

# Gift Card Cardholder Agreement

## **BMO Harris Bank Debit Mastercard®**

Important information. Please read and save.

**BMO**  **Harris Bank**

We're here to help.™

This BMO Harris Bank Mastercard Gift Card Cardholder Agreement (this "Agreement") contains information about your BMO Harris Bank Mastercard Gift Card (your "Card"), which is issued by BMO Harris Bank N.A. This Agreement sets forth the terms and conditions that apply to your Card. In this Agreement, the words "you," "your," and "yours" refer to the owner (purchaser or recipient, as applicable) of the Card and any persons authorized by the owner to use the Card ("Authorized Users"). The words "BMO Harris Bank," "we," "us," and "our" mean BMO Harris Bank N.A. and its successors, affiliates, and assigns. This Agreement, along with our privacy policy described in the BMO Harris Bank N.A. privacy notice which can be found at [www.bmoharris.com/giftcardaccess](http://www.bmoharris.com/giftcardaccess), as amended from time to time (our "Privacy Policy") and any other documentation we provided or made accessible to you, governs the relationship between you and us regarding your Card, our services related to your Card, the funds credited to and debited from your Card, and your and our rights regarding your Card. By activating, using or authorizing another person to use your Card, you agree to the terms of this Agreement and other applicable terms and conditions. **Please read this Agreement carefully and keep it, and other information you receive about your Card, in a safe place with your other important records. Please record your Card number: \_\_\_\_\_.**

The Card should only be used by you. You are not permitted to resell your Card, and it is not transferable except to an Authorized User. INTEREST WILL NOT BE PAID TO YOU OR ANY AUTHORIZED USER FOR ANY FUNDS LOADED ON YOUR CARD. You may use your activated Card at any merchant in a participating network. See "Where Your Card is Accepted; Merchant Disputes" below for more information.

**Prior to using your Card, you must call 1-800-650-0843 to activate your Card and select a PIN for your Card.**

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR ISSUING A NEW CARD.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who purchases a Card.

**What this means for you:** When you purchase your Card, we will ask for your name, address, Social Security number, date of birth, and other identifying documents that will allow us to identify you. If your Card is purchased by a business we will also ask for the business name, tax identification number, business address and other documents that will allow us to identify your business and confirm your authority.

#### **DEFINITIONS.**

"ATM" means automated teller machine.

"Business Day" means Monday through Friday, excluding any holiday on which we and/or the Federal Reserve Bank are closed for processing.

"FDIC" means Federal Deposit Insurance Corporation.

"Funds" means the funds credited to or debited from your Card.

"PIN" means personal identification number.

"Transaction" means a point-of-sale ("POS") transaction, other merchant purchase, or other transaction made with your Card, your Card number or by debiting or crediting your Card.

**AUTHORIZATION.** To the extent allowed by applicable law, you agree to be bound by this Agreement and any future revisions to any terms and conditions herein. In the event we delay enforcing any of our rights under this Agreement, you agree that we do not waive or lose such rights.

**YOUR CARD.** Your Card is not connected in any way to any checking, savings, demand deposit, overdraft or credit card account. The Card is NOT a credit card. The Funds stored on your Card are held in a pooled account. **THE FUNDS ON YOUR CARD ARE NOT FDIC INSURED.**

**ACTIVATION.** You can use your Card only after it is activated. To activate your Card you must call 1-800-650-0843 and provide the requested information. You are required to select a PIN in connection with the activation of your Card. We may not activate your Card until we have completed any of our activation or authentication procedures. Your PIN is for personal use, and you should not disclose your PIN, record it on your Card, or otherwise make it available to anyone else. If someone identifies himself or herself as one of our employees and asks for your PIN, that person is an imposter. If you believe someone else may be using your Card without your permission, or if your Card is lost or stolen, you should notify us at once by calling 1-800-650-0843. If your Card has been lost or stolen, and you can provide us with your Card number so that we can close your Card, we may issue a check for the remaining balance to you (minus a check issuance fee) if there is a remaining balance on your Card. If you authorize or permit someone else to use your Card and/or PIN, you will be liable for any Transactions made by that person and any fees incurred. We will not be liable to you for any such Transactions, unless you give us notice that you have revoked your permission for any person you previously authorized to use your Card and/or PIN before such Transactions are initiated. We may have to close your Card and reissue you a new Card with a different Card number if you notify us that you have revoked your permission for another person to use your Card.

By activating your Card or by retaining, using or authorizing the use of your Card, you represent and warrant to us that (a) you and any Authorized User are at least 18 years of age (or 19 if you or the Authorized User, as applicable, reside in a state where the age of majority is 19); (b) you and any Authorized User are a U.S. citizen or legal alien residing in the United States; (c) you have received a copy of this Agreement and have given a copy to any Authorized User, and you and any Authorized User agree to be bound by and to comply with its terms; and (d) you and any Authorized User accept your Card.

**AVAILABILITY OF FUNDS.** Funds loaded to your Card will be promptly available to you once your Card is activated. You acknowledge and agree that the amount available is limited to the available amount loaded to your Card, less any pending Transactions, applicable fees or charges, merchant holds or adjustments, or holds imposed by us or pursuant to law (“Available Balance”). You may not deposit funds to or reload your Card. Except for credits from merchants (for returns or adjustments) there are no other ways to add funds to your Card.

Each time you use your Card, we will debit the amount of the Transaction and any applicable fees or charges from your Available Balance. Any individual purchase or series of purchases may not exceed your Available Balance. If, however, a Transaction does occur that exceeds your Available Balance, you agree we may seek recovery and require repayment or otherwise recover such funds from you. If a purchase will exceed the

Available Balance on your Card, ask the merchant if you may use the Funds on your Card toward a portion of the purchase price and use another form of payment for the remaining amount of the purchase price.

There are times when adjustments will be made to your Available Balance to reflect an adjustment by a merchant, resolve a disputed Transaction or correct erroneous Transactions. These adjustments could cause your Card to have a negative balance. If you do not have a sufficient Available Balance to cover a Transaction or fee, you agree we may seek recovery and require repayment or otherwise recover such funds from you.

A Transaction presented for authorization may be denied if (i) it exceeds your Available Balance, (ii) we are uncertain whether you have authorized the Transaction, (iii) we believe the Transaction may involve fraudulent, Internet gambling or other illegal activity, (iv) there is a dispute over the Funds, (v) we believe it violates the terms of this Agreement or other applicable terms and conditions, or (vi) there are other legally permissible reasons. We may also suspend or close your Card in our sole discretion as described below under “Amendment or Cancellation.”

You should check your Available Balance and Transaction history on a regular basis. This information is available to you free of charge through [www.bmoharris.com/giftcardaccess](http://www.bmoharris.com/giftcardaccess) and our customer service number: 1-800-650-0843. Please note, Available Balance information may not include Transactions, holds or fees that are still in process and have not yet settled. The Available Balance may also include payments subject to a hold or adjustment by a merchant. We will provide a written history of your Transactions promptly upon your request that covers sixty (60) days preceding the date of your request.

**WHERE YOUR CARD IS ACCEPTED; MERCHANT DISPUTES.** You may use your Card to purchase goods and services through a signature or PIN POS transaction at any merchant in the United States that accepts your Card through a participating network. A current list of participating networks is available by calling 1-800-650-0843. To conduct a PIN POS transaction, say or select “Debit” and enter your PIN as instructed. To conduct a POS transaction without using your PIN, say or select “Credit” and follow the instructions. If you say or select “Credit”, the merchant may require a signature to conduct your transaction. We are not responsible if a merchant does not honor your Card or does not return your Card to you. If you have a problem with a purchase you make with a Card, or if you have a dispute with a merchant or service provider, you must deal directly with the merchant or service provider involved. You may be asked to provide an acceptable form of identification in order to make a purchase using your Card. You may not use your Card for ATM transactions, cash advances or to get cash back through a merchant transaction.

**AUTHORIZATIONS AND HOLDS.** Any merchant may choose or be required to obtain approval or authorization for any Transaction. An authorization may be declined by us for a number of reasons, including, for example, having an insufficient Available Balance. After any purchase at a participating merchant, your Available Balance will decrease by the amount of such purchase (and any applicable fees or charges) or by the amount of any debit hold requested by a merchant. Merchants may request debit holds for many reasons, including, without limitation, to satisfy a security deposit requirement or to ensure Funds are available to complete a Transaction. For some Card purchases, such

as a gas purchase, a car rental or hotel accommodations, the merchant may request authorization in advance for an estimated amount. If the authorization is approved, a temporary hold may be placed on your Funds for the estimated amount of the purchase to help make sure there are enough Funds available when the purchase is completed. Until the Transaction finally settles, the Transaction is released by the merchant, or we determine that the Transaction is not likely to be processed, the Funds held will not be available for other Transactions. For example, a hotel may initiate a debit hold at the time you make a reservation in an amount equal to the first night's stay. We do not control the timing of a merchant's release of a debit hold. Upon a merchant's release of Funds previously subject to a debit hold, we will have a reasonable amount of time to make them available to you. When using your Card at a merchant where a tip may be included (such as at a restaurant), your Transaction may be authorized for an additional amount, which may be 10% to 20% or more above your total bill. Many types of merchants may include such a tip, including, for example, restaurants, bars, taxis, beauty and barber shops, and health and beauty spas. You may not pay at the pump using your Card. Instead, locate the attendant (usually inside) and pay him or her prior to pumping.

You may use your Card only in the manner and for the purposes authorized by this Agreement. We may process a Transaction even if we have not authorized it, but that does not mean we will process or authorize the same type of Transaction again. We may restrict access to or suspend your Card if we notice excessive use of your Card or other suspicious activities. You are responsible for all authorized transactions initiated by use of your Card. We will not make cash refunds on purchases except as required by applicable law. Any merchant credit vouchers for returns or adjustments will be credited to your Card when received by us.

**UNCLAIMED PROPERTY.** Applicable law may require us to report the available balance on your Card as unclaimed property to the state of your last address in our records in accordance with that state's applicable statutory period of time. If we do not have a valid record of address for you, then we may escheat the funds in accordance with the unclaimed property laws of the state of Illinois. Your last address in our records will be the address of the Card purchaser unless you have provided another address to us in connection with ordering the Card or otherwise in accordance with the notice provisions of this Agreement.

**TRANSFER LIMITATIONS.** You may use your Card to make purchases in the United States totaling up to the Available Balance on your Card through any merchant that utilizes a participating network. If you have authorized a merchant to process a purchase involving your Card and you wish to revoke that authorization, please contact the merchant directly before the merchant processes the Transaction. We do not have control over whether the merchant will agree to the revocation. You agree not to make or authorize a merchant or other third party to make regular, automatically recurring payments using your Card.

**FEES.** The table below lists the fees that we may deduct from the Funds loaded on your Card.

Inactivity Fee:	\$3.00
Check Issuance Fee	\$10.00

**Inactivity Fee.** We will charge an Inactivity Fee each calendar month your Card remains inactive after twelve (12) consecutive months of inactivity. In the event you then use your Card to make a Transaction, we will stop charging an Inactivity Fee unless and until another twelve (12) consecutive months of inactivity occurs.

**Check Issuance Fee.** To the extent allowed by applicable law, we will charge a Check Issuance Fee to your Card for issuing a check to you for the remaining balance on your Card if, at your request, your Card is closed prior to its expiration date; provided, however, that no such Check Issuance Fee shall apply if we are able to transfer the remaining balance on your Card directly into a deposit account that you hold with us. Any funds transferred directly into your BMO Harris Bank deposit account will be subject to a three (3) Business Day delay. We will not charge a Check Issuance Fee for issuing a check to you for the remaining balance on your Card if (i) we close your Card for any reason (other than at your request) or (ii) you request the remaining balance on your Card after the Card's expiration date.

**AMENDMENT OR CANCELLATION.** To the extent permitted by applicable law, we may amend or change any part of this Agreement or add or remove requirements at any time. If we do so, you agree that we may give you notice if required by applicable law of such amendment by posting it at [www.bmoharris.com/giftcardaccess](http://www.bmoharris.com/giftcardaccess), or as otherwise required by applicable law. However, if the change is made for security purposes, we can implement it without prior notice. We will not change the fees or expiration date of your Card after your Card is purchased. The Card is our property. We may, at any time, with or without cause and without advance notice, terminate this Agreement and/or close or temporarily suspend your right to use your Card. For example, we may suspend or close your Card immediately if you breach any of the provisions of this Agreement, we believe there has been or may be unauthorized use of your Funds or Card, there are conflicting claims to your Funds or we believe your Card is being used for any unlawful purpose. You may not use your Card if it has been closed or suspended. If we close your Card, upon request we will return any remaining balance to you directly by check to the address furnished by you or by transfer to your BMO Harris Bank deposit account, unless prohibited by applicable law.

**EXPIRATION.** Your Card will expire on the last day of the month shown on the front of your Card. Upon expiration of your Card, the underlying Funds do not expire. Following the expiration of your Card, we will pay any Funds remaining on your Card to you when you present the expired Card to us or otherwise provide us with your Card number. If we do not receive a check request from you, we will provide any legally required notice, and if you do not respond to such notice, will deliver the funds to the applicable state as unclaimed property in accordance with applicable law, as described above under "Unclaimed Property."

**NOTICES.** To the extent legally permitted, all notices from us shall be deemed given when we post them at [www.bmoharris.com/giftcardaccess](http://www.bmoharris.com/giftcardaccess). Any notice you send to us will not be effective until we receive it at BMO Harris Bank N.A., P.O. Box 94019, Palatine, IL 60094-4019 and have had a reasonable opportunity to act on it.

**APPLICABLE LAW.** Applicable federal laws, rules and regulations shall govern this Agreement. To the extent federal law is not applicable, the laws of the state of Illinois shall govern this Agreement. In the event of any conflict between the provisions of this **Agreement and any**

**applicable law or regulation, this Agreement shall be deemed modified to the extent necessary to comply with such law or regulation.**

**LIMITATION ON RIGHT TO SUE.** Except as otherwise required by applicable law, any proceeding by you to enforce an obligation, duty or right arising out of this Agreement or applicable law with respect to your Card must be commenced within twelve (12) months after the cause of action accrues.

**WAIVER OF JURY TRIAL. TO THE EXTENT ALLOWED BY APPLICABLE LAW, YOU UNDERSTAND AND AGREE THAT YOU AND WE ARE WAIVING THE RIGHT TO A JURY TRIAL OR TRIAL BEFORE A JUDGE IN A PUBLIC COURT.**

**WAIVER.** We may waive any of the provisions or conditions of this Agreement, but any such waiver shall be effective only on that occasion and shall not be construed as a continuing waiver on any other occasion.

**SEVERABILITY.** The invalidity of any provision of this Agreement shall not affect the validity of any other provision.

**DOCUMENTATION.** Except for balance inquiries and certain small dollar amount transactions as permitted by applicable law, you should get, or have the option to get, a receipt each time you use your Card to conduct a transaction. We are not liable if a merchant fails to provide you with a receipt for your Transaction.

**CARD BALANCE AND TRANSACTION HISTORY.** You may obtain information about the Available Balance you have on your Card by calling 1-800-650-0843. Your Available Balance, along with a sixty (60) day history of Transactions on your Card, is also available on-line at [www.bmoharris.com/giftcardaccess](http://www.bmoharris.com/giftcardaccess). You may also request a sixty (60) day Transaction history be provided to you by calling 1-800-650-0843, or by writing us at BMO Harris Bank N.A., P.O. Box 94019, Palatine, IL 60094-4019.

**CONTACT IN EVENT OF UNAUTHORIZED TRANSFER.** If you believe your Card has been lost or stolen or that someone has transferred or may transfer money from your Card without your permission, call us IMMEDIATELY at 1-800-650-0843 or write to us at BMO Harris Bank N.A., P.O. Box 94019, Palatine, IL 60094-4019. Our Customer Service representatives are available 24 hours a day, 7 days a week.

**ERROR RESOLUTION PROCEDURES.** In case of errors or questions about your Card telephone us at 1-800-650-0843 or write us at BMO Harris Bank N.A., P.O. Box 94019, Palatine, IL 60094-4019, as soon as you can, if you think an error has occurred in connection with your Card. We will allow you to report an error until sixty (60) days after the date of the Transaction in question. Telephoning is the best way to minimize your losses for any error or unauthorized transaction. You may request a written Transaction history statement at any time by calling us at 1-800-650-0843 or writing us at BMO Harris Bank N.A., P.O. Box 94019, Palatine, IL 60094-4019.

In order to help resolve any errors or questionable Card transactions, you will need to tell us:

- Your name, address and Card number;
- A description of the error or the Transaction you are unsure about, including the date of such error or Transaction;
- An explanation as to why you believe there is an error or why you need more information; and
- The dollar amount of the suspected error.

If you tell us orally, we may require that you also 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 take this additional time and you have provided us with written confirmation, we may credit your Card within ten (10) Business Days of first receiving your error notice 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. In some cases, applicable state law may limit your liability for errors or unauthorized transactions on your Card.

For errors involving new Cards or POS transactions, we may take up to ninety (90) days to investigate your complaint or question. For new Cards, 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 of our investigation within three (3) Business Days after completing our investigation. If we determine that there was no error, we will send you a written explanation, and debit your Card for any amount that was previously credited. You may ask us for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at 1-800-650-0843.

**OUR LIABILITY.** If we do not complete a Transaction on time or in the correct amount in accordance with the terms of this Agreement, we may be liable for your losses or damages. However, there are some exceptions. We will not be liable to you under certain circumstances, including, for example if:

1. through no fault of ours, you do not have enough available funds on your card to make the transaction;
2. the terminal or system was not working properly and you knew about the breakdown when you started the Transaction;
3. circumstances beyond our control (such as fire or flood prevent the Transaction, despite reasonable precautions that we have taken);
4. we believe you may not have authorized the Transaction;
5. your Card is damaged;
6. a merchant cannot or refuses to process the Transaction;
7. the Funds on your Card were held as a result of legal process, a Transaction hold or security freeze; or
8. other exceptions allowed by applicable law or stated in this Agreement apply.

IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.

**LEGAL PROCESS; DISPUTES.** We may comply with any subpoena, levy or other legal process which we believe is valid. If we are not fully reimbursed for our record search, photocopying and handling costs by the party that served the process, we may charge those costs to your Card to the extent allowed by applicable law. We may honor legal process that is

served in any manner at any of our offices, including locations other than where the Funds or records sought are held, even if the law requires personal delivery at another location.

We may restrict the use of your Card or your access to the Funds in the event your Card becomes involved in legal proceedings or we believe or receive notice that there is a dispute or uncertainty regarding the ownership or control of the Funds on your Card, until the dispute is settled or the uncertainty is resolved to our satisfaction. In addition, if we believe or receive notice that you have used or are using your Card in a fraudulent or unlawful manner, we may reverse any Transactions, no matter when they were originally made, in order to avoid or reduce any loss which we would otherwise incur because of the fraudulent or unlawful use.

**CONFIDENTIALITY.** We may disclose information to third parties about your Card, or the transfers or Transactions that you make from it:

1. Where it is necessary to complete Transactions or provide service related to your Card;
2. In order to verify the existence and condition of your Card to a third party, such as a credit bureau, merchant or bank;
3. For security purposes, fraud deterrence, and when necessary to prevent identity theft or to protect you or our interests;
4. In order to comply with government agency or court subpoenas and/or orders;
5. If you give us your consent;
6. In accordance with our Privacy Policy;
7. For analytical purposes; or
8. As otherwise allowed by applicable law.

**TRANSFER; ASSIGNMENT.** We may transfer, sell or assign our obligations with respect to your Card and under this Agreement. You may not transfer your Card (except to an Authorized User) or sell or assign your rights with respect to your Card or under this Agreement. We are not responsible for any goods or services you purchase with your Card.

**ARBITRATION. Please read this provision carefully. It affects your rights and will have a substantial impact on how legal claims you and we have against each other are resolved.**

#### *Summary*

Most concerns regarding your Card can be resolved quickly and to your satisfaction by calling us. In the unlikely event that we are unable to resolve any Claims (as defined below) you may have to your satisfaction (or if we have not been able to resolve a Claim we have with you after attempting to do so) after following the procedures set forth in this provision, you and we each agree to resolve those Claims through binding arbitration or small claims court instead of in courts of general jurisdiction.

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief on an individual basis that a court can award to an individual. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations, class actions, private**

**attorney general actions, and non-individualized injunctive relief are not permitted. By agreeing to arbitrate, both parties are waiving the right to a trial by jury or before a judge.** For any non-frivolous Claim with a value of \$75,000 or less, we will pay the filing, administration and arbitrator fees charged by the American Arbitration Association (the "AAA") in connection with the arbitration. Moreover, in arbitration you are entitled to recover attorney's fees from us to at least the same extent as you would be in court.

In addition, under certain circumstances (as explained below), we will pay you more than the amount of the arbitrator's award and will pay your reasonable attorney's fees even when you would not be entitled to recover such fees under applicable law in a court proceeding.

**YOU HAVE A RIGHT TO OPT OUT OF THIS ARBITRATION PROVISION AS DISCUSSED BELOW.**

#### *Special Definition of Certain Terms*

For purposes of this arbitration provision only, references to "you," "your," "we," "our," and "us" in this arbitration provision include each party's respective parent companies, subsidiaries, affiliates, agents, employees, officers, directors, predecessors in interest, successors and assigns, as well as all Authorized Users or unauthorized users or beneficiaries of your Card under this Agreement, as applicable.

#### *Claims Subject to Arbitration*

We and you agree to arbitrate all disputes or claims between you and us arising out of or relating to your Card or this Agreement ("**Claims**"). This arbitration provision is intended to be broadly interpreted. Claims include, but are not limited to:

- claims arising out of or relating to your Card, this Agreement or any transactions arising under this Agreement, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before the effective date of this Agreement (including, but not limited to, claims relating to advertising, promotions, or disclosures);
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act, 9 U.S.C. § 1 et seq., governs the interpretation and enforcement of this provision. The arbitrator will decide the substance of all Claims in accordance with all applicable law, including recognized principles of equity and statutes of limitations, and will honor all claims of privilege recognized by law. Under this arbitration provision, arbitrators shall not be bound by rulings in prior arbitrations involving different customers but are bound by rulings in prior arbitrations involving the same customer to the extent required by applicable law. This arbitration provision shall survive the closing of your Card and/or the termination of this Agreement.

Unless both you and we agree otherwise, each party must bring all related or similar Claims in a single arbitration proceeding. If you or we later initiate a subsequent arbitration asserting Claims that are related or similar to ones that were raised by such party in a prior arbitration, the AAA or the arbitrator will either: (i) consolidate the subsequent



arbitration with the earlier proceeding if it is ongoing or (ii) dismiss the subsequent arbitration if it raises Claims that would be barred by applicable law if brought in court.

#### *Notice of Dispute and Arbitration Procedures*

A party who intends to pursue a Claim must first send to the other a letter describing the Claim (a “Notice of Dispute”). Any Notice of Dispute sent to us should be addressed to:

BMO Harris Bank N.A.  
PO Box 88840  
Carol Stream, IL 60188-8840

Any Notice of Dispute sent to you by us will be sent to the address in our records that is associated with you at the time the Notice of Dispute is sent. The Notice of Dispute must (a) describe the nature and basis of the Claim; (b) set forth the specific relief sought; (c) set forth the name and address of the claimant; and (d) include your Card number to which the Claim relates. If we and you do not reach an agreement to resolve the Claim described in the Notice of Dispute within 45 days after the Notice of Dispute is received, you or we may commence an arbitration proceeding. If you or we attempt to commence arbitration proceedings before providing the requisite Notice of Dispute, the AAA shall not commence administration of arbitration proceedings for at least 45 days after the AAA receives the request to initiate arbitration. Neither you nor we shall disclose to the arbitrator the existence, amount, or terms of any settlement offers made by either party until after the arbitrator issues a final award resolving the Claim.

A form for initiating arbitration proceedings is available on the AAA's website at [www.adr.org](http://www.adr.org).

After we receive notice that you have commenced arbitration, we will promptly reimburse you for your payment of the filing fee unless the value of the relief sought in your Claim(s) is greater than \$75,000. The maximum filing fee to be paid by you is currently \$200 for all Claims regardless of amount. However, these fees are subject to change at the discretion of the AAA. In addition, if you or we initiate an arbitration proceeding in which the value of the relief sought (either to you or to us) is greater than \$75,000, the payment of all AAA filing, administration and arbitrator fees will be governed by the AAA Rules (as defined below). If you are unable to pay your share of the filing fee, we will pay it directly to the AAA upon receiving a written request from you at the notice address provided above. The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, the “AAA Rules”) of the AAA, as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by writing to the notice address provided above.

The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the arbitrability of Claims or the scope, and enforceability of this arbitration provision, including the interpretation of the prohibition of class and representative actions and non-individualized relief, are for the court to decide. If the value of the relief sought (either to you or to us) is \$25,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If the value

of the relief sought (either to you or to us) exceeds \$25,000, the right to a hearing will be determined by the AAA Rules. Any in-person arbitration hearing will take place within the federal judicial district where the address associated with you as identified in our records at the time the arbitration is commenced is located or, if that location is inconvenient to you, at some other location that the parties agree is convenient. Regardless of the manner in which the arbitration is conducted, the arbitrator, upon the request of either party made prior to the closing of the hearing (or, if there is no oral hearing, prior to or along with submission of final documents to the AAA), will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award, if any, is based. Unless otherwise agreed by you and us, any award will be rendered by the arbitrator not later than 14 days from the date of the closing of the hearing or, if there is no oral hearing, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator in accordance with the AAA Rules. 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 the notice requirements above. If, however, the arbitrator finds that either the substance of your Claim or the relief sought in your Claim is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse us for all monies previously disbursed by us that are otherwise your obligation to pay under the AAA Rules.

#### *Alternative Payment and Attorney's Fees*

If, after finding in your favor on the merits of your Claim(s), the arbitrator issues you an award that is greater than the value of our last written settlement offer made before an arbitrator was selected, then we will:

- pay you the amount of the award or \$5,000, whichever is greater (the “alternative payment”); and
- pay your attorney, if any, the amount of attorney's fees, and reimburse any expenses (including expert witness fees and costs reasonably necessary to prove your Claim), that your attorney reasonably incurs for investigating, preparing, and pursuing your Claim in arbitration (the “attorney payment”).

If we did not make a written offer to settle the Claim(s) before an arbitrator was selected, you and your attorney will be entitled to receive the alternative payment and the attorney payment, respectively, if the arbitrator finds in your favor on the merits of your Claim(s). The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, the alternative payment, and the attorney payment upon request from either party made within 14 days of the arbitrator's ruling on the merits. In assessing whether the arbitrator's award is greater than the value of our last written settlement offer, the arbitrator will not include in his or her calculations the value of any attorney's fees or expenses incurred by you after the date of our last written settlement offer. If you amend your Claim after an arbitrator is selected to include new or different Claims, the arbitrator will stay further arbitration proceedings for 30 days, during which time we may make a written settlement offer that is deemed to be effective before the date of the arbitrator's selection for purposes of assessing the availability of the alternative payment and/or attorney payment.

The right to the attorney payment supplements any right to attorney's fees and expenses you may have under applicable law. Thus, if you

would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorney's fees or expenses. Although under some laws we may have a right to an award of attorney's fees and expenses if we prevail in an arbitration, we agree that we will not seek such an award unless you have retained an attorney and your Claim is determined to be frivolous or brought for an improper purpose (as determined by the arbitrator and measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

#### *Prohibition of Class and Representative Actions and Non-Individualized Relief*

The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party's individual Claim; any injunctive relief must be individualized in nature and cannot affect individuals other than the claimant. **YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, OR AS A PRIVATE ATTORNEY GENERAL OR ON BEHALF OF THE GENERAL PUBLIC.** Further, unless both you and we agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If a court decides that any part of this arbitration provision (other than the prohibition of class or representative actions and/or consolidation) is invalid or unenforceable, the other parts of this arbitration provision will still apply. However, if a court decides that this paragraph's prohibition of class or representative actions and/or consolidation is invalid or unenforceable, then the entirety of this arbitration provision will be null and void.

#### *Availability of Small Claims Court and Access to Government Agencies*

Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration provision does not preclude you from bringing issues to the attention of federal, state, or local agencies. Such agencies can, if the law allows, seek relief against us on your behalf.

#### *Opt Out Procedures*

You can choose not to agree to this arbitration provision ("opt out") by writing to us prior to the date that your Card is first used. The written opt out notice must state that you do not agree to this arbitration provision and must be postmarked prior to the date on which your Card is first used for any Transaction. The opt out notice must include your name, address and your Card number to which the opt out applies. You must sign the written opt out notice for it to be effective. Mail the opt out notice to:

BMO Harris Bank N.A.  
PO Box 88840  
Carol Stream, IL 60188-8840

This is the only way you can opt out of this arbitration provision. If you opt out of this arbitration provision, all other parts of this Agreement will continue to apply to your Card. Opting out of this arbitration provision has no effect on any previous, other, or future arbitration agreements that you may have with us.

#### *Future Changes to the Arbitration Provision*

Notwithstanding any provision in this Agreement to the contrary, we agree that if we make any future change to this arbitration provision (other than a change to any notice address, website link or telephone number provided herein), that change will not apply to any Claim of which we had written notice on the effective date of the change. Moreover, if we seek to terminate the arbitration provision as included in this Agreement, any such termination will not be effective until at least 30 days after notice of such termination is posted at [www.bmoharris.com/giftcardaccess](http://www.bmoharris.com/giftcardaccess), and will not be effective as to Claims which arose prior to the date of termination.

#### *Other Remedies*

This arbitration provision and the exercise of any of the rights you and we have under this arbitration provision will not prohibit you or us from exercising any lawful rights either you or we have to use other remedies available to preserve, foreclose or obtain possession of real or personal property or exercise self-help remedies.



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