereby authorize Commerce to accept instructions from your Depositor to add or deduct funds from your Card, and in the case of a deduction, to return those funds to your Depositor. If you have a dispute with the Depositor about the amount of your wages, salary or other compensation, or the amount that the Depositor loads onto or deducts from the Card, you agree to not involve Commerce in that dispute and to resolve that dispute solely with your Depositor. We may terminate your access to our Direct Deposit Service at any time.
- (d) **Other Funding Methods.**
- At any Commerce Bank branch location**
- Cash;
  - Cashing of an employer payroll check drawn on Commerce Bank or a federal, state or local government-issued check (Note: Checks will be cashed in accordance with Commerce Bank's normal check cashing policy); and
  - Transfer from an existing Commerce Bank checking or savings account.
- Commerce Bank Online Banking**
- Log into Commerce Bank Online Banking, at [commercebank.com](https://commercebank.com), and choose the 'Transfers' option to transfer funds from an existing Commerce Bank checking or savings account to your Card.

## **C. Rights and Obligations Regarding Card Use**

### **1. Your Personal Identification Number (PIN)/Signature on the Card**

- (a) **Creating a PIN.** You must create a PIN for your Card in order to use ATMs and make purchases at merchants accepting Visa® debit or Interlink® transactions. You may do this by visiting the Site at [commercebank.com/mySpendingCard](https://commercebank.com/mySpendingCard). You may also create a PIN by calling 1-888-373-2883 and following the prompts to select your PIN. **Your PIN will not be sent to you through the mail.** If you have forgotten your PIN, you may reset it via the Site or by calling 1-888-373-2883.
- (b) **Security of your PIN.** You should not disclose your PIN to anyone. If the security or confidentiality of your PIN is compromised, you must notify Commerce at once. The PIN is for your use and protection. You agree to: (a) not disclose the PIN or otherwise make it available to anyone else; (b) be liable for the PIN and for its authorized and unauthorized use. We are entitled to rely on the use of your PIN as your authorization for any transaction using the Card and PIN until we have had a reasonable period of time to disable your Card after notice that your Card or PIN has been compromised. We reserve the right to implement additional security procedures.

### **2. Lost/Stolen Cards**

Notify us AT ONCE if you believe your Card or PIN has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money on your Card. If you believe that someone has stolen your Card or PIN or transferred, or may transfer, money from your Card without your permission, call **1-888-373-2883**. If you tell us within two (2) Business Days after you learn of the loss or theft of your Card, you can lose no more than \$50.00 if someone used your Card without your permission. If you do not tell us within 2 Business Days after you learn of the loss or theft of your Card or PIN, and we can prove that we could have stopped someone from using your Card and making transfers from your Card without your permission if you had told us, you could

lose as much as \$500. (Note: Since your Card is a Visa Card, as long as Visa's Zero Liability Policy is in effect, you will not be liable for the amounts stated above unless we determine that you were grossly negligent or fraudulent in the handling of your Card.) Also, if your statement or account history shows transfers that you did not make, notify us at once. If you do not notify us within 120 days after the transaction posts to your account, you may not get any money you lost after 120 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 hospital stay) kept you from telling us, we may extend the time periods at our discretion.

### 3. **ATM User Precautions**

As with all financial transactions, please exercise discretion. For your own safety when using an ATM, keep in mind the following suggestions:

- Be aware of your surroundings when using an ATM, particularly during the hours of darkness;
- Be accompanied by another person when using an ATM during the hours of darkness;
- Refrain from displaying cash. Place cash in a pocket as soon as a transaction is completed and count cash in the safety of a locked enclosure such as a car or home;
- Use another ATM or return at a later time if anything suspicious is noticed when using or considering using an ATM; and
- Please report any suspicious activity or crimes to both the operator of the ATM and the local law enforcement officials immediately.

### 4. **Limitations on Amount of Loads/Reloads**

For security reasons, Commerce reserves the right to limit the amount that can be loaded to the Card using any method outside of Automated Clearing House transactions (ACH). ACH transactions can include, but are not limited to, direct deposit of payroll, government benefits and tax refunds.

- Minimum load amounts – There is a \$10 minimum for each load that is not an ACH load.
- Maximum load amounts – There is a maximum load amount of \$1,500 per day (up to \$3,000 per rolling 7-day period) that is not an ACH load.
- The maximum balance allowed on the Card at any one time is \$3,000, unless funds are loaded through ACH. ACH loads may cause the balance to exceed \$3,000.

**Commerce reserves the right to restrict the total amount loaded to your Card and to accept or reject any request to reload value to the Card at our sole discretion. We reserve the right to monitor and report any suspicious activity.**

### 5. **Limitation on Dollar Amount of Transactions**

The balance available for authorizing purchases or cash withdrawals is the lesser of 1) the balance on your Card, or 2) dollar limitations.

- Minimum withdrawal amount – Minimum withdrawals are subject to the method of withdrawal.
- Maximum withdrawal amount – There is a maximum cash withdrawal amount of \$1,000 per day (up to \$1,500 per rolling 7-day period). This includes teller and ATM withdrawals, and cash-back transactions from merchants at the point of sale. Further dollar limitations may be imposed by specific ATMs or merchants.
- Maximum spending amounts – There is a maximum daily spending limit of \$3,000 (up to \$10,000 per month).

For security reasons, Commerce reserves the right to implement additional limits on the amount, number or type of transactions you can make using the Card.

### 6. **Reservations and Merchant Authorizations**

- (a) Hotel Reservations. Hotels may put a hold on your Card in the amount of your estimated bill when you check in, which will make that amount unavailable for other purchases. The hold may last until a few days after you check out. Under certain circumstances, a hotel may require the use of a Card to guarantee reservations that may result in a hold on the available funds on the Card. If you cancel any guaranteed reservation made using the Card, you must obtain a cancellation number. If you fail to do so, the hold placed for the guaranteed reservation will not be canceled and the amount will be held against the balance on the Card. This may limit your future transactions. Further, if the merchant subsequently charges the amount of the guaranteed reservation to your Card, we will not be obligated to re-credit the Card if you fail to obtain a cancellation number.
- (b) Rental Car Reservations and Payments. Auto rental establishments may require you to reserve your car with a credit card. They may allow you to use your Card for the final payment. Please check with the car rental establishment for their specific procedures.
- (c) Cancellation of Authorizations. If you do not use your Card for the final payment, you must request that the merchant cancel authorizations issued for Card transactions. The failure to have the authorization canceled

may result in a hold on funds on the Card and limit your future transactions for a period of time.

- (d) Pay at the Pump Transactions. If you use your Card at an automated fuel dispenser (i.e., pay at the pump) it may result in a hold on your funds of \$75.00 or more. To avoid this hold, you may go into the gas station and pay for your purchase in advance with the cashier and specify the exact dollar amount of gas you would like to purchase.
- (e) Restaurant and Other Merchant Authorizations. Restaurants, hair salons and some other types of merchants may obtain an authorization on the Card for an amount greater than the total service bill to cover any gratuity that may be added. Be sure that the balance on the Card is sufficient to cover the cost of the bill plus any anticipated gratuity. If the Card is declined, ask the merchant to obtain an authorization for an amount equal to or less than the balance on your Card and pay the difference with another form of payment if allowed by the merchant.

#### **7. Split-tender Transactions**

If you do not have sufficient funds on your Card to complete your transaction, you may request the merchant to charge a part of the purchase to the Card and pay the remaining amount with cash or another card. These are called "split-tender transactions". Some merchants do not allow you to conduct split-tender transactions. Some merchants will only allow you to do a split-tender transaction if you pay the remaining amount in cash.

#### **8. Foreign & U.S. Currency/Conversion Rates and Fees**

Purchases, cash withdrawals and cash advances made in currencies other than U.S. dollars will be converted to U.S. dollars under regulations established by Visa International. Conversion will be at a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives or the government-mandated rate in effect for the applicable central processing date. Conversion to U.S. dollars may occur on a date other than the date of the transaction. Therefore, the conversion rate may be different from the rate in effect at the time of the transaction. You agree to pay the converted amount, plus a 2% International Service Fee. For purchases, cash withdrawals and cash advances made in U.S. dollars at merchant locations or processed through the merchant's bank located outside of the United States and its territories, you agree to pay the transaction amount, plus a 2% Service Assessment Fee. Whether or not there is a currency conversion, transactions made through a third-party payment processor may be subject to the International Service Fee or the Service Assessment Fee, or both, if funds are transferred to merchants or merchants' banks located outside of the United States and its territories.

#### **9. Right to Receive Documentation of Card Transactions - Terminal Receipts**

At the time you make a Card ATM transaction or merchant POS transaction, you will get, or may choose to get, a receipt for the transaction.

#### **10. Preauthorized Credits**

If you have arranged to have a direct deposit made to your account at least once every 60 days from the same source and you do not receive a receipt (such as a pay stub), you can find out whether or not the deposit has been made by logging into [commercebank.com/mySpendingCard](http://commercebank.com/mySpendingCard) or calling the 24-hour Account Information Line at 888-373-2883. This does not apply to transactions occurring outside the United States.

#### **11. Account History.**

You may obtain information about the amount of money you have remaining in your prepaid account by calling 888-373-2883. This information, along with a 12-month history of account transactions, is also available online at [www.commercebank.com/mySpendingCard](http://www.commercebank.com/mySpendingCard). If your account is registered with us, you also have the right to obtain at least 24 months of written history of account transactions by calling 888-373-2883, or by writing us at Commerce Bank, Attn: Prepaid Products KCBC-12, P.O. Box 411036, Kansas City, MO 64140-1036. You will not be charged a fee for this information unless you request it more than once per month."

#### **12. Right To Stop Payment Of Preauthorized Transfers And Procedures For Doing So; Right To Receive Notice Of Varying Amounts; And Our Liability For Failure To Stop Payment**

If you have authorized a merchant to initiate debits to your Card at substantially regular intervals, you can stop any of these payments. Here's how: Call us at 1-888-373-2883, or write us at Commerce Bank, Attn: Prepaid Products KCBC-12, P.O. Box 411036, Kansas City, MO 64141-1036 in time for us to receive your request three (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 fourteen (14) days after you call.

If these regular payments vary in amount, the person you are going to pay will tell you, ten (10) days before each payment, when it will be made and how much it will be. You may choose to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

If you notify us and request us to stop one of these payments three (3) Business Days or more before the transfer is scheduled, and we do not do so, we will be liable for the amount of the payment as your sole and exclusive remedy for the failure to stop the payment.

**13. Disclosure of Commerce's Liability for Failure to Make Transfers**

If we do not complete a transfer to or from your Card on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, we will not be held liable for and you will be responsible for all fees in connection with the following:

- If, through no fault of ours, you do not have enough money stored on your Card to make the transaction.
- If the ATM where you are making the transfer does not have enough cash.
- If the terminal or system was not working properly and you knew about the breakdown prior to completing the transaction.
- If circumstances beyond our control (such as flood or fire) prevent the transfer, despite reasonable precautions that we have taken.

**14. Disclosure of Card Information to Third Parties**

We will disclose information to third parties about your Card or the transactions you make:

- When it is necessary for completing transactions, or
- In order to verify the existence and condition of your Card for a third party, such as a consumer reporting agency or merchant, or
- In order to comply with government agency or court orders, or
- If you give us permission, or
- In accordance with our current Privacy Policy <http://commercebank.com/about/security-center/privacy.asp>

When you signed up for your Card, you were asked to provide information about yourself. The personal information you gave was collected by Commerce and will be used as described in our Privacy Policy.

You understand and agree that Commerce may share your Card experience and transaction information with its Affiliates, which are members of the Commerce Corporate family as defined in our Privacy Policy Notice. Unless you call 1-888-373-2883, you agree that Commerce and its Affiliates may also share other information about you or your Card.

You understand and agree that Commerce will receive and use information you provide so that Commerce may offer you other Commerce products and services. Commerce's Privacy Policy will govern how Commerce uses the information you provide to Commerce. You agree that we may monitor and record your telephone and electronic communications with us at any time, without further notice to you or any party to the communication.

You will notify us immediately at Commerce Bank, Attn: Prepaid Cards KCBC-12, P.O. Box 411036, Kansas City, MO 64141-1036 if you believe any information we reported to a consumer reporting agency is inaccurate.

**D. Other Important Information About Your Card**

**1. Expiration of Cards**

Your Card will expire and no longer be valid for use as of the last day of the month of the "good thru" date that is embossed on the front of your Card. If you are in compliance with the terms of this Cardholder Agreement and you have used your Card within the 12 months prior to the expiration of the "good thru" date on the front of the Card, we will send you a replacement Card. If you do not receive a replacement Card and wish to receive one, please contact customer service at: 1-888-373-2883.

**2. Balance Refund Requests**

At any time, you may close your Card, which will terminate this Agreement. If you have Direct Deposits or other ACH transactions being loaded to your Card, we ask that you wait at least two (2) pay periods after you have cancelled your Direct Deposits with your Depositors or until the loads cease, whichever is later, before you close and destroy your Card. You may request Commerce to "unload" the funds from your Card and send them to you in the form of a check. Please see the above fee schedule for the unload fee amount. Please contact us at 1-888-373-2883 to unload and close your Card. We will send you a check in the amount of your Card balance after deducting the fee and any other fees chargeable to your Card. The check will be sent to the address on record. Please be sure your address is correct BEFORE making the request.



**3. Zero Balance and Inactive Cards; Abandoned Property**

If your Card goes fifteen (15) consecutive months with a zero balance, Commerce will consider your Card closed and will deactivate the Card. If your Card maintains a negative balance for at least 90 days, Commerce will close the Card and begin procedures to collect the funds due us. After 365 days of inactivity, Commerce will consider a Card with a remaining balance as dormant and will close the Card. We may charge a monthly maintenance fee on inactive and closed Card accounts until the balance reaches \$0 or we must escheat the funds to the state or governmental authority. You acknowledge and agree that Commerce may be required to turn over to a state government authority any funds remaining on your Card if they are considered abandoned under applicable state law.

**4. In Case of Errors or Questions About Your Prepaid Account**

Telephone us at 888-373-2883 or Write us at Commerce Bank, Attn: Prepaid Products KCBC-12, P.O. Box 411036, Kansas City, MO 64140-1036 as soon as you can, if you think an error has occurred in your prepaid account. We must allow you to report an error until 120 days following the date the transaction posts to the account. You may request a written history of your transactions at any time by calling us at 888-373-2889 or writing us at Commerce Bank, Attn: Prepaid Products KCBC-12, P.O. Box 411036, Kansas City, MO 64140-1036. You will need to tell us:

- Your name and Card number.
- Why you believe there is an error, and the dollar amount involved
- Approximately when the error took place.

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) calendar days to investigate your complaint or question. If we decide to do this, we will credit your Card within ten (10) Business Days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) Business Days, we may not credit your Card.

For errors involving new Card relationships, point-of-sale, or foreign-initiated transactions we may take up to ninety (90) calendar days to investigate your complaint or question. For new Card relationships, we may take up to twenty (20) Business Days to credit your Card 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 need more information about our error-resolution procedures, call us at 1-888-373-2883 or visit [commercebank.com/mySpendingCard](http://commercebank.com/mySpendingCard).

**5. Commerce's Business Days**

Our "Business Days" are Monday through Friday, excluding Federal holidays.

**6. Commerce Right to Set-Off**

You agree that Commerce is authorized at any time to set-off the funds that are associated with your Card account against your debts or liabilities owed to Commerce. Commerce may exercise this right of set-off without notice to you.

**7. Change of Terms**

We may change the terms of this Agreement at any time without notice to you unless required by law. To the extent allowed by law, the new terms will affect all existing balances on your Card in addition to your future use of your Card.

**8. Assignment**

You may not transfer or assign this Agreement to any other person without Commerce's prior written consent. We may assign our obligation to you under this Agreement without your consent or notice to you.

**9. Severability/No Waiver**

If any provision of this Agreement shall be deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions. Commerce's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of Commerce's right to subsequently enforce such provision or any other provisions of this

Agreement.

**10. Governing Law**

This Agreement shall be governed by applicable federal and state law and regulations and the rules of the Federal Reserve. To the extent not preempted by applicable federal law, this Agreement shall be governed by the laws of the State of Missouri without reference to its conflict of laws provisions. If any provision of this Agreement is invalid under law, that provision will be invalidated; the remainder of this Agreement will continue to be valid.

**11. Indemnification; No Liability for Third Party Goods or Services**

Commerce is not liable for any goods or services purchased with the Card, including, but not limited to any liability for the quality, availability, delivery or any other issue with respect thereto. Cardholder hereby agrees to indemnify, defend and hold harmless Commerce and its officers, directors, employees, agents and shareholders from and against any third party claims arising out of or related to Cardholder's use of a Card or the Site.

**12. Cancellation; Termination**

To the extent permitted by law, Commerce may cancel your Card, refuse to allow further transactions against your Card or revoke your Card(s) at any time (whether or not you are in default of any part of this Agreement). We may cancel your Card without notice or liability. This Agreement will terminate upon any such cancellation or termination. The Card is and shall remain the property of Commerce and you agree upon demand to return your Card to Commerce. You must surrender the Card(s), either upon a direct request by us, or any other bank or merchant who is acting upon our instructions. You may terminate this Agreement at any time by returning your Card to Commerce. Termination, whether by you or by Commerce, shall not affect prior transactions or obligations relating to your Card existing at the time of termination. Upon completion of the processing of all outstanding transactions, disputes and fees, this Agreement will terminate, and Commerce will arrange to transfer any remaining funds stored on the Card to you.

**13. Survival**

The rights and obligations in this Agreement that by their nature are continuing will survive the expiration or termination of this Agreement for any reason, including, but not limited to Sections: A.3, A.5, A.6(b), A.7(e)-(g), A.9, B.1 (last paragraph), C.8, C.10, C.11, C.12, D.3, D.4, D.6, and D.8 through D.17(inclusive).

**14. Disclaimer of Warranties**

THE CARD, THE SITE, AND RELATED SERVICES ARE PROVIDED TO CARDHOLDER BY COMMERCE AND ITS LICENSORS, VENDORS AND SERVICE PROVIDERS "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COMMERCE HEREBY DISCLAIMS, AND CARDHOLDER HEREBY WAIVES AND RELEASES COMMERCE AND ITS LICENSORS, VENDORS AND SERVICE PROVIDERS, AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM, ALL REPRESENTATIONS AND WARRANTIES OF ANY NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE CARD, THE SITE AND THE SERVICES, INCLUDING, WITHOUT LIMITATION: (a) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, PURPOSE OR APPLICATION, OR OTHER IMPLIED CONTRACTUAL WARRANTY; (b) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (c) ANY WARRANTIES OF TIMELINESS, TITLE OR NON-INFRINGEMENT; AND (d) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR OF THE CARD OR SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER COMMERCE NOR ITS LICENSORS, VENDORS OR SERVICE PROVIDERS WARRANT THAT OPERATION OF THE CARD, THE SITE OR THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. IN NO EVENT SHALL COMMERCE OR ITS LICENSORS, VENDORS OR SERVICE PROVIDERS BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY AN EQUIPMENT MALFUNCTION OR DUE TO TELECOMMUNICATIONS OR INTERNET OUTAGES OR MALFUNCTIONS OR AN OUTAGE OR MALFUNCTION IN ANY OF THE OTHER SYSTEMS OR SERVICES USED TO PROVIDE THE SERVICES. ABSENT COMMERCE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, COMMERCE'S SOLE OBLIGATION AND CARDHOLDER'S SOLE REMEDY IN THE EVENT A SERVICE IS NOT PROVIDED IN THE MANNER SET FORTH IN THIS AGREEMENT, WILL BE FOR COMMERCE TO REPERFORM THE SERVICE IN THE MANNER SET FORTH IN THIS AGREEMENT AT NO COST TO CARDHOLDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING SENTENCE, COMMERCE'S LIABILITY FOR ERRORS OR OMISSIONS CAUSED BY COMMERCE WITH RESPECT TO THE TRANSACTIONS PROCESSED OR DATA TRANSMITTED OR PRINTED BY COMMERCE WILL BE LIMITED TO REPROCESSING, RETRANSMITTING OR PRINTING CORRECTED DATA OR REPRINTING AT NO CHARGE TO CARDHOLDER. THE REMEDIES SET FORTH IN THIS AGREEMENT ARE CARDHOLDER'S SOLE AND EXCLUSIVE REMEDIES FOR COMMERCE'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

**15. Limitation of Liability**

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, COMMERCE'S AGGREGATE LIABILITY TO CARDHOLDER FOR CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT, WHETHER FOR BREACH, NEGLIGENCE, INFRINGEMENT, IN TORT OR OTHERWISE, SHALL BE LIMITED TO THE LESSER OF \$100 OR THE TOTAL FEES PAID BY CARDHOLDER TO COMMERCE FOR THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THIS LIMITATION OF LIABILITY IS AN AGGREGATE LIMIT AND IS INTENDED TO APPLY TO ALL CLAIMS, WITHOUT REGARD TO WHICH PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED.

(b) IN NO EVENT WILL COMMERCE BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR ANY LOST PROFITS, LOSS OF OPPORTUNITY OR GOOD WILL, OR LOST OR CORRUPTED DATA, EVEN IF COMMERCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. THIS LIMITATION ON DAMAGES SHALL APPLY TO ALL CLAIMS OF CARDHOLDER, WHETHER SOUNDING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHER CLAIM EXCEPT FOR ANY CLAIMS ARISING OUT OF COMMERCE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(c) COMMERCE AND CARDHOLDER ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE A BARGAINED FOR ALLOCATION OF RISK AND LIABILITY, AND AGREE TO RESPECT SUCH ALLOCATION OF RISK AND LIABILITY. CARDHOLDER ACKNOWLEDGES AND AGREES THAT COMMERCE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION.

**16. Notices**

We may send notices to you at the last postal or e-mail address reflected for you in our Card records. Notices sent to you for any one of your Cards shall be deemed given with respect to all of your Cards. If your e-mail or postal address changes, you agree to update your information online at [commercebank.com/mySpendingCard](https://commercebank.com/mySpendingCard) or by calling us at 1-888-373-2883 immediately. Failure to do so may result in a replacement Card or Card information being mailed to the wrong person or your transactions being declined at the point-of-sale.

**17. Questions**

You may provide us notice of or direct any questions to us regarding this Agreement or our current fee schedule, by writing to us at Commerce Bank, P.O. Box 411036, Kansas City, MO 64141-1036; calling us at 1-888-373-2883 or visiting: [commercebank.com/mySpendingCard](https://commercebank.com/mySpendingCard) and clicking on "contact us".

**18. DISPUTE RESOLUTION – ARBITRATION**

**PLEASE READ THIS SECTION CAREFULLY. IT PROVIDES THAT, WITH LIMITED EXCEPTIONS, YOU AND WE MAY ELECT TO RESOLVE ANY DISPUTES BETWEEN YOU AND US BY BINDING ARBITRATION. IF ARBITRATION IS ELECTED, YOU AND WE WAIVE THE RIGHT TO A JURY TRIAL OR TRIAL BEFORE A JUDGE IN A PUBLIC COURT, AND YOU AND WE WAIVE ANY RIGHT TO BRING OR PARTICIPATE IN ANY CLASS ACTION OR SIMILAR PROCEEDING.**

**YOU HAVE THE RIGHT TO OPT OUT OF THIS AGREEMENT TO ARBITRATE AS SET FORTH BELOW.**

**Agreement to Arbitrate**

You and we agree that either of us may elect to resolve any Claims (as defined below) through binding arbitration unless you opt out of the agreement to arbitrate as set forth below, or unless prohibited by law. If you or we elect to resolve a Claim through arbitration, neither you nor we will have the right to pursue such claim in court or have a jury decide the claim, nor will you or we have the right to bring or participate in any class or other representative action in court or in arbitration.

**What Claims are Subject to Arbitration?** As used in this section, the term "Claim" has the broadest possible meaning and includes, but is not limited to, any unresolved disagreement, controversy, dispute, or cause of action between you and us, whether preexisting, present or future, arising out of, related to or concerning this Agreement, your Account, the services provided pursuant to this Agreement, optional features including but not limited to the use of any computer or mobile application used to access the Account, any relationship between you and us, or any advertisement or solicitation, whether such Claim is asserted or brought in a direct, derivative, assignee, survivor, successor, beneficiary or personal capacity. Without limiting the foregoing, the term "Claim" also includes any unresolved disagreement, controversy, dispute, or cause of action between you and us arising out of, related to or concerning any fees or charges relating to any Account(s), and any services relating to any Account(s), optional features including but not limited to on-line or telephone banking services, communication methods and practices we may use to service your Account, and ATM services. It also includes any disputes you have with our agents, contractors, employees, officers or assignees, any merchants with whom you use the Account, any credit reporting agencies to whom we report the Account or any other third party that has been involved or becomes involved with, or whose trademarks are used in connection with, any purchasing, marketing, soliciting, servicing or credit reporting

activity relating to your Account. The Claims covered by this agreement to arbitrate include, without limitation:

- Any disputes regarding: the information you provided in connection with the issuance of your Account; any solicitation or advertising materials you received in connection with your Account; any activities relating to the maintenance or servicing of your Account; and any funds held by the Bank in connection with your Account;
- Any disputes arising from the collection of amounts you owe in connection with your Account or the manner of collection;
- Any disputes concerning the dollar amount of payments made or transactions posted to your Account;
- Any disputes concerning the processing of items or funds transfers sent to the Bank for the purpose of posting to your Account;
- Any disputes regarding information obtained by us from, or reported by us to, credit bureaus or others;
- Any disputes related to insurance or other services or products purchased from us in connection with your Account;
- Any disputes regarding communications involving telephones, automatic dialing systems, artificial or prerecorded voice messages, SMS text messages or facsimile machines; and
- Any disputes concerning the relationships resulting from this Agreement, your Account or any of the foregoing.

The term "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. For purposes of this section, "we," "us," and "our" includes Commerce Bank, any corporate parent, subsidiaries, affiliates, employees, officers, directors, agents, controlling persons and representatives, as well as any person or entity who provides any services in connection with this Agreement or who is named as a co-defendant with us in a Claim asserted by you.

What Disputes are Not Subject to Arbitration? Notwithstanding any other language herein, the term "Claim" shall not include any dispute or controversy regarding the validity, enforceability, coverage or scope of this agreement to arbitrate or any part thereof, including, without limitation, the "Waiver of Jury Trial and Class or Representative Action" provision set forth below, subsections A and B of the "Survival and Severance" provision set forth below and this sentence; all such disputes are for a court and not the arbitrator to decide. In addition, claims filed by you or us individually in small claims court, so long as any such claim remains in that court and advances only an individual claim for relief, are not subject to arbitration. However, if a claim is transferred, removed or appealed to a different court, you or we will then have the right to demand arbitration of such claim. Other claims, disputes, controversies or issues not subject to arbitration are set forth in the section titled "Rights Preserved."

How Does Arbitration Work? The arbitration shall be administered by the American Arbitration Association ("AAA"), pursuant to its Consumer Arbitration Rules (collectively, "Rules") in effect at the time a demand for arbitration is filed. The Rules are available online at [www.adr.org](http://www.adr.org), or you may contact the AAA at 120 Broadway, Floor 21, New York, N.Y 10271. If the AAA is unable to serve and you and we cannot agree on a replacement, a court with jurisdiction will select the arbitrator. If there is a conflict between the Rules and this agreement to arbitrate, or between this agreement to arbitrate and the Agreement, this agreement to arbitrate shall control. Pursuant to the Rules, the AAA will select a single arbitrator who shall have expertise in the substantive laws applicable to the Claim's subject matter. If the value of relief sought is \$10,000 or less, you or we may elect to have the arbitration conducted by telephone or based solely on the submission of written documents, unless the Rules or arbitrator requires an in-person proceeding. If the value of the relief sought is more than \$10,000, or an in-person proceeding is required, the arbitration proceeding shall be conducted in the same city as the U.S. District Court closest to your home address, unless the parties mutually agree upon a different location in writing. Either party may, at its sole cost and discretion, choose to be represented by an attorney at any arbitration proceeding.

The arbitrator may award any damages or other relief provided for under applicable law as if an individual action were brought in court, including, without limitation, punitive damages (which shall be governed by the Constitutional standards employed by the courts) and injunctive, equitable and declaratory relief (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim). If we made a written offer to you to settle your Claim prior to an arbitrator being selected, and the arbitrator awards you an amount greater than our last offer, if any, we will (i) pay you the arbitrator's award or \$5,000, whichever is greater, and (ii) pay your reasonable attorney, witness and expert fees and costs, if any. Judgment on the arbitrator's award is final and binding and may be entered in any court of competent jurisdiction.

The arbitrator, you and we will not disclose the existence, content or outcome of any arbitration proceeding; provided, however, that disclosures required by applicable law or regulation shall not be subject to such restriction. The

forgoing sentence does not prohibit any party from, in good faith, investigating a claim or defense, including interviewing witnesses or otherwise engaging in discovery as permitted by the Rules. No arbitration award involving the parties will have any preclusive effect as to issues or claims in any dispute involving anyone who is not a party to the arbitration, nor will an arbitration award in prior disputes involving other parties have preclusive effect in an arbitration between the parties to this agreement to arbitrate.

How is Arbitration Initiated? If you or we elect to arbitrate a Claim, the party electing arbitration must notify the other party in writing. This notice can be given after the beginning of a lawsuit and can be given in papers filed in the lawsuit (for example, a motion by the defendant to compel arbitration of claims asserted by the plaintiff in a lawsuit filed in court). Otherwise, your notice must be sent to Commerce Bank, Attn: ADR Notice, P.O. Box 413037, Kansas City, MO 64141-3037, and our notice will be sent to the most recent address for you in our files. If a party files a lawsuit in court asserting Claim(s) that are subject to arbitration and the other party files a motion to compel arbitration with the court which is granted, it will be the responsibility of the party asserting the Claim(s) to start the arbitration proceeding in accordance with the Rules.

Who Pays for Arbitration? Except as otherwise provided herein, we will pay the filing, administration and arbitrator fees charged by the AAA for any arbitration initiated in accordance with this agreement to arbitrate. If you pay any initial filing fee, we will reimburse you. If you cannot afford to pay any initial filing fees, we will pay them for you. We will pay any fees or expenses that we are required to pay by law or the Rules or that we are required to pay for this agreement to arbitrate to be enforced.

The arbitrator will have the authority to award fees and costs of attorneys, witnesses and experts to the extent permitted by the Rules, this agreement to arbitrate, the Agreement, or applicable law. We will not seek to recover from you any fees or expenses we pay on your behalf, or any attorney, witness or expert fees or other costs or expenses we incur in defending an individual arbitration commenced by you. Notwithstanding the foregoing, if the arbitrator finds that a Claim is frivolous or brought in bad faith or for an improper purpose, then the payment of all fees, costs and expenses shall be determined by the Rules.

What Law is Applicable? You and we agree that our relationship includes transactions involving interstate commerce and that this agreement to arbitrate and any arbitration rule, proceeding and award pursuant to the terms hereof, are governed by and enforceable pursuant to the provisions of the Federal Arbitration Act ("FAA") (9 U.S.C. § 1, *et seq.*). Notwithstanding anything to the contrary in the Agreement, to the extent that state law is applicable, including with respect to the interpretation and enforcement of this agreement to arbitrate, Missouri law shall apply to the extent consistent with the FAA. The arbitrator shall decide the claim in accordance with applicable substantive law and the terms of this Agreement, and shall apply all statutes of limitation and honor attorney-client and other privileges.

How do I Opt Out of the Agreement to Arbitrate? If you do not accept this agreement to arbitrate, you may reject it ("opt out"). If you opt out, neither you, nor we, will be subject to the requirement to resolve any claim by arbitration or any other provision of this section.

To opt out, you must send us written notice of your decision to reject this agreement to arbitrate to the address set forth below. We must receive your written notice no later than thirty (30) days after we sent you this Agreement via US Mail, through electronic disclosure, provided it to you in person, or by other reasonable delivery method. Your written opt out notice must: (a) include a signed statement that you reject the agreement to arbitrate set forth in this Agreement; (b) include your name, address and the Account number you wish to opt out; and (c) be sent to us at the following address: Commerce Bank, Attn: ADR PP&R Card Opt Out, P.O. Box 414220, Kansas City, MO 64141-4220.

This is the only way you can reject this agreement to arbitrate. If you opt out, it will not affect any other terms of this Agreement, and it will not adversely affect your Account or any relationship between you and us. Your rejection of this agreement to arbitrate shall not be imputed to any other person or entity or be deemed to be a rejection of this agreement to arbitrate by any person or entity other than you. Nor shall your rejection of this agreement to arbitrate eliminate the obligation of other persons or entities who wish to reject this agreement to arbitrate to personally comply with the notice and time requirements of this opt-out provision.

Waiver of Jury Trial and Class or Representative Action. **UNLESS YOU REJECT THIS AGREEMENT TO ARBITRATE IN ACCORDANCE WITH THE TERMS OF THIS SECTION, YOU AND WE AGREE THAT IF A CLAIM IS ARBITRATED, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO (i) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE OR CLASS MEMBER, (ii) ACT AS A PRIVATE ATTORNEY GENERAL OR IN ANY OTHER REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR OTHER PERSONS SIMILARLY SITUATED IN COURT OR IN ARBITRATION OR (iii) HAVE A COURT OR A JURY RESOLVE THE CLAIM. MOREOVER, UNLESS MUTUALLY AGREED UPON IN WRITING BY ALL PARTIES, CLAIMS MAY NOT BE JOINED, CONSOLIDATED, OR OTHERWISE COMBINED WHETHER OR NOT ANY SUCH COMBINATION OCCURRED AS A RESULT OF AN ASSIGNMENT.**

Rights Preserved. In addition to subjects excluded from arbitration in accordance with the provision titled "Which Disputes are Not Subject to Arbitration?" this agreement to arbitrate does not prohibit you or us, at any time, from (a)

exercising any lawful rights to preserve or obtain possession of property or self-help remedies, including but not limited to, the right to set-off, the right to restrain funds in a deposit account, recoupment, repossession, replevin or trustee's sales; (b) obtaining provisional or ancillary remedies or injunctive relief (other than a stay of arbitration), including but not limited to attachment, garnishment, interpleader or the appointment of a receiver by a court of appropriate jurisdiction; or (c) bringing an individual action in court that is limited to preventing the other party from using a self-help or non-judicial remedy and that does not involve a request for damages or monetary relief of any kind.

Conflict, Survival and Severance. In the event of any conflict or inconsistency between this agreement to arbitrate and other provisions of this Agreement or the Rules, this agreement to arbitrate will govern. This agreement to arbitrate shall survive any termination of or changes to any of your Account subject to this Agreement; the transfer or assignment of any of the foregoing; and the bankruptcy of any party to the extent permitted by law. If any term or provision of this agreement to arbitrate is held to be unenforceable, prohibited or invalid, the remaining provisions shall be enforced without regard to such illegal or unenforceable term or provision, except that:

(A) if any provision of this agreement to arbitrate regarding class action, class arbitration, private attorney general action, other representative action, joinder, or consolidation is determined by an authority of competent jurisdiction to be unenforceable or illegal, such provision shall not be severable and this agreement to arbitrate between you and us (except for this sentence) shall be null and void, provided that such determination of unenforceability or illegality shall be subject to appeal. The parties acknowledge and agree that under no circumstances will a class action, private attorney general action or other representative action be arbitrated; and

(B) if a Claim is brought seeking public injunctive relief and a court determines that the restrictions in the "Waiver of Jury Trial and Class or Representative Action" provision or elsewhere in this agreement to arbitrate prohibiting the arbitrator from awarding relief on behalf of third parties are unenforceable with respect to such Claim (and that determination becomes final after all appeals have been exhausted), the Claim for public injunctive relief will be determined in court and any individual Claims seeking monetary relief will be arbitrated. In such a case the parties will request that the court stay the Claim for public injunctive relief until the arbitration award pertaining to individual relief has been entered in court. In no event will a Claim for public injunctive relief be arbitrated.

- 19. DISPUTE RESOLUTION - JURY TRIAL WAIVER.** You and we agree that in the event that any Claim or dispute between us is not arbitrated but instead is resolved in court, you and we knowingly and voluntarily waive the right to a jury trial to the full extent permitted by applicable law.