

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN DIVISION**

_____ )	
NATALIE CAMPAGNA, GLORIA )	
DEVAULT, AMANDA FARMER, PHILIP )	
PAGLIARO, and YAAKOV ROZINER, on )	
behalf of themselves and all others similarly )	
situated, )	
)	
Plaintiffs, )	Case No. 1:20-cv-18533-KMW-SAK
)	
v. )	
)	
TD BANK, N.A., )	
)	<b><u>JURY TRIAL DEMANDED</u></b>
Defendant. )	
_____ )	

**SECOND AMENDED CLASS ACTION COMPLAINT**

Plaintiffs Natalie Campagna, Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner, pursuant to Federal Rule of Civil Procedure 15(a)(2) and this Court’s scheduling orders (ECF Nos. 42, 50), on behalf of themselves and the classes of persons preliminarily defined below, bring this Second Amended Class Action Complaint against Defendant TD Bank, N.A. (“TD” or “TD Bank”) as follows:

**INTRODUCTION**

1. This is a civil action seeking monetary damages from TD Bank arising from its improper business practices in connection with consumer credit card accounts.
2. For consumers who need to build or rebuild their credit score, TD Bank offers a secured credit card.
3. A secured credit card is a credit card that requires a security deposit which is held as collateral in a savings account. The deposit in the savings account “secures” the credit line for

the card. The issuer of the credit card essentially has no risk because funds are available in the savings account up to the amount of the credit limit on the card.

4. A consumer who applies for, and is issued, a TD secured credit card is also required to open a TD Simple Savings Account to hold their security deposit.

5. Once approved for the secured credit card, the consumer has 15 days to deposit funds in their TD Simple Savings account.

6. The funds in the TD Simple Savings account are frozen and cannot be accessed by the consumer while the secured credit card account is open.

7. In its contract and the promotional webpage and solicitations that are incorporated in the contract, TD Bank informs consumers that, if they use and maintain their secured credit card and keep it in good standing for seven consecutive billing cycles, they can “graduate” to an unsecured TD Bank Credit Card.

8. Graduating to an unsecured TD Bank Credit Card allows consumers to regain control of the funds in the TD Simple Savings account that had previously been held as security. In accordance with TD Bank’s terms, shifting to an unsecured card also entitles consumers to a prorated refund of the annual fee that they were charged for having a secured credit card.

9. Other benefits of moving from a secured to an unsecured account include a boost to the consumer’s credit score after the change is reported to the credit reporting agencies by TD.

10. The reality is, however, that, despite the fact that TD Bank’s form contract and promotional materials, promise a meaningful review of secured card accounts after seven months in good standing that does not in fact occur. The limited discovery to date proves conclusively that the “seven-month promise” is always breached by TD.

11. The limited documents and information disclosed thus far by TD also reveal a series of newly-discovered breaches of good faith and fair dealing by TD. While the contract

and TD's marketing materials only reference keeping a secured credit card in good standing for seven consecutive billing cycles as a criterion utilized to determine whether or not consumers can graduate to an unsecured TD Bank Credit Card, TD Bank actually utilizes nine secret criteria that it refuses to disclose to consumers when determining whether or not a consumer is eligible to graduate. When combined with the ignored seven-month promise, these criteria create a totally false premise for customers considering secured credit card accounts. TD Bank signs up such customers based on falsehoods and misrepresentations, as opposed to allowing customers to pick superior products offered by TD's competitors.

12. By doing so, TD violates the terms set forth in TD's contractual documents. TD Bank's conduct also results in TD continuing to exercise control over the collateral funds in the TD Simple Savings account and its refusal to refund the annual fee paid by consumers for the secured credit card. TD Bank's scheme robs consumers of several of the benefits of the bargain. This practice also gives TD Bank an unfair advantage over competitors, which do not promise to upgrade accounts in seven months, and therefore lose business to TD.

### **PROCEDURAL HISTORY**

13. On or about April 3, 2020, Plaintiff Natalie Campagna, on behalf of herself and others similarly situated, filed a complaint against TD Bank in the State Court of Muscogee County, Georgia, a location which was mentioned numerous times as the contact point for customers in the secured card contract.

14. On May 8, 2020, TD Bank removed this action to the United States District Court for the Middle District of Georgia. *See* ECF No. 1 in Case No. 4:20-cv-00094-CDL (M.D. Ga.).

15. Thereafter, TD Bank moved to dismiss the complaint for lack of personal jurisdiction and failure to state a claim upon which relief can be granted. *See* ECF No. 10 in Case No. 4:20-cv-00094-CDL (M.D. Ga.).

16. On December 4, 2020, the Georgia court granted TD's motion to dismiss for lack of personal jurisdiction. *See* ECF No. 13 in Case No. 4:20-cv-00094-CDL (M.D. Ga.).

17. On December 8, 2020, Plaintiffs Natalie Campagna and Gloria DeVault, on behalf of themselves and others similarly situated, commenced this action. *See* ECF No. 1.

18. Pursuant to the stipulation of the parties, which was adopted by the Court (ECF No. 41), TD Bank filed a motion to dismiss on January 19, 2021 (ECF No. 9).

19. On January 22, 2021, Plaintiffs filed an Amended Complaint that, *inter alia*, added Amanda Farmer, Philip Pagliaro, and Yaakov Roziner as named Plaintiffs and added causes of action. *Id.*

20. In response, TD Bank filed a supplement to its motion to dismiss (ECF No. 20).

21. After briefing on TD Bank's motion was complete, Judge Bumb issued a written Opinion (ECF No. 31), and entered an Order (ECF No. 32), denying Defendant's motion.

22. Even though this Court denied TD Bank's motion to dismiss in its entirety, TD Bank, with the approval of the Magistrate Judge, has limited the scope of Plaintiffs' breach of contract and breach of the implied covenant of good faith and fair dealing claims to the sole issue of whether TD conducts a review of the secured credit card accounts at seven months and beyond to determine if they satisfied the graduation criteria. *See* Sept. 21, 2021 Initial Scheduling Conference Transcript, p. 9:22-23.

23. TD Bank has refused to provide even the limited discovery allowed by the Magistrate and the parties are engaging in the meet-and-confer process pursuant to the Local Rules and the Rules of Magistrate Judge King. *See* ECF No. 42. TD's refusal to provide discovery has resulted in an incomplete amended complaint. Despite the lack of proper disclosure by TD, Plaintiffs have filed this Second Amended Complaint in an abundance of caution based on the Court's current amendment deadline of January 5, 2022. *See* ECF No. 50.

Based on TD's refusal to provide relevant documentation, a further amendment may be appropriate after proper disclosures are received and reviewed by Plaintiffs.

24. Even the very limited discovery that TD Bank has provided to date, however, has revealed facts that prove the scope of TD's improprieties have been far broader than previously realized. For example, Defendant utilizes nine secret criteria to determine whether or not to graduate customers to an unsecured credit card. These criteria are never disclosed to consumers. In accordance with the admitted criteria, TD's seven-month promise is breached as to every customer, every time. TD's solicitations are inaccurate and misrepresentative of its actual practices.

25. Therefore, Plaintiffs have sought leave, in accordance with the Court's Scheduling Order (ECF No. 42), as amended (ECF No. 50), to amend their operative pleading to update their allegations.

### **PARTIES**

26. Plaintiff Natalie Campagna is a citizen of the State of New York. Ms. Campagna has contracted with TD Bank for a "TD Cash VISA Secured Card."

27. Plaintiff Gloria DeVault is a citizen of the State of New Jersey. Ms. DeVault has contracted with TD Bank for a "TD Cash VISA Secured Card."

28. Plaintiff Amanda Farmer is a citizen of the State of South Carolina. Ms. Farmer has contracted with TD Bank for a "TD Cash VISA Secured Card."

29. Plaintiff Philip Pagliaro is a citizen of the State of Connecticut. Mr. Pagliaro has contracted with TD Bank for a "TD Cash VISA Secured Card."

30. Plaintiff Yaakov Roziner is a citizen of the State of New York. Mr. Roziner has also contracted with TD Bank for a "TD Cash VISA Secured Card."

31. Defendant TD Bank is headquartered in Cherry Hill, New Jersey. TD has approximately 1,300 branches and 1,900 ATM machines in the United States. By assets, TD Bank is now ranked in the top 10 among U.S. banks and provides banking services to 6,500,000 east coast customers from Maine to Florida.

32. TD Bank has 242 branches in New Jersey and provides banking services to over 12% of the state's bank customers.

### **JURISDICTION AND VENUE**

33. This Court has jurisdiction over the subject matter presented by this Second Amended Class Action Complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), which explicitly provides for the original jurisdiction of the federal courts of any class action in which any member of the class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate sum of \$5,000,000, exclusive of interest and costs. *See* ECF No. 31, pp. 6-7.

34. Plaintiffs allege that the total claims of members of the proposed class in this action are in excess of \$5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. §§ 1332(d)(2) and (6). Plaintiffs are citizens of the New York, New Jersey, South Carolina, and Connecticut, whereas Defendant is a citizen of New Jersey for purposes of diversity. The proposed class will include consumers from dozens of states. Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A). Furthermore, most of the members of the proposed class are citizens of a state other than New Jersey, where this action is being filed, and the total number of members of the proposed class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B). *See* ECF No. 31, pp. 6-7.

35. Venue is proper in the District of New Jersey pursuant to the facts described above which include the presence of the TD Bank headquarters, hundreds of bank branches, and hundreds of thousands of customers in this District. *Id.*

### **COMMON FACTUAL ALLEGATIONS**

36. Secured credit cards are not used by the wealthy or those with good credit. Such cards are the only option to obtain a credit card for those without established credit. According to the Federal Deposit Insurance Corporation (“FDIC”):

Cash secured credit cards are generally marketed to two consumers groups: those with poor credit scores or prior credit problems and those with a limited or non-existent credit history. These programs can allow consumers an opportunity to establish or re-establish their credit. The accounts are collateralized by savings accounts or certificates of deposits. Cash secured credit card lending can be profitable and attractive to institutions because the receivables are self funding, finance charges and fees are high, the collateral is liquid, and new markets are opened.

FDIC Credit Card Activities Manual, ch. 2 (accessed on January 5, 2022).<sup>1</sup> Thus, TD Bank knowingly markets its secured card program to consumers with the least ability to obtain credit on favorable terms. The secured card program offers high profits with almost no risk, so TD is highly motivated to add customers to the program.

37. In the Consumer Financial Protection Bureau’s manual “Building Credit from Scratch,” the Bureau explains how consumers use secured cards to develop credit.

Apply for this card as you would a traditional credit card. Once approved you deposit an amount of money – which can range from \$50 to \$300 – into a separate account. The bank holds onto this deposit and extends a credit line matching the deposit amount. Generally, you can build credit with a secured card, but be sure to ask your card issuer about reporting to the credit reporting companies. Many of these cards include a “graduation” component, so you are able to move from a secured card to a traditional credit card seamlessly after establishing a pattern of consistent payments.

Thus, TD is aware that an important aspect of the secured card for many consumers is graduation

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<sup>1</sup> See [https://www.fdic.gov/regulations/examinations/credit\\_card/ch2.html](https://www.fdic.gov/regulations/examinations/credit_card/ch2.html)

to a traditional credit card “after establishing a pattern of consistent payments.” By offering more certain standards for graduation than other banks – namely graduation after seven months with no default – TD is more likely to sign up profitable customers.

38. TD’s secured credit cards like those held by Plaintiffs are governed by the Card Agreement, which is a ten-page form contract drafted by TD Bank. *See* Card Agreement (Exhibit 1 hereto).

39. The Card Agreement incorporates by reference TD’s marketing materials:

*This Personal Credit Card Agreement, the Interest Rate and Fee Schedule and the application or solicitation you submitted for this Credit Card Account are all a part of* and collectively referred to as the “*Agreement.*”

*See* Card Agreement, p. 1 (emphasis added). Thus, TD’s promotional solicitations to prospective customers are part of the contract. TD Bank has thus far failed to provide in discovery its marketing solicitations from the relevant time period. TD does, however, agree that it must provide these materials to Plaintiffs. TD’s tardy disclosure of these materials may warrant further amendment after the Court’s current deadline. The allegations herein are based on the one solicitation already in the possession of the Plaintiffs.

40. Prior the filing of this lawsuit, TD bank stated as follows in one of its most prominent solicitations:

**The key is to pay your balance on time each month**

If you use and maintain the card and keep it in good standing, you may be eligible to graduate to an unsecured TD Bank Credit Card

Cash Secured Credit Card Website, p. 3 (Exhibit 2 hereto). A footnote directly after this provision advises consumers as follows:

For details, read the [Personal Credit Card Agreement for TD Cash Secured](#), [important terms and conditions for Cash Secured](#), and [TD Simple Savings Account Guide](#).

These underlined documents were directly linked from the TD Bank website and, therefore,



versions of all three documents for all relevant time periods are in the possession of Defendant. TD has not yet provided all versions of the linked documents. TD's tardy disclosure of these materials may warrant further amendment after the Court's current deadline. The allegations herein are based on the versions of the documents already in the possession of the Plaintiffs.

41. The Card Agreement has a specific paragraph that governs eligibility to graduate from a secured to an unsecured credit card. *See* Card Agreement, p. 2. The relevant paragraph reads as follows:

**C. Eligibility for an Unsecured Card.** If you use and maintain a Credit Card Account for 7 consecutive Billing Cycles without committing an act of default pursuant to the Agreement you may be eligible to graduate to an unsecured TD Bank credit card automatically. This means that your savings account that secured the credit card will be released so you will have access to these funds. Upon graduation, a prorated refund of the annual fee will be given to you and it will appear on a subsequent monthly statement. Your credit limit and your APR will remain the same. Your account will automatically be reviewed once you meet the threshold eligibility requirements. If you are not graduated at your first review, your account will automatically be reviewed on an ongoing basis thereafter to determine if you have become eligible for an unsecured account. If you meet the requirements you will be notified of the impending automatic graduation. All other terms and conditions remain the same.

42. Most notably, Section 3(C) explicitly states: "If you use and maintain a Credit Card Account for 7 consecutive Billing Cycles without committing an act of default pursuant to the Agreement, you may be eligible to graduate to an unsecured TD Bank credit card automatically." *Id.* TD Bank has now conceded via its discovery responses that it did not during the relevant period – and does not now – honor this promise. Namely, customers who keep up their end of the bargain by using and maintaining a card for seven consecutive billing cycles without a default are **not** eligible to graduate.

43. The Card Agreement defines default as follows:

**A. Events of Default.** Subject to restrictions of applicable law, you will be in default and we will not be obligated to honor any attempted use of your Credit Card Account (even if we do not give you advance notice) if any of the following events occurs:

- We do not receive any payment required by this Agreement when such payment is due.
- You exceed any credit limit.
- A levy is placed on the Collateral Account.
- You are unwilling or unable to pay what you owe under this Agreement, for any reason.
- You die, become insolvent, file for bankruptcy or otherwise become the subject of a bankruptcy petition or filing.
- You give us false or misleading information at any time in connection with your Credit Card Account.
- You send us more than one check or similar instrument that is returned to us unpaid or any automatic, electronic or other payment on your Credit Card Account cannot be processed or is returned unpaid, for any reason, within the last six Billing Cycles.
- You breach or otherwise fail to comply with any term or condition of this Agreement.
- We have reason to suspect that you may have engaged or participated in any unusual, suspicious, fraudulent or illegal activity on your Credit Card Account or any other account or loan you have with us or our affiliates.
- You do not give us any updating information about your finances, employment or any other information we may reasonably request, promptly after our request.

See Card Agreement, p. 6 (Section 7(A)).

44. Using the card and avoiding default for seven months are the only eligibility requirements mentioned in the Card Agreement regarding graduating to an unsecured credit card. Paying on time (and thus avoiding default) is also stated to be the “key” requirement in the one known solicitation from the relevant period. “Key” is defined as “something that affords a means of access.” In reality, paying your balance and staying in good standing for seven months was not the key to graduation to an unsecured card. In fact, graduation was *impossible* through these promised methods.

45. This section of the Card Agreement also states: “Your account will automatically be reviewed [for graduation] once you meet the threshold eligibility requirements.” “Threshold” is defined as “any point of beginning.” The “threshold eligibility requirements” are those referred to earlier in the contract: to “use and maintain a Credit Card Account for 7 consecutive Billing Cycles without committing an act of default.” TD Bank has now conceded that such

automatic review can *never* lead to graduation after only seven months in good standing.

46. TD has gone even further on page 6 of the latest version of the TD Cash Secured Important Credit Card Terms and Conditions, by stating:

If I graduate from TD Cash Secured Credit Card, how do I earn rewards? • **Once you have met the eligibility requirements to graduate to a TD Cash Unsecured credit card (see your Credit Card Agreement for more details),** your rewards balance will transfer to your new credit card and you will earn three (3) Points for each dollar (\$1) of Dining Purchases, two (2) Points for each one dollar (\$1) of Grocery Store Purchases, and one (1) Point for each one dollar (\$1) of other Purchases.

TD promises that, once a customer meets the eligibility requirements, they will be graduated to an unsecured card. Further, only the Card Agreement is referenced for details about eligibility.

47. Therefore, TD represents to consumers that, after seven months, their account will automatically be reviewed and, if they have not defaulted, their account will graduate to an unsecured credit card or, at the very least, that their accounts may be graduated at that time. This is not true.

48. The Card Agreement also provides that upon graduation, “your saving account that secured the credit card will be released so you will have access to these funds.” This benefit cannot possibly be obtained after seven months in good standing under the actual practices of TD Bank.

49. Further, the Card Agreement promises: “Upon graduation, a prorated refund of the annual fee will be given to you and it will appear on a subsequent monthly statement.” Pursuant to the actual policies and practices of TD Bank, such a refund is *never* available during a customer’s first year with TD.

50. If an account has not been kept in good standing for seven consecutive months, then TD promises to “automatically” review the account “on an ongoing basis thereafter to determine if you have become eligible.” Thus, if the customer later completes seven months in a

row with no default, TD should “automatically” graduate the account. Indeed, the Card Agreement states “[i]f you meet the requirements you will be notified of the impending *automatic* graduation.” (emphasis added). “Automatic” means “occurring independently of volition or intention.” Thus, for those customers who use their card and maintain good standing for any seven-month period, TD promises that they will be automatically graduated or, at the very least, that they will be automatically eligible for graduation. TD Bank’s own documents prove this promise to be false. Indeed, multiple secret criteria that have been adopted by TD without disclosure to customers ensure that *no customer could ever* be graduated in the promised time-frame.

51. Secret, internal TD Bank documents reveal that TD Bank’s reference to graduating to an unsecured card “[i]f you use and maintain a Credit Card Account for 7 consecutive Billing Cycles without committing an act of default pursuant to the Agreement” is a misrepresentation that has never been accurate.

52. For example, an internal document used for training TD Bank employees only explains that graduation is determined “based on your credit score at time of monthly review and your existing credit card account activity and payments with TD Bank.” *See* TDBANK-00001493 (Exhibit 3 hereto). Notably, further documentation not available to customer-facing employees shows that this also is not true and that Defendant has, therefore, coached its customer-facing employees to deliver inaccurate information to customers. Nevertheless, even TD tells its employees that a credit score is used in addition to a customer’s credit card history when determining whether or not someone can graduate to an unsecured credit card. This information is never shared with customers.

53. TD Bank’s strategy manual for its secured credit card products further reveals that TD relies upon nine secret criteria to determine whether or not a cardholder can graduate to an

unsecured credit card. These criteria were in place during the relevant time period:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

*See* TDBANK-00001503 (Exhibit 4 hereto). The use of several of these criteria constituted violations of TD’s contract and TD’s use of other criteria without informing customers violated federal law.

54. For example, one of the mandatory criteria was “[REDACTED] [REDACTED]” This was a mandatory requirement for graduation. This violated TD’s promise that customers would be eligible for promotion after seven months in good standing. The Card Agreement already lists a delinquent payment as an even of default. *See* Card Agreement, Section 7(A) (“We do not receive any payment required by this Agreement when such payment is due.”). Thus, the parties had already agreed that graduation would be permitted after seven months of non-default. TD was not allowed to unilaterally and secretly change this critical term of the parties’ bargain.

55. By way of further example, another mandatory requirement was “[REDACTED] [REDACTED]” Once again, such a payment was already an event of default. *See* Card Agreement, Section 7(A) (“You send us more than one check or similar

instrument that is returned to us unpaid or any automatic, electronic or other payment on your Credit Card Account cannot be processed or is returned unpaid, for any reason, within the last six Billing Cycles.”). Thus, TD unilaterally changed the seven-month deal to a [REDACTED] requirement. Obviously, the new requirement could never be satisfied within the agreed-upon time-frame. Further, a customer could never receive a refund of the any portion of the first annual fee, as is clearly contemplated in the contract.

56. TD’s requirement that customers [REDACTED] [REDACTED] also violates other provisions of the contract. For example, Section G of the Card Agreement establishes minimum payment standards, such as the greater of \$35 or 1% of the balance. TD is not allowed to use its discretion to secretly adopt standards which defy the parties’ agreement on this critical issue.

57. TD’s secret use of credit information – without disclosure to customers – also violates federal law. In any circumstance in which a customer’s credit score was [REDACTED] [REDACTED] and they therefore were not graduated to an unsecured card – federal law requires prompt notice to the customer. *E.g.*, 15 U.S.C. § 1681m. This was never done because TD kept these criteria and its use of these criteria secret. TD Bank has confirmed in discovery that it does not notify customers as required by federal law. In addition to violating federal statutes and regulations, TD’s use of these criteria without notifying customers violates the contract because the Card Agreement specifically incorporates any “applicable federal law” to govern the parties.

58. TD’s requirement that [REDACTED] also necessarily requires a review of the customer’s credit report and credit information. Any use of such credit reporting information, followed by any negative decision by TD – including failure to graduate the account – triggers the legal requirement of notice to the customer. TD

does not send such notice in violation of applicable federal law and the contract.

59. TD's [REDACTED] also qualifies as credit reporting under applicable federal law.

60. TD Bank has improved its policies since this case was filed. Defendant's practices, however, still violate the contract, federal law, and state statutory consumer protections. In TD Bank's responses to Plaintiffs' Interrogatories, Defendant described the nine currently-used criteria for graduation as follows:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

*See* Response to Interrogatory No. 3 (Exhibit 5 hereto).

61. Two of these criteria are appropriate under the contract: an account must be open for seven months and there must be activity in the account.

62. Six of the criteria violate the contract and applicable federal law. Five of these bases have been covered above under the prior set of secret criteria.

63. One new standard has been added which violates the contract. Whereas the contract required seven months without a default – and listed exceeding the card credit limit as a

default, *see* Card Agreement, Section 7(A) (“You exceed any credit limit.”) – TD Bank has now extended the time-frame by [REDACTED]. Thus, even since this lawsuit has been filed, TD Bank has chosen to double down on its breaches of the parties’ agreement.

**A. Natalie Campagna**

64. In the summer of 2019, Ms. Campagna began investigating secured credit cards that included a defined graduation period.

65. A secured credit card with a defined graduation period was important to Ms. Campagna, because she ultimately wanted to transition to an unsecured credit card.

66. During her online searches, Ms. Campagna was unable to find any other banks that were as specific as TD was about the timing and requirements to graduate from a secured credit card to an unsecured credit card. Only TD Bank promised that a customer was eligible for the upgraded account after seven months in good standing.

67. For example, even though Ms. Campagna was approved for a secured credit card through Citibank, the graduation policy associated with that card was quite vague, so Ms. Campagna elected to obtain a secured credit card with TD.

68. In reliance upon the representations made by TD Bank in the Card Agreement regarding being able to graduate to an unsecured credit card following seven consecutive billing cycles in good standing, Ms. Campagna went into her local TD Bank branch and applied in person for a Cash Secured Credit Card.

69. After being approved for the secured card, Ms. Campagna deposited \$2,000 into a TD Bank Simple Savings account to be used as collateral for the credit card.

70. Ms. Campagna began using her secured card in August 2019.

71. On September 13, 2019, TD Bank assessed Ms. Campagna an annual fee of \$29.00 for the secured card.



72. Ms. Campagna used and maintained her account in good standing for seven consecutive billing cycles.

73. In March 2020, Ms. Campagna contacted TD Bank via telephone to inquire about her graduation to an unsecured credit card as described in the Card Agreement.

74. TD Bank's "customer service specialist" informed Ms. Campagna that she would **not** be graduating to an unsecured credit card.

75. The specialist also told Ms. Campagna that "she didn't know why the agreement is still on the web site" because the process of graduating to an unsecured credit card is not undertaken after seven months and the process takes into account many factors which are not included in the form contract.

76. The specialist also advised Ms. Campagna that consumers are "always calling in" and requesting graduation to an unsecured card pursuant to the seven-month promise, but that the process takes far longer than seven months and "hardly anyone ever graduates due to the lengthy process involving many outside factors."

77. As a result of TD Bank's refusal to graduate Ms. Campagna to an unsecured credit card, Ms. Campagna did not receive her prorated refund of the annual fee that she paid and has not regained use of the \$2,000 that she was required to deposit into her TD Bank Simple Savings account as collateral.

78. TD Bank breached the Card Agreement by refusing to consider and grant Ms. Campagna's request after she complied with the terms.

**B. Gloria DeVault**

79. In 2018, Ms. DeVault began investigating secured credit cards as a way of improving her credit.

80. Ms. DeVault was attracted to TD Bank's secured credit card program because of

the specific timing requirements to graduate from a secured credit card to an unsecured credit card.

81. In reliance upon TD Bank's promise that a customer was eligible to be upgraded from a secured credit card to an unsecured credit card after seven months in good standing, Ms. DeVault opened her secured credit card in October 2018.

82. After maintaining her secured credit card in good standing for over seven months, Ms. DeVault contacted TD Bank about graduating to an unsecured credit card.

83. The customer service representative stated that Ms. DeVault did not qualify to graduate to a secured credit card and recommended that Ms. DeVault try to open an unsecured card and request a larger line of credit.

84. Ms. DeVault explained that the recommended strategy was not what TD Bank had represented to her when she signed up for the card and that she had been assured that, if she made all her payments on time, she would graduate to the unsecured card and have her security deposit refunded.

85. Many months later, after incurring an annual fee in November 2019 and continuing to keep her account in good standing, Ms. DeVault again contacted TD Bank about graduating to an unsecured credit card.

86. TD Bank's customer service representative again advised Ms. DeVault that she should forget about graduating and simply try to apply for an unsecured credit card directly.

87. Once again, Ms. DeVault explained that she should not have to do that because the program she signed up for stated she would graduate to an unsecured credit card after keeping her account in good standing and that her security deposit would then be released.

88. Ms. DeVault explained that she had an impeccable record with TD Bank and requested to speak with someone else about graduating the card as promised.

89. TD Bank's customer service representative refused to allow Ms. DeVault to speak with anyone else.

90. Since being denied graduation a second time, Ms. DeVault continues to keep her account in good standing and continues to incur additional fees from TD Bank, including yet another annual fee.

91. However, Ms. DeVault has still not graduated to an unsecured credit card.

**C. Amanda Farmer**

92. In the spring of 2018, Ms. Farmer began investigating secured credit cards as a way of improving her credit.

93. In reliance upon TD Bank's promise that a customer would be eligible for an upgrade to an unsecured credit card from a secured credit card after seven months in good standing, Ms. Farmer opened her secured credit card in April 2018.

94. After being approved for the secured card, Ms. Farmer deposited \$1,000 into a TD Bank Simple Savings account to be used as collateral for the credit card.

95. Ms. Farmer has used and kept her secured credit card in good standing for more than two years without graduating to an unsecured card.<sup>2</sup>

96. TD Bank assesses Ms. Farmer an annual fee of \$29 for having her secured credit card every April.

97. On numerous occasions over the past three years, Ms. Farmer has contacted TD Bank about graduating to an unsecured credit card.

98. Despite the fact that Ms. Farmer maintained her secured credit card in good

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<sup>2</sup> On one occasion in the last two years, Ms. Farmer exceeded her credit limit of \$1,000 by \$3.16 due to TD's assessment of a \$27.00 late payment fee on her account. That fee was later reversed due to bank error, meaning her account never should have exceeded the credit limit. Regardless, Ms. Farmer's account was in good standing for over seven months prior to TD's mistake and has been in good standing for 13 consecutive months since then without being graduated.

standing for periods of time much longer than seven months, each time Ms. Farmer contacts TD Bank about graduating to an unsecured credit card, she is told by a “customer service specialist” that she does not qualify to graduate.

99. Despite TD Bank’s refusal to graduate Ms. Farmer in violation of the Card Agreement, Ms. Farmer continues to keep her account in good standing and continues to incur additional fees from TD Bank. An annual fee of \$29 was assessed in April 2021.

100. In May 2021, over three years after first being issued a secured credit card, Ms. Farmer was finally upgraded to an unsecured credit card.

**D. Philip Pagliaro**

101. In late 2016, Mr. Pagliaro began investigating secured credit cards as a way of improving his credit.

102. In reliance upon TD Bank’s promise that a customer was eligible for to be upgraded from a secured credit card to an unsecured credit card after seven months in good standing, Mr. Pagliaro opened his secured credit card in December 2016.

103. After being approved for the secured card, Mr. Pagliaro deposited \$500 into a TD Bank Simple Savings account to be used as collateral for the credit card.

104. Mr. Pagliaro has used and maintained his secured credit card for over four years.

105. TD Bank assesses Mr. Pagliaro an annual fee of \$29 every December.

106. On numerous occasions over the past four years, Mr. Pagliaro has contacted TD Bank about graduating to an unsecured credit card.

107. Despite the fact that Mr. Pagliaro maintained his secured credit card in good standing for periods of time much longer than seven months, each time Mr. Pagliaro contacts TD Bank about graduating to an unsecured credit card, he is told by a “customer service specialist” that he does not qualify to graduate.

108. Despite TD Bank's refusal to graduate Mr. Pagliaro in violation of the Card Agreement, Mr. Pagliaro continues to keep his account in good standing and continues to incur additional fees from TD Bank, including yet another \$29 annual fee that was assessed in December of 2021.

109. Mr. Pagliaro kept his account in good standing throughout 2021 but was never graduated to an unsecured credit card.

**E. Yaakov Roziner**

110. In the spring of 2019, Mr. Roziner began investigating secured credit cards as a way of improving his credit.

111. In reliance upon TD Bank's promise that a customer was eligible to be upgraded from a secured credit card to an unsecured credit card after seven months in good standing, Mr. Roziner applied for his secured credit card in March 2019.

112. After being approved for the secured card, Mr. Roziner deposited \$4,000 into a TD Bank Simple Savings account to be used as collateral.

113. Mr. Roziner has used and maintained his account in good standing since opening the secured credit card.

114. In the summer of 2020, Mr. Roziner contacted TD Bank via telephone to inquire about his graduation to an unsecured credit card as described in the Card Agreement.

115. TD Bank's "customer service specialist" informed Mr. Roziner that he would not be graduating to an unsecured credit card, but that he should wait and check back later.

116. Recently, Mr. Roziner contacted TD Bank again to inquire about graduating to an unsecured credit card.

117. TD Bank's "customer service specialist" informed him that he would not be graduating to an unsecured credit card because he had a late payment – which was a complete

falsehood.

118. TD Bank's "customer service specialist" also informed Mr. Roziner that he would never be re-evaluated for promotion to an unsecured credit card again.

119. Despite TD Bank's refusal to consider Mr. Roziner for graduation in violation of the Card Agreement, Mr. Roziner continues to keep his account in good standing, continues to incur additional fees from TD Bank, and continues to be denied use of the \$4,000 collateral he deposited when he opened his account.

120. Indeed, Mr. Roziner kept his account in good standing throughout 2021 but was never graduated to an unsecured credit card.

**F. Plaintiffs Are But a Few of Thousands of Victims**

121. TD's handling of Plaintiffs' accounts are not isolated events. TD Bank's discovery responses have confirmed that the challenged practices are uniform. All of the hundreds of thousands of secured card customers have been subjected to the secret terms and practices described above in violation of their contracts, good faith and fair dealing, applicable federal laws, and state statutory consumer protections.

122. TD Bank has confirmed that there have been over 205,000 secured credit card accountholders during the relevant period. TD Bank has conceded multiple breaches of contract as to each customer because the seven-month promise was never true and TD Bank knew it even at the time it signed up Plaintiffs and the other customers.

123. Many customers regularly call TD to enquire as to why their accounts have not been upgraded to unsecured accounts. All of these requests are based on the same misrepresentations and broken promises of TD Bank. Of course, based on the Card Agreement and Defendant's marketing materials, the process should be automatic and customers should not even need to call TD.

124. When a consumer credit expert filmed an instructional video called “TD Bank Secured Cash Credit Card Review” about the TD Secured Credit Card, he stated that TD’s card was one of the best options on the market because you know if you simply pay the card for seven months you will be automatically upgraded to an unsecured card in the eighth month. The video is available at: <https://www.youtube.com/watch?v=lq0Sy5ujK2Q>

125. Thus, even a savvy consumer, who regularly instructs other consumers on credit issues, was completely fooled by TD Bank’s misrepresentations about the seven-month promise.

126. The consumer expert recommended the card under completely false pretenses, thus perfectly illustrating the unfair competitive advantage that TD Bank gains through its willful misrepresentations about the seven-month promise.

127. TD’s practices are not new. As suggested by the TD employees who spoke to Plaintiffs, the Bank has continued this practice for some time. For example, a similar complaint was lodged online against TD Bank regarding the same practice in 2014.

128. A customer known as “@taxi818” commented that he applied for a secured credit card from TD Bank in November 2013. During the application process, this consumer was advised that he could graduate to a secured card after six months of use.

129. After the sixth month, @taxi818 called to speak with TD Bank’s customer service specialists and was told that the review period for promotion to an unsecured account took place after **two years** rather than what was stated in the contract.

130. Other customer complaints raise similar issues with TD’s failure to graduate cardholders whose accounts have been in good standing for seven consecutive billing cycles. For example, in December 2020, “Alfredo Cunha” complained:

Im in the same boat, open this secured credit card 1 year ago and they told me I would graduate after 7 months of using and paying correctly, I have several other unsecured cards at the moment and my credit score is over 750 (FICO) across all the bureaus, they told me they evaluate my account every month after the 7th

month and for credit worthiness reason they cannot graduate my account and the worst thing is that nobody can give me a reason, they said they never promise any graduation.<sup>3</sup>

131. In August 2021, a cardholder named “Michael” stated the following:

I was told when I opened my card that the longest my money could be held was 12 months, but it could be as few as 7. It’s been 24 months now, and they will not release my funds or approve me for an unsecured card. I feel very misled, lied to, and taken advantage of. I have never missed a payment, gone over my credit limit, etc. Chase Bank approved me recently for a \$1000 unsecured card, and I also have another unsecured card with a \$500 limit, and I’ve never missed a payment on any of those accounts or gone over my limit, yet TD refuses to graduate me. I’m fed up and want my original deposit back. I have an almost 700 credit score. I am going to close my account out tomorrow and never, ever go back to TD.<sup>4</sup>

132. In September 2021, a cardholder named “Georgia” protested:

I was told my account would automatically change to unsecured after 8 months. It’s been 17 months now. I called them at 10 months and was told “oh no, it takes much longer than that but I was welcome to apply for the unsecured card.”<sup>5</sup>

133. Another disgruntled cardholder stated:

It took me 5 years to get it unsecured but only after raising hell with the customer service reps in 3 different departments. I finally cursed the last rep out and hung up the phone, about a month later I received a letter stating they are unsecured my credit card. Lol crazy ... after 5 years. Just put a bad taste in my mouth. Only reason I didn’t close the account because it’s my oldest card ... good luck everybody.<sup>6</sup>

134. One consumer stated:

TD bank did the same thing to me after I had the unsecured card for 1 year and never upgraded me to a regular card so I closed the entire account out.<sup>7</sup>

135. Another complained:

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<sup>3</sup> See <https://topclassactions.com/lawsuit-settlements/money/credit-cards/class-action-lawsuit-filed-over-td-bank-credit-card-terms/> (last visited January 5, 2022).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See <https://www.youtube.com/watch?v=HqNlzs4Nzkk&lc=UgwYT6jitDHE5tMf79J4AaABAg> (last visited January 5, 2022).

<sup>7</sup> *Id.*



1 year and 6 months and if u call they only advise u need to continue waiting until unsecured. It was supposed to unsecured after 8 months<sup>8</sup>

136. One customer stated:

I'm still waiting in month 8. I was told in a branch it could take 18 months or more.<sup>9</sup>

137. Another customer stated:

have this secured td c.c since 2016 was told it would graduate in a year, never did. Called customer service they said have to wait until they decide to unsecure it or i can apply for another card. Can't lie td bank is not bad but was expecting to graduate but never happened<sup>10</sup>

138. Yet another consumer complained:

I have TD SECURED CREDIT CARD... its been 1yr and 8 months and they havent unsecured me<sup>11</sup>

139. These are but a sampling of the complaints from consumers suffering from TD Bank's improper practices.

140. Even though TD Bank's Card Agreement clearly establishes that a consumer can graduate to an unsecured credit card following seven consecutive billing cycles, as shown above, TD Bank's internal documents prove this to be untrue. Even worse than TD's secret criteria disclosed in discovery, however, is the actual practice suffered by most customers, where graduation usually takes two years or longer. TD customer service representatives have referred to a two-year waiting period.

141. This two-year waiting period is spelled out in a much less prominent location on the Bank's website. This webpage invites consumers who *already* have a TD Secured Credit Card to apply for an unsecured credit card and informs them as follows:

Upon receipt of your application, we will review your TD Secured Credit Card account to ensure it has been open and in good standing for at least 24

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See <https://www.youtube.com/watch?v=lq0Sy5ujK2Q> (last visited January 5, 2022)

<sup>11</sup> *Id.*

consecutive billing cycles. We will then review your application in its entirety to determine your creditworthiness in accordance with our standard procedures for review of unsecured personal credit card applications, including, but not limited to, obtaining a credit report to determine your eligibility.

*See* You May Be Eligible for a TD Unsecured Credit Card (Exhibit 6 hereto) (available at: <https://www.tdbank.com/personalcreditcard/unsecured-credit-card.html>) (last visited March 26, 2020).

142. Because this webpage is aimed at consumers who already have TD Secured Credit Cards, but want to apply for an unsecured credit card, it is not geared toward those applying for the card initially.

143. The few procedures mentioned on this webpage are dramatically different than the criteria set forth in the Card Agreement for graduation to an unsecured credit card. For example, the Card Agreement only mentions a seven-month waiting period, not the two-year waiting period. *Compare* Exhibit 1, p. 2, *with* Exhibit 6. Likewise, the Card Agreement makes no mention of a credit report needing to be pulled to make a determination as does the webpage. *Id.* TD's own documents reveal a classic bait-and-switch scheme.

144. This separate online document, however, cannot trump the Card Agreement, which states that the Card Agreement "replaces any other agreement relating to your Credit Card Account that you and we made earlier or at the same time" and further provides that the Card Agreement controls over any other document unless expressly provided otherwise. *See* Card Agreement, p. 8.

145. TD should not be allowed to rely on this webpage or the nine secret, undisclosed criteria revealed in discovery to determine eligibility for graduation to an unsecured credit card. Rather, the contract should govern.

146. In sum, Plaintiffs' experiences with TD Bank are not isolated, but rather are illustrative of TD's improper business practices.

### **CLASS ACTION ALLEGATIONS**

147. Plaintiffs bring this action individually and on behalf of all others similarly situated pursuant to Rule 23. The Classes are preliminarily defined as:

#### **The National Class**

All holders of a TD Bank, N.A. Cash Secured Credit Card who, within the applicable statute of limitations preceding the filing of this lawsuit, maintained their account for seven consecutive billing cycles without committing an act of default and were not timely graduated to an unsecured TD Bank credit card.

#### **The New York Subclass**

All New York citizens who are holders of a TD Bank, N.A. Cash Secured Credit Card and who, within the applicable statute of limitations preceding the filing of this lawsuit, maintained their account for seven consecutive billing cycles without committing an act of default and were not timely graduated to an unsecured TD Bank credit card.

#### **The New Jersey Subclass**

All New Jersey citizens who are holders of a TD Bank, N.A. Cash Secured Credit Card and who, within the applicable statute of limitations preceding the filing of this lawsuit, maintained their account for seven consecutive billing cycles without committing an act of default and were not timely graduated to an unsecured TD Bank credit card.

#### **The Connecticut Subclass**

All Connecticut citizens who are holders of a TD Bank, N.A. Cash Secured Credit Card and who, within the applicable statute of limitations preceding the filing of this lawsuit, maintained their account for seven consecutive billing cycles without committing an act of default and were not timely graduated to an unsecured TD Bank credit card.

148. Excluded from the Classes are:

- a. Defendant and any entities in which Defendant has a controlling interest;
- b. Any entities in which Defendant's officers, directors, or employees are employed and any of the legal representatives, heirs, successors, or assigns of Defendant;
- c. All current employees of Defendant;
- d. The judges to whom this case is assigned and any member of the judges' immediate family and any other judicial officer assigned to this case;

- e. Any attorneys representing Plaintiffs or the Classes; and
- f. All governmental entities.

149. Plaintiffs reserve the right to modify or amend the definitions of the proposed Classes and/or to add classes or subclasses if necessary before the Court determines whether certification is appropriate and as the Court may otherwise allow.

150. The Classes will face common questions such that there is a well-defined community of interest among the members of the Classes. These questions predominate over questions that may affect only individual class members because TD Bank has acted on grounds generally applicable to the Classes. Such common legal or factual questions include, but are not limited to:

- a. Whether TD Bank improperly refused to consider graduation of consumers who held secured credit cards to unsecured credit cards;
- b. Whether TD Bank breaches the Card Agreement by using secret, undisclosed criteria that contradict the parties' contract;
- c. Whether TD Bank breaches the Card Agreement by failing to consider graduating consumers who held secured credit cards to unsecured credit cards after their seventh consecutive billing cycle in good standing;
- d. Whether TD Bank engages in unfair and/or deceptive trade practices in violation of Delaware, New York, New Jersey, or Connecticut law by engaging in the trade practices alleged herein; and/or
- e. Whether Plaintiffs and other members of the Classes have been damaged as a result of TD Bank's wrongful business practices described herein.

151. The parties are numerous such that joinder of them all is impracticable. TD Bank has confirmed that over 205,000 secured card holders may be members of the Classes. Certainly

the Classes consist of tens of thousands of members or more, the identities of whom are within the exclusive knowledge of and can be ascertained only by resort to TD's records. TD Bank has the administrative capability through its computer systems and other records to identify all members of the Classes, and such specific information is not otherwise available to Plaintiffs.

152. It is impracticable to bring the Class members' individual claims before the Court. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

153. Plaintiffs' claims are typical of the claims of the other members of the Classes in that they arise out of the same wrongful business practices by TD Bank, as described herein.

154. Plaintiffs are more than adequate representatives of the Classes in that Plaintiffs have or had a TD Bank secured card and have suffered damages as a result of TD's contract violations (including violations of applicable federal laws), violations of the covenant of good faith and fair dealing, and/or violations of state statutory protections. In addition:

a) Plaintiffs are committed to the vigorous prosecution of this action on behalf of themselves and all others similarly situated and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against financial institutions;

b) There is no conflict of interest between Plaintiffs and the unnamed members of the Classes;

c) Plaintiffs anticipate no difficulty in the management of this litigation as a class action; and

d) Plaintiffs' legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

155. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

156. TD Bank has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

157. All conditions precedent to bringing this action have been satisfied and/or waived.

158. Indeed, this is a textbook class action. TD Bank concedes there are 205,000 secured card customers. Each of them was indisputably subject to practices that violate the contract. Even if only the admitted violation of requiring [REDACTED], rather than the promised seven months, was at issue, this would require a refund [REDACTED] of the annual fee, which for most customers is [REDACTED]. No customer could hire an attorney to litigate for [REDACTED]. But TD Bank must not be allowed to keep the spoils of its bait-and-switch scheme. A class action is the only way to obtain a just result.

## **REQUESTS FOR RELIEF**

### **COUNT ONE**

#### **Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing (On behalf of the National Class)**

159. Plaintiffs reallege and incorporate by reference all the foregoing allegations as if they were fully set forth herein.

160. Plaintiffs and Defendant have contracted for credit card services. As described above, the actions of TD Bank violate the specific terms of the Card Agreement. TD is liable for

the losses of Plaintiffs and the Classes that have resulted from TD's breaches of the Card Agreement.

161. TD violated the contract in several ways. TD violated the contract by relying on secret, undisclosed criteria to determine whether or not to graduate a cardholder rather than following what was laid out in the Card Agreement. Many of the admitted criteria actually contradict the Card Agreement (and its incorporated documents). TD violated the contract by failing to consider and to graduate Plaintiffs from a secured credit card to an unsecured credit card after seven consecutive billing cycles without a default. These breaches caused Plaintiffs substantial damages. Specifically, Ms. Campagna is being denied the use of her \$2,000 collateral deposit; Ms. DeVault is being denied the use of her \$1,000 collateral deposit; Mr. Pagliaro is being denied the use of his \$500 collateral deposit; and Mr. Roziner is being denied the use of his \$4,000 collateral deposit. These losses are likely to continue for many more months. Also, TD has continued to assess annual fees and has not issued a prorated refund of the annual fees Plaintiffs were assessed for their secured credit card. If TD follows its normal process, it will never refund any of the fees and, indeed, will continue to assess additional annual fees on the anniversary dates of Plaintiffs' accounts. TD Bank has also regularly violated applicable federal law (made binding in the Card Agreement), thereby breaching the contract. Also, Plaintiffs' credit scores have been harmed by TD's failure to shift them to an unsecured card.

162. The same harms have befallen all of the members of the Classes. All members were entitled to have TD consider them for graduation based on the criteria set forth in the Card Agreement, but TD does not do so. Each member has suffered the same losses as Plaintiffs, namely the loss of the use of their collateral funds, the loss of the annual fee refund (and assessment of additional annual fees for those who have reached their anniversary date), and a

lower credit score and reduced access to credit.

163. Plaintiffs and the Classes have performed all, or substantially all, of the obligations imposed on them under the contracts, or those obligations have been waived by TD Bank. By definition, every member of the Classes has met the only contractual requirement for graduation to an unsecured line of credit.

164. Pursuant to TD Bank's Card Agreement:

Applicable federal law and the substantive laws of the State of Delaware (to the extent not preempted by federal law) without regard to principles of conflict of law or choice of law shall govern this Agreement.

Card Agreement, p. 1 ("Governing Law").

165. Additionally, the section of the Card Agreement where the language about graduating to an unsecured credit card is found (Section 3 – Collateral Account and Security Agreement) states:

This Security Agreement and our security interest and rights pledged hereunder will be governed by the laws of the State of Delaware. We may, in our sole discretion, assign our rights and obligations under this Security Agreement.

Card Agreement, p. 2 ("Applicable Law; Assignment"). Thus, it is clear that the elements of breach of contract are identical for all members of the Classes.

166. Delaware law also imposes upon each party to a contract the duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute violations of good faith and fair dealing in the performance of contracts.

167. Subterfuge and evasion violate the obligation of good faith in performance even



when an actor believes his conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty.

168. By utilizing secret, undisclosed criteria to make determinations regarding graduation, TD Bank has violated the spirit of the contract and thus breached the covenant of good faith and fair dealing. Even if TD Bank believed that it had given itself contractual discretion to refuse to graduate cardholders from a secured credit card to an unsecured credit card, such discretion is constrained by good faith and fair dealing under Delaware law. It simply was not acceptable for TD to lure customers away from other, better credit card options by promising that they could graduate to unsecured status after seven months when this was never TD Bank's actual practice. Indeed, TD Bank has conceded in writing and via its staff that it does not honor this promise.

169. Plaintiffs and the Classes have performed all, or substantially all, of the obligations imposed on them under the contract. There is no excuse or defense for TD Bank's conduct under Delaware law.

170. Plaintiffs and members of the Classes sustained damages as a result of TD Bank's breaches of the covenant of good faith and fair dealing. As such, all elements for a successful claim under Delaware law have been satisfied.

171. Whether viewed as a direct breach of the TD Bank Card Agreement – which makes a promise that TD plainly does not keep – or as a violation of good faith and fair dealing, TD Bank should be forced to make Plaintiffs and the Classes whole.

**COUNT TWO**

**Violation of Delaware’s Consumer Fraud Act, 6 Del. C. §§ 2511-27  
(On behalf of the National Class)**

172. Plaintiffs reallege and incorporate by reference all the foregoing allegations as if they were fully set forth herein.

173. According to the Card Agreement, the substantive laws of the State of Delaware, which includes the Delaware Consumer Fraud Act, 6 Del. C. §§ 2511, *et seq.*, apply to this dispute.

174. Defendant TD Bank is a “person” as defined by 6 Del. C. § 2511(7).

175. Secured TD Bank credit cards are “merchandise” within the meaning of 6 Del. C. § 2511(6).

176. The promotional page on TD Bank’s website that disseminates information regarding the Bank’s secured credit cards and specifically incorporates the terms of the Card Agreement therein is an “advertisement” within the meaning of 6 Del. C. § 2511(1).

177. Delaware’s Consumer Fraud Act provides in relevant part that:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is an unlawful practice.

6 Del. C. § 2513(a).

178. TD Bank violated the Delaware Consumer Fraud Act’s proscription against the act, use, or employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact by: (a) affirmatively misrepresenting at all times to Plaintiffs and Class members that they could graduate from a secured credit card to an unsecured credit card following seven months of use without

committing an act of default when, in fact, TD Bank has not honored that seven-month promise, but instead imposed a much longer graduation period of at least two-years, and/or (b) concealing from Plaintiffs and all Class members that it used secret, undisclosed criteria that were used to determine whether or not a cardholder could graduate from a secured credit card to an unsecured credit card.

179. TD Bank intended that Plaintiffs and members of the Classes would rely upon its assurances regarding graduating to an unsecured credit card when applying for a secured credit card.

180. TD Bank's affirmative misrepresentations occurred "in the conduct of any trade or commerce in part or wholly within this State" under the Delaware Consumer Fraud Act as: (1) at least some of the deceptive conduct that violates 6 Del. C. § 2513 originated, arose, was directed, and emanated from Delaware, and/or (2) the presence of TD Bank in Delaware is sufficient grounds for the Delaware Consumer Fraud Act to apply. TD Bank imposed Delaware law on all customers and the Bank cannot escape Delaware's consumer protections.

181. As a direct and proximate result of TD Bank's misconduct, Plaintiffs and the Class members have been damaged in an amount to be proven at trial.

182. In addition to compensatory damages, Plaintiffs and the Classes are entitled to punitive damages because TD Bank's conduct was fraudulent, gross, oppressive, and/or reckless. Plaintiffs and the Classes are entitled to all relief afforded under the Delaware Consumer Fraud Act. Plaintiffs and the Classes are further entitled to reimbursement of all of their legal fees and expenses.

**COUNT THREE**

**New York General Business Law, N.Y. Gen. Bus. Law § 349, *et seq.*  
(On Behalf of the New York Plaintiffs and Subclass)**

183. Plaintiffs reallege and incorporate by reference all the foregoing allegations as if they were fully set forth herein.

184. New York General Business Law § 349 (“Section 349”) allows “any person who has been injured by reason of any violation of this section [to] bring an action in [their] own name . . . to recover [their] actual damages or fifty dollars, whichever is greater, or both such actions.” As New York citizens, Ms. Campagna and Mr. Roziner are permitted to bring a claim under Section 349.

185. TD Bank’s refusal to graduate card holders from a secured TD Bank credit card to an unsecured TD Bank credit card violates Section 349.

186. Section 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in the state of New York. A bait-and-switch scheme such as that described above is a textbook violation of Section 349.

187. As one of the largest banks in the United States with multiple branch locations in New York, Defendant conducted business, trade, or commerce in New York State.

188. In the conduct of its business, trade, and commerce, and in furnishing services in New York State, Defendant’s actions were directed at consumers.

189. In the conduct of its business, trade, and commerce, and in furnishing services in New York State, Defendant engaged in deceptive, unfair, and unlawful trade acts or practices, in violation of Section 349(a), including but not limited to the following:

a. Defendant misrepresented material facts pertaining to the when a card holder would graduate from a secured credit card to an unsecured credit card to the New York Subclass by representing in the Card Agreement that it would only take seven billing cycles to graduate

when, in fact, it is TD Bank's practice not to graduate a card holder until they have exceeded at least 24 billing cycles in good standing; and/or

b. Defendant omitted, suppressed, and concealed the material fact that it takes at least two years rather than seven months to graduate from a secured credit card to an unsecured credit card; and/or

c. Defendant omitted, suppressed, and concealed the material fact that used secret, undisclosed criteria when determining whether or not a cardholder could graduate from a secured credit card to an unsecured credit card.

190. Defendant systematically engaged in this deceptive, misleading, and unlawful act and practice to the detriment of Ms. Campagna, Mr. Roziner, and the members of the New York Subclass.

191. Defendant willfully engaged in such acts and practices and knew that it violated Section 349 or showed reckless disregard for whether it violated Section 349.

192. As a direct and proximate result of Defendant's deceptive trade practices, New York Subclass members suffered injury and/or damages, including the loss of the use of the monetary collateral the card holder provided TD Bank when it opened the secured credit card and the loss of all or part of the annual fees they paid to TD Bank.

193. These unfair and deceptive practices and acts by TD Bank were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to consumers that these consumers could not reasonably avoid; this substantial injury outweighed any benefits to consumers or to competition.

194. TD Bank's actions were negligent, knowing, and willful, and/or wanton and reckless with respect to the rights of members of the New York Subclass. Facts that have already come to light show that TD Bank has continued this practice for over five years. TD

staffers have confirmed that customers regularly complain about the bait-and-switch techniques used by TD to get them to sign up. TD's willfulness is further proven by the fact that a portion of the TD Bank website – a portion that potential secured card applicants would never have reason to look at – concedes that it does not honor its contractual seven-month promise.

195. Had Ms. Campagna, Mr. Roziner, and the members of the New York Subclass known they would not be able to graduate from a secured credit card to an unsecured credit card until two years passed rather than seven months, or known TD used secret, undisclosed criteria to determine whether or not a cardholder could graduate from a secured credit card to an unsecured credit card, they would have made different decisions with respect to their enrollment in the TD secured credit card program.

196. As a result of TD Bank's violations of Section 349, Ms. Campagna, Mr. Roziner, and the members of the New York Subclass have lost the use of the monetary collateral they provided TD Bank when they opened the secured credit card. They have also paid an annual fee to TD Bank that they otherwise would not have paid and/or they have not been paid a pro-rated refund as promised. They have also suffered damage to their credit which increases their expense of borrowing and reduces their access to credit. Accordingly, they have suffered and will continue to suffer actual damages.

197. Accordingly, Ms. Campagna, Mr. Roziner, and the New York Subclass members are entitled to relief under Section 349(h), including, but not limited to, actual damages, treble damages, statutory damages, and legal fees and costs. They are further entitled to any and all other relief afforded under Section 349.

**COUNT FOUR**

**Violations of the New Jersey Consumer Fraud Act  
(On behalf of the New Jersey Plaintiff and Subclass)**

198. Plaintiffs reallege and incorporate by reference all the foregoing allegations as if they were fully set forth herein.

199. TD Bank engages in unfair business practices relating to its administration of its secured credit card program in violation of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.* Ms. DeVault is a New Jersey citizen.

200. TD Bank is a “person” as defined by § 56:8-1(d).

201. TD Bank’s secured credit cards constitute “merchandise” as defined by § 56:8-1(c).

202. TD Bank’s practices relating to the its secured credit card program are unlawful and constitute an “unconscionable commercial practice, deception, fraud . . . [and] misrepresentation, or the knowing, concealment, suppression, or omission of material facts” in connection with their services as defined by § 56:8-2.

203. Under the New Jersey Consumer Fraud Act, such conduct done in connection with the sale or advertisement of its secured credit cards is unlawful whether or not any person has in fact been misled, deceived, or damaged thereby.

204. As alleged herein, Ms. DeVault, on behalf of herself and the New Jersey Subclass, performed any requisite obligations under the secured credit card program.

205. As redress for TD Bank’s repeated and ongoing violations of the New Jersey Consumer Fraud Act, Ms. DeVault and the New Jersey Subclass are entitled to damages and declaratory relief pursuant to §§ 56:8-2.12 and 56:8-159. They are also entitled to any other relief afforded by the New Jersey Consumer Fraud Act.

206. Further, pursuant to § 56:8-19, Ms. DeVault and the New Jersey Subclass are entitled to court costs and reasonable and necessary legal fees and expenses in connection with this action.

**COUNT FIVE**

**Violations of the Connecticut Unfair Trade Practices Act  
(On behalf of the Connecticut Plaintiff and Subclass)**

207. Plaintiffs reallege and incorporate by reference all the foregoing allegations as if they were fully set forth herein.

208. TD Bank engages in unfair methods of competition and unfair or deceptive acts or practices relating to its administration of its secured credit card program in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, *et seq.* Mr. Pagliaro is a Connecticut citizen.

209. TD Bank is a “person” as defined by § 42-110a(3).

210. TD Bank’s secured credit cards constitute “trade and commerce” as defined by § 42-110a(4).

211. TD Bank’s practices relating to its secured credit card program are unlawful and constitute an “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” as defined by § 42-110b.

212. Under the Connecticut Unfair Trade Practices Act, such conduct done in connection with the sale or advertisement of its secured credit cards is unlawful whether or not any person has in fact been misled, deceived, or damaged thereby.

213. As alleged herein, Mr. Pagliaro, on behalf of himself and the Connecticut Subclass, performed any requisite obligations under the secured credit card program.

214. As redress for TD Bank’s repeated and ongoing violations of the Connecticut Unfair Trade Practices Act, Mr. Pagliaro and the Connecticut Subclass are entitled to damages



and injunctive or equitable relief pursuant to § 42-110g. They are also entitled to any other relief afforded by the Connecticut Unfair Trade Practices Act.

215. Further, pursuant to § 42-110g, Mr. Pagliaro and the Connecticut Subclass are entitled to court costs and reasonable and necessary legal fees and expenses in connection with this action.

WHEREFORE, Plaintiffs Natalie Campagna, Gloria DeVault, Natalie Farmer, Philip Pagliaro, and Yaakov Roziner, on behalf of themselves and the proposed Classes, request that this Court:

- (a) Certify this case as a class action pursuant to Federal Rule 23;
- (b) Find for Plaintiffs as to all claims set forth herein;
- (c) Award Plaintiffs and the Classes actual, incidental, and consequential damages in an amount to be proven at trial, including any and all compensatory damages, punitive damages, restitution, any applicable penalties and interest, authorized attorneys' fees, interest, and costs, and any further relief as the Court deems just, equitable, and proper;
- (d) Award all reasonable legal fees and expenses incurred by Plaintiffs;
- (e) Award Plaintiffs and the National Class damages, including punitive damages, and attorneys' fees and expenses pursuant to Delaware's Consumer Fraud Act;
- (f) Award Ms. Campagna, Mr. Roziner, and the New York Subclass damages, including treble damages, and attorneys' fees pursuant to New York General Business Law § 349;
- (g) Award Ms. DeVault and the New Jersey Subclass damages, including costs and attorneys' fees pursuant to New Jersey Consumer Fraud Act;

- (h) Award Mr. Pagliaro and the Connecticut subclass damages, including punitive damages and attorneys' fees and expenses pursuant to the Connecticut Unfair Trade Practices Act;
- (i) Hold a trial by jury on all matters; and
- (j) Award such other and further relief as the Court may deem just and equitable.

DATED this 14th day February, 2022.

Respectfully submitted,

BY: GOLOMB SPIRT GRUNFELD, P.C.

/s/ Kenneth J. Grunfeld

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*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 14, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to all counsel of record.

*/s/ Kenneth J. Grunfeld* \_\_\_\_\_  
Kenneth J. Grunfeld

# **Exhibit 1**



## Personal Credit Card Agreement TD Cash Secured

**1. INTRODUCTION.** Your TD Bank VISA® Card account (“*Credit Card Account*”) is subject to this Personal Credit Card Agreement, including the Interest Rate and Fee Schedule we send with your credit card(s) (“*Card*”) when we open a Credit Card Account for you. This Personal Credit Card Agreement, the Interest Rate and Fee Schedule and the application or solicitation you submitted for this Credit Card Account are all a part of and collectively referred to as the “*Agreement*.” Please read and keep this Agreement for your records.

*You, your, and yours* mean each person who applied for the Credit Card Account and the person to whom we direct billing statements (“*Statements*”). *We, us, our* and *TD Bank* mean TD Bank, N.A., a national bank with its main office located in Delaware, and its successors and assigns.

**A. Credit Card Account Use and Acceptance.** By accepting your Card and using or maintaining your Credit Card Account, or letting someone else use your Card or your Credit Card Account, you agree to all of the terms of this Agreement. You acknowledge that you received a copy of this Agreement. Your signature on your application, solicitation, back of the credit card or Collateral Account Deposit Agreement for this Credit Card Account, including without limitation any electronic signature or oral acceptance of a telephone offer or in store application, your Card or any Credit Card Account-related document represents your signature on this Agreement.

**You agree that you will not use your Card or Credit Card Account for any fraudulent or illegal purposes. Such transactions include, but are not limited to, illegal gambling transactions. We reserve the right to block all such transactions. If any such charge or transaction is approved and processed, you will still be liable for the charge.**

**B. Promise to Pay.** You promise to pay us for all purchases, balance transfers and cash advances resulting from the use of your Card or Credit Card Account, plus interest charges and all other fees and charges owed under this Agreement.

**2. GOVERNING LAW.** Applicable federal law and the substantive laws of the State of Delaware (to the extent not preempted by federal law) without regard to principles of conflicts of law or choice of law shall govern this Agreement. To the extent any court determines that this Agreement is subject to Maryland law concerning credit, you and TD Bank agree that your Credit Card Account is governed by Title 12, Subtitle 9 of the Commercial Law Article of the Annotated Code of Maryland, except as preempted by federal law.

### **3. COLLATERAL ACCOUNT AND SECURITY AGREEMENT**

**A. Collateral Account.** You understand and agree that you established and will maintain an individual TD Bank savings account (the “*Collateral Account*”) in your name to secure repayment of your Credit Card Account. You deposited and will maintain an amount that equals your Credit Card Account credit limit in the Collateral Account. The Collateral Account serves as the security deposit funds for your Credit Card Account. You have up to fifteen (15) business days from conditional approval to deposit the funds into your collateral account. The initial deposit, up to your approved credit limit, will equal your new credit card limit. Depositing funds greater than your approval amount will not increase your credit limit and you may not have access to those funds once the Collateral Account is locked. The total amounts deposited and maintained in the Collateral Account at any time and any interest earned thereon shall be referred to as the “*Funds*”. You agree to sign all applications and documents that we may request from time to time that show that you have granted and assigned to us the security interest in the Collateral Account.

**B. Security Agreement.** As of the date you established the Collateral Account and provided the Funds, you agree as follows (terms not defined in this section 3.B. (the “*Security Agreement*”) have the same meaning that such terms have in the remainder of this Agreement):

**1. Collateral.** You understand and agree that you have provided Funds to serve as security for your Credit Card Account. All Funds will be held in the Collateral Account. If the Collateral Account is amended, extended, renewed or closed and replaced for any reason, the resulting Collateral Account will be deemed the Collateral Account for purposes of this Security Agreement. You may not use any portion of the Collateral Account to secure other loans.

**2. No Withdrawals.** You agree not to make withdrawals from the Collateral Account while the Funds are used as collateral to secure the obligations to us that you incur in connection with your Credit Card Account.

**3. Pledge and Grant of Security Interest.** Your obligations to us under the Agreement and this Security Agreement and any expenses that we incur in enforcing your obligations under the Agreement and this Security Agreement, where permitted by applicable law, are collectively referred to as “*Obligations*.” You hereby pledge and grant to us a security interest in the Funds for the purpose of securing your Obligations. You irrevocably and unconditionally relinquish all possession and control over and pledge and assign as security to us all of your right, title and interest in and to any and all Funds. You agree to take any actions we request to perfect or protect the first lien position of our security interest in the Funds.

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\* VISA is a registered trademark and service mark of VISA International Service Association, and is used by TD Bank, N.A. pursuant to a license from VISA U.S.A. Inc.

**4. Legal Proceedings.** You represent that there are no current lawsuits or bankruptcy proceedings that might affect our interest in the Funds. You have not and will not attempt to transfer any interest in the Funds to any person other than us.

**5. Our Actions.** We will maintain records to account for the Funds. We may pay interest on the Funds if the Collateral Account established is an interest-bearing account. Such interest will be added to the Collateral Account and will constitute proceeds securing your Obligations.

**6. Default.** You will be in default under this Security Agreement if you are in default in any respect as defined in the Agreement, including failing to pay your Obligations at any time when due. Upon any such default, you hereby authorize us to withdraw Funds from the Collateral Account and to apply such amounts to your Obligations without additional notice or demand for payment. The foregoing rights will be in addition to all other rights we have under the law or the Agreement.

**7. Application of Funds to Your Credit Card Account.** If you or we close your Credit Card Account, or if you are in default under the Agreement, we may apply the Funds towards any outstanding Obligations. You will not be considered to have made a payment on your Credit Card Account because we have applied funds from the Collateral Account to your Credit Card Account. If you have any outstanding Obligations after the Funds are applied, you will be responsible for the repayment of such amounts, and we may continue to report your Credit Card Account as delinquent.

**8. Applicable Law; Assignment.** This Security Agreement and our security interest and rights as pledged hereunder will be governed by the laws of the State of Delaware. We may, in our sole discretion, assign our rights and obligations under this Security Agreement.

**9. Personal Deposit Account Agreement.** You acknowledge that the provisions of the TD Bank Personal Deposit Account Agreement you received when you established the Collateral Account (the "*Deposit Account Agreement*") apply to the Collateral Account. If a provision of the Deposit Account Agreement conflicts with this Security Agreement, this Security Agreement will prevail.

**C. Eligibility for an Unsecured Card.** If you use and maintain a Credit Card Account for 7 consecutive Billing Cycles without committing an act of default pursuant to the Agreement you may be eligible to graduate to an unsecured TD Bank credit card automatically. This means that your savings account that secured the credit card will be released so you will have access to these funds. Upon graduation, a prorated refund of the annual fee will be given to you and it will appear on a subsequent monthly statement. Your credit limit and your APR will remain the same. Your account will automatically be reviewed once you meet the threshold eligibility requirements. If you are not graduated at your first review, your account will automatically be reviewed on an ongoing basis thereafter to determine if you have become eligible for an unsecured account. If you meet the requirements you will be notified of the impending automatic graduation. All other terms and conditions remain the same.

#### **4. USING YOUR CREDIT CARD ACCOUNT**

##### **A. Credit Limit.**

**1. General.** Your initial credit limit is shown in the Agreement disclosure materials we send with your Card when we open a Credit Card Account for you. Your current credit limit will be shown on each Statement. You also may telephone Customer Service at 1-888-561-8861 for your current credit limit. You agree to not go over your credit limit. We may permit you to go over your credit limit, but we are not required to do so. If your Credit Card Account goes over your credit limit, you agree to pay the overlimit amount when it is billed or sooner upon our request.

**2. Limit for Cash Advances.** We may set a credit limit for the total dollar amount of cash advances that may be outstanding from time to time that is lower than the overall credit limit for your Credit Card Account.

**3. Changes to Credit Limit.** In our discretion, at any time, we may change any credit limit that applies to your Credit Card Account. We will notify you if we change any credit limit.

##### **B. Types of Transactions.**

**1. Purchases.** You may use your Card to pay for the purchase or lease of goods or services wherever your Card is honored. If you use your Card to purchase or lease goods or services by telephone, mail or internet, you agree that your signature is not necessary as identification in such cases.

**2. Cash Advances.** You may use your Card or Credit Card Account to obtain cash advances wherever they are honored for cash advances.

a. Cash Advances obtained from a financial institution, an automated teller machine, or any other party that agrees to honor your Card or Credit Card Account for cash advance purposes, and all convenience checks posted to your account are considered Cash Advances. For example, your Card may be used to obtain cash advances at ATMs displaying the VISA logo and from participating financial institutions honoring VISA credit cards. Transactions to obtain the following goods and services will also be treated as a Cash Advance: travelers checks, foreign currency, money orders, wire transfers, cryptocurrency, debt repayments, lottery tickets, casino gaming chips, race track wagers, legal online wagers, or similar betting transactions, and any other similar cash-like transactions.

b. See the Interest Rate and Fee Schedule of this Agreement for Cash Advance fee details. The amount of the Cash Advance transaction fee will be added to your minimum monthly payment and is due by the payment due date indicated on your monthly billing statement.

c. You may be required to sign a special form and/or provide your personal identification number (PIN) when making a Cash Advance. Please select a PIN that is not easily identifiable and does not consist of one single number (for example, "1111") or consecutive numbers. PINs should also not be based on or include your birth date, zip code or Account number. Do not write your PIN on your Card and do not keep your PIN with or near your Card or any Access Device

**3. Balance Transfers.** We may allow you to transfer balances from other credit card accounts with third parties (but not us or our affiliates) to your Credit Card Account. We may limit the number and types of credit card accounts from which we will allow you to transfer balances and the times, amounts, manner and circumstances in which balance transfers may be requested. The minimum balance transfer amount is \$250 (plus the Balance Transfer Transaction Fee). See the Interest Rates and Fee Schedule on the card mailer for Balance Transfer fee details.

**4. Access Devices.** We may from time to time issue additional Credit Card Account access devices (“Access Devices”). Access Devices may include, for example, special checks you may use to obtain cash advances or oral offers or written forms by which you may request balance transfers. Each Access Device must be in the form we issue and must be used according to the instructions we give you. We may refuse to process Access Devices received after any applicable expiration date. We will not return paid Access Devices to you. Access Devices may not be used to pay any amount owed to us or our affiliates. We will not certify any Access Device. You may not post-date any Access Device. We may refuse to process a post-dated Access Device or process it before the date on the Access Device.

**5. Foreign Transactions.** If you use your Credit Card Account to make a purchase or cash advance in a foreign currency, the transaction will be converted to U.S. Dollars based on a rate selected by VISA U.S.A. Inc. (or any of its affiliates) from the range of rates available in wholesale currency markets for the applicable central processing date (which may vary from the rate VISA U.S.A. Inc. itself receives) or the government-mandated rate in effect for the applicable central processing date. The currency conversion rate used by VISA U.S.A. Inc. (or any of its affiliates) on the currency conversion date may differ from the exchange rate in effect on the day you made the transaction or on the day the transaction is posted to your Credit Card Account.

**C. Stop Payment.** If you want us to stop payment on an Access Device, notify Customer Service immediately at P.O. Box 84037, Columbus, GA 31908-4037, by first class mail, postage prepaid, or call us at 1-888-561-8861. If you call, you must confirm your request in writing within 14 days. A written stop payment request will remain in effect for six months unless renewed in writing. Call or write us with your stop payment request as soon as possible after you have submitted the Access Device and give us information about the Access Device to help us identify it.

If you ask us to stop payment, we will make reasonable efforts not to pay that Access Device. However, if we pay that Access Device despite these efforts, we will not be liable to you for paying that Access Device. We may not be able to stop payment if you call or write us after we have started processing the Access Device. A Stop Payment Fee may apply.

**D. Refusal to Honor Your Card or Access Device.** A merchant, business or financial institution may refuse to honor your Card or Access Device. You agree that you have no legal claims or damages against us or anyone else if your use of your Credit Card Account is denied by any merchant, business or financial institution.

#### **E. Statements.**

**1. General.** At the end of each monthly billing cycle (“Billing Cycle”), if there was activity on your Credit Card Account, we will send you a Statement showing what you owe (the “New Balance”) as of the end of the Billing Cycle. The Statement will show any interest charges you owe, the minimum payment due, the payment due date, your current credit limit, an itemized list of fees, charges, payments and credits posted to your Credit Card Account during the Billing Cycle and other important information. We will mail or deliver the Statement to the address we have on file for your Credit Card Account.

**2. Change of Address.** You must notify us promptly of any change in your address by contacting Customer Service at P.O. Box 84037, Columbus, GA 31908-4037, by first class mail, postage prepaid, or by calling us at 1-888-561-8861. We may accept mailing address corrections from the United States Postal Service. You may also update your address online via [www.tdcardservices.com](http://www.tdcardservices.com). Until we receive, process and verify your new address, we will continue to send Statements and other notices to the last address we have on file for your Account (which may be a correction from the United States Postal Service).

**F. Credit Balance.** We will make a good faith effort to return to you any credit balance that has been on your Credit Card Account longer than six consecutive Billing Cycles (or, in our discretion, for a shorter time period). You may also request a refund of a credit balance on your Credit Card Account at any time by sending your request to Customer Service at P.O. Box 84037, Columbus, GA 31908-4037, by first class mail, postage prepaid. We may reduce the amount of any credit balance on your Credit Card Account by applying the credit balance towards new fees and charges posted to your Credit Card Account. We do not pay any interest on credit balances.

**G. Payments.** You may at any time pay off the full unpaid balance under this Agreement.

**1. Minimum Payment.** If you have an outstanding balance, we must receive your minimum payment by no later than 5 p.m. Eastern Time on the payment due date. The minimum payment will be the greater of:

- (i) \$35, or
- (ii) One percent (1%) of the New Balance plus:
  - (a) The periodic interest charges for the Billing Cycle; plus
  - (b) The full amount of any transaction fees (such as Cash Advance, Balance Transfer and Foreign Transaction Fees) owed for the Billing Cycle; plus
  - (c) The full amount of any Annual Membership Fee, Late Payment or Returned Payment Fee or other applicable fees owed.

In addition, any past due minimum payment amounts will be added to your current minimum payment due.

If your New Balance is less than \$35, your minimum payment will equal your New Balance.

Credits, adjustments, refunds, prepayments and similar Credit Card Account transactions may not be used in place of payment of any portion of a required minimum payment. You may pay more than the minimum payment due (this is a prepayment) without any penalty. The sooner you pay the New Balance, the less you will pay in interest charges. A prepayment in one Billing Cycle will not excuse you from paying the minimum payment due in the next Billing Cycle.

**2. Making Payments.** Payments may be made by mail, online, at a TD Bank store or over the phone. All payments must be in U.S. dollars and, if applicable, drawn on a U.S. bank. *Business Day* is defined as Monday through Friday, excluding federal holidays.

**a. By Mail.** Send a check or money order to the payment address shown on your Statement with the payment stub from your Statement. Do not mail any cash payments. A properly addressed payment with the payment stub will be credited to your Credit Card Account as of the date received if we receive it by 5 p.m. Eastern Time on a Business Day. A properly addressed payment with the payment stub received after 5 p.m. Eastern Time or on a day that is not a Business Day will be credited to your Credit Card Account as of the next Business Day. You agree to not give us any post-dated check as payment on your Credit Card Account. If the payment due date falls on a day on which we do not receive or accept payments, the payment will not be treated as late if received the next Business Day.

**b. Online.** You may pay online by logging in to our website. A payment made online will be credited to your Credit Card Account as of the date received if we receive it by 5 p.m. Eastern Time on a Business Day. Online payments received after 5 p.m. Eastern Time or on a day that is not a Business Day will be credited to your Credit Card Account as of the next Business Day.

**c. At TD Bank Stores.** You may make a payment in person to one of our employees at a TD Bank store. A payment made at a TD Bank store will be credited to your Credit Card Account as of the date received if we receive it by the close of business for that location.

**d. By Phone.** You may pay by phone by calling 1-888-561-8861. A payment made by phone will be credited to your Credit Card Account as of the date received if we receive it by 5 p.m. Eastern Time on a Business Day. Phone payments received after 5 p.m. Eastern Time or on a day that is not a Business Day will be credited to your Credit Card Account as of the next Business Day.

**e. Delay in Crediting and Available Credit.** We may reject or delay crediting payments that do not follow the instructions above. For example, there may be a delay of up to five days in crediting a payment by mail if it is received at an address other than the address we specify for payments on your Statement or if it is received without the required payment stub. Your available credit limit(s) may not reflect the payment for up to 15 days after we have credited a payment to your Credit Card Account.

### 3. Application of Payments.

**a. Generally.** We will generally apply your minimum payment in the following order:

- (i) to Interest Charges and other fees;
- (ii) to transactions (purchases, balance transfers, cash advances) with the lowest Daily Periodic Rates and corresponding APRs;
- (iii) to transactions with the highest Daily Periodic Rates and corresponding APRs.

**b. Application of Payments in Excess of Minimum Payment.** We will generally apply your payments and credits in excess of the minimum payment in the following order:

- (i) to transactions (purchases, balance transfers, cash advances) with the highest Daily Periodic Rates and corresponding APRs;
- (ii) to transactions with the lowest Daily Periodic Rates and corresponding APRs.

**4. Payments Marked "Paid in Full".** Any check, money order or other instrument sent in payment on your Credit Card Account marked with "paid in full" or similar notation to settle a debt on your Credit Card Account that is reasonably in dispute (and any accompanying letter or other instructions) must be sent to: TD Bank, P.O. Box 100290, Columbia, SC 29202-3290, Attention: Customer Service. If such payment is sent to any other address, you agree that (i) we may ignore any special notations or instructions on or with the payment and (ii) our crediting any such payment to your Credit Card Account does not mean that we have agreed to any special notations or instructions on or with the payment.

**5. Automatic Payments.** We may allow you to repay amounts owed under this Agreement through automatic payments from a savings or checking account. We may terminate our permission to make automatic payments at any time. If we allow automatic payments, no automatic payment will occur unless the savings or checking account has sufficient collected funds in it on the Business Day before the payment due date to cover the full amount of the minimum payment due (or any larger monthly payment you and we may agree to from time to time). If an automatic payment does not occur for any reason, you still must pay the minimum payment and a Late Payment or Returned Payment Fee may apply.

If you have authorized us to pay your credit card bill automatically from your checking or savings account with us, you can stop the payment on any amount you think is wrong. To stop the payment, write to: TD Bank, P.O. Box 84037, Columbus, GA 31908-4037 or call 1-888-561-8861. To stop the payment, your letter or telephone call must reach us three Business Days before the automatic payment is scheduled to occur.

**6. Electronic Check Conversion.** When you send a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your bank account or (at our option) to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your bank account on the same day we receive your payment, and you will not receive your check back from your financial institution. If we cannot process the electronic fund transfer, or if it is returned to us, you authorize us to reinstate the electronic fund transfer from your bank account. Alternatively, we may (at our option) present the original check, a substitute check, draft or similar negotiable instrument to obtain payment. If you have questions about electronic check conversion, you may telephone us at 1-888-561-8861.



**H. Additional Cards.** We may limit the total number of Cards and other Access Devices issued.

**I. Lost or Stolen Cards, Credit Card Account Numbers or Access Devices.** If any Card, Credit Card Account number or Access Device is lost or stolen, or if you think someone used or may use them without your permission, notify us **AT ONCE** by calling 1-888-561-8861. You agree that we may close your Credit Card Account to new transactions, change your Credit Card Account number and issue you a new Card(s) and new Access Devices with a different Credit Card Account number if we have been notified of the possible loss, theft or unauthorized use. If we do this, you must notify anyone you have authorized to submit and post charges to your Credit Card Account of your new Credit Card Account number. Do not use your Card, Credit Card Account number or Access Device after you notify us, even if your Card or other Access Device is later found or returned.

Under VISA U.S.A.'s "Zero Liability Policy" you may not be liable for the unauthorized use of your Credit Card Account or Card that results in a fraudulent transaction made over the VISA network. To be eligible, you must notify us immediately of any unauthorized use of your Credit Card Account or Card. We will provisionally credit you for losses from the unauthorized Card use within five Business Days of your notification to us of the loss. The VISA Zero Liability Policy does not apply to transactions made at an ATM or to any transactions made using your PIN that are not processed by VISA. We may impose greater liability, or withhold, delay, limit or rescind any provisional credit that we provide to you under the Zero Liability Policy, based on factors such as your gross negligence or fraud, your delay in reporting unauthorized use, our investigation and verification of your claim, your Credit Card Account standing and history and other factors. If you are not eligible for the VISA Zero Liability Policy or it otherwise does not apply, you may be liable for unauthorized use of your Credit Card Account, but not for more than \$50. You won't be liable for any unauthorized use of your Credit Card Account that occurs after you notify us of the loss, theft or possible unauthorized use of your Card, Credit Card Account number or Access Device. We may require you to provide certain information in writing to help us find out what happened. You also must identify for us any charges on your Statement that were not made by you or someone authorized by you and from which you received no benefit.

## **5. INTEREST CHARGES**

**A. Annual Percentage Rates.** *Annual Percentage Rate* or *APR* means the annual rate of interest charged on Credit Card Account balances. The APRs and corresponding Daily Periodic Rates for your Credit Card Account are listed in the Interest Rate and Fee Schedule. To get the Daily Periodic Rate, we divide the APR by 365 and round at the seventh place after the decimal point. We may charge different Daily Periodic Rates and APRs on different Credit Card Account transactions (such as purchases, cash advances and balance transfers) or during special promotional periods.

**B. Variable Rates.** Your APRs are subject to change each Billing Cycle and are determined each Billing Cycle by adding the Margins listed in the Interest Rate and Fee Schedule to the Index. The Index is the Prime Rate (U.S.) published in the Money Rates section of The Wall Street Journal. Your APRs may increase if the Index increases. If any APR increases, the amount of interest charged and your minimum payment may increase. Your APR will be based on the Prime Rate in effect 45 days prior to the end of each billing cycle. When a range of rates has been published on the day we calculate the APR, the highest rate will be used. If this Index is no longer available we will select a new one. The maximum rate for any variable APR is the applicable Margin plus the Index.

**C. Introductory or Promotional APR.** We may offer you an introductory or promotional APR for specific Account transactions, such as balance transfers. Any introductory or promotional APR offer will be subject to the terms of the offer and this Agreement. Upon the expiration of an introductory or promotional APR, the rate will return to the rate for the specified type of transaction(s) as stated in this Agreement.

**D. When Interest Charges Begin.** Your due date is at least 25 days after the close of each Billing Cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each Billing Cycle. Interest charges as a result of the loss of a grace period will not be charged if those interest charges are based on any portion of a balance subject to the grace period that was repaid prior to the expiration of the grace period. We will begin charging interest on cash advances and balance transfers on the transaction date. There is no time period in which you may repay a cash advance or balance transfer and avoid imposition of an interest charge.

### **E. Balance Calculation Method (Average Daily Balance Method (Including Current Transactions)).**

In any Billing Cycle in which you owe interest, we will charge interest on your balances of purchases, balance transfers and cash advances at the applicable Daily Periodic Rates. We calculate the interest charge on your Credit Card Account by applying the periodic rate to the "average daily balance" of your Credit Card Account. To get the "average daily balance", we take the beginning balance of your Credit Card Account each day, add any new transactions and fees and subtract any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the Billing Cycle and divide the total by the number of days in the Billing Cycle. This gives us the "average daily balance". We compound (charge interest on) unpaid interest charges and unpaid fees.

**F. Minimum Interest Charge.** If the total interest charges on your Credit Card Account for a Billing Cycle are greater than zero but less than \$1, the interest charge for that Billing Cycle will be \$1.

**6. FEES.** You agree to pay the fees described below whenever applicable.

**A. Annual Membership Fee.** If your Credit Card Account has an Annual Membership Fee, it will be billed each year, whether or not you use your Credit Card Account. The amount is listed in the Interest Rate and Fee Schedule. Your payment of the Annual Membership Fee does not affect our right to close your Credit Card Account or limit your right to make transactions on your Credit Card Account.

### **B. Cash Advance and Balance Transfer Transaction Fees.**

**1. Cash Advance and Balance Transfer Transaction Fees.** We will charge a transaction fee on each cash advance and balance transfer you obtain in the amounts shown in the Interest Rate and Fee Schedule. Any applicable cash advance or balance transfer transaction fees will be added to your minimum payment amount which will be due on the payment due date specified on that statement.

**2. Foreign Transaction Fee.** If your Credit Card Account has a Foreign Transaction Fee, we may impose a fee equal to a certain percentage of the U.S. Dollar amount of a foreign transaction as shown in the Interest Rate and Fee Schedule. Foreign Transactions are subject to a transaction fee (see above) and the Foreign Transaction Fee charge will appear on your first monthly billing statement following the foreign transaction, and that applicable Foreign Transaction fee amount will be added to your minimum payment amount which will be due on the payment due date specified on that statement.

**C. Penalty Fees.**

**1. Late Payment Fee.** The first time we do not receive a required minimum payment when due, we may charge a Late Payment Fee of the minimum payment due or \$27, whichever is less. If over the next six Billing Cycles, the minimum payment is not received when due, we may charge a Late Payment Fee of the minimum payment due or \$37, whichever is less.

**2. Returned Payment Fee.** We may charge you this fee each time your financial institution for any reason rejects a payment you make to us, or if the payment cannot be processed. The first Returned Payment Fee will be equal to \$27 or your minimum payment due; whichever is less, even if your payment is eventually paid after a second presentment (if we elect to re-present the payment). If over the next six Billing Cycles you incur an additional Returned Payment fees (for any of the reasons stated above) the Returned Payment Fee may increase to \$37, or your minimum payment due, whichever is less.

**D. Other Fees.** We may also charge the following fees, subject to any restrictions of applicable law.

**1. Copy Fees.** We may charge you a fee of up to \$7 for each copy of a Statement or sales draft you request or up to \$5 for each copy of a payment check or written Access Device you request. However, we will not charge you for copies of documents that you request in connection with a billing error/inquiry you may assert against us under applicable law.

**2. Emergency Replacement Card Fee.** If you request a replacement Card on an expedited basis (for example, to replace a lost or stolen Card), we may charge you an Emergency Replacement Card Fee of up to \$25.

**3. Stop Payment Fee.** If you ask us to stop payment on an Access Device, we may charge you a Stop Payment Fee of \$39.

**7. DEFAULT**

**A. Events of Default.** Subject to restrictions of applicable law, you will be in default and we will not be obligated to honor any attempted use of your Credit Card Account (even if we do not give you advance notice) if any of the following events occurs:

- We do not receive any payment required by this Agreement when such payment is due.
- You exceed any credit limit.
- A levy is placed on the Collateral Account.
- You are unwilling or unable to pay what you owe under this Agreement, for any reason.
- You die, become insolvent, file for bankruptcy or otherwise become the subject of a bankruptcy petition or filing.
- You give us false or misleading information at any time in connection with your Credit Card Account.
- You send us more than one check or similar instrument that is returned to us unpaid or any automatic, electronic or other payment on your Credit Card Account cannot be processed or is returned unpaid, for any reason, within the last six Billing Cycles.
- You breach or otherwise fail to comply with any term or condition of this Agreement.
- We have reason to suspect that you may have engaged or participated in any unusual, suspicious, fraudulent or illegal activity on your Credit Card Account or any other account or loan you have with us or our affiliates.
- You do not give us any updating information about your finances, employment or any other information we may reasonably request, promptly after our request.

**B. Our Rights After Default.** In the event of default, we may close your Credit Card Account, require you to pay the unpaid balance in full or take any other action permitted by applicable law, including the application of funds in your Collateral Account to your outstanding Credit Card Account balance pursuant to this Agreement.

**C. Collection Costs.** If we refer any past due amounts you owe under this Agreement to a collection agency or lawyer for collection, you agree to pay us our reasonable costs of collection, including without limitation collection agency fees, court costs and attorneys' fees actually incurred by us, to the fullest extent permitted by applicable law.

**8. CLOSING YOUR CREDIT CARD & COLLATERAL ACCOUNT**

**A. We May Close Your Credit Card Account.** Except where prohibited by applicable law, we may close your Credit Card Account to new transactions at any time, for any reason including Account inactivity and/or lack of credit card usage for an extended period of time, and without prior notice.

**B. We may Close Your Collateral Account.** You may not close your Collateral Account while your Credit Card Account is open. If your Credit Card Account is closed for any reason, we will release the holds on any remaining funds and you may access those funds by coming into a store. At such time the account will no longer be a Collateral Account. If after your Credit Card Account is closed if you do not have any account activity in your Collateral Account, your account may be considered abandoned. See your Deposit Account Agreement for details.

**C. You May Ask Us to Close Your Credit Card Account.** You may ask us to close your Credit Card Account to new transactions at any time by notifying Customer Service in writing at P.O. Box 84037, Columbus, GA 31908-4037, by first class mail, postage prepaid, or contacting us at 1-888-561-8861. If you request to close your Credit Card Account by phone, we may require a written notice from you.

**D. After Your Credit Card Account is Closed.** After your Credit Card Account is closed, you still must pay us any unpaid amounts under this Agreement. We will not be liable to you for any consequences resulting from closing your Credit Card Account. You agree to cut, tear or otherwise deliberately damage all Cards and unused Access Devices in your possession or control to prevent unauthorized use by third

parties and, upon our request, return such Cards or Access Devices to us at P.O. Box 84037, Columbus, GA 31908-4037, by first class mail, postage prepaid.

**9. CHANGING THIS AGREEMENT.** We may change this Agreement, including (for example) changing the addresses and telephone numbers you should use to contact us, changing fees, adding new fees, changing the Daily Periodic Rates and corresponding APRs or increasing your required minimum payment. We may change this Agreement based on economic or market conditions, our business strategies or for any other reason (including reasons unrelated to you or your Credit Card Account). Any changes we make to this Agreement may apply to new transactions and/or then-existing balances as described in any notice we are required to provide to you. We will notify you of changes to this Agreement as required by applicable law. We will mail any required written notice to the address we have on file for your Credit Card Account.

## **10. INFORMATION SHARING**

**A. Credit Information.** We may review your credit history by obtaining information from consumer reporting agencies and others. We may report information about your Credit Card Account to credit bureaus. Late payments, missed payments or other defaults on your Credit Card Account may be reflected in your credit report.

**B. How to Dispute Reports Regarding Your Credit Card Account.** If you think the information we furnished to consumer reporting agencies on your Credit Card Account is not accurate please write to us at: P.O. Box 84037, Columbus, GA 31908-4037. With your letter, please provide us with:

Your name, address and telephone number;

- The Credit Card Account number(s) for the Credit Card Account(s) you are disputing; A description of the specific information you are disputing and an explanation of the basis for your dispute; and
- Copies of documents that support your dispute. These could include (but are not limited to): a copy of your consumer report showing the information that you are disputing, your Statements, a court order or (if applicable) a copy of a police report or fraud or identity theft affidavit.

If you fail to provide us with the information listed above, we may be unable to investigate your dispute. We will notify you of the results of our investigation within 30 days of receiving your dispute. A delay may be experienced if the dispute is not mailed to the address above. We may take up to 45 days to investigate your dispute if, after providing us with your initial notice of dispute, you provide us with additional information that is relevant to our investigation. If our investigation finds that the information you are disputing was inaccurate, we will notify the consumer reporting agency of our determination and provide the consumer reporting agency with the information necessary to correct the inaccuracy.

We will have no duty to investigate disputes that are substantially similar to a prior dispute that we have responded to, or that relate to your identifying information (such as your name, date of birth, Social Security number, telephone number or address), inquiries appearing on your consumer report, information from public records (such as judgments, liens, or bankruptcies, unless these matters relate to your Credit Card Account(s) with us), information related to fraud or active duty alerts on your report, or information provided to the consumer reporting agency from someone other than us. We will also have no duty to investigate your dispute if we reasonably believe it was submitted or prepared by (or if you submitted it on a form provided by) a credit repair organization. If we determine that we will not investigate your dispute for one of these (or some other) reasons we will notify you of that determination within five Business Days.

**C. Telephone Monitoring and Recording.** You consent to and authorize us and any of our affiliates, agents and marketing associates to monitor and/or record any of your telephone conversations with any of our or their representatives for quality control, training and other lawful purposes.

### **D. Telephone Numbers.**

When you give us your mobile phone number, we have your permission to contact you at that number about all of your TD Bank accounts. Your consent allows us to use text messaging, artificial or prerecorded voice messages and automatic dialing technology for informational and account service calls, but not for telemarketing or sales calls. It may include contact from companies working on our behalf to service your accounts. Message and data rates may apply. You may contact us anytime to change these preferences.

**E. Credit Card Account Benefits.** We may offer you certain third-party benefits and services with your Credit Card Account, as outlined in benefits brochures or other documents and internet web sites. For example, certain eligible purchases charged with a VISA® Platinum Card may be eligible for certain benefits or services through VISA U.S.A. Inc. (or its affiliates). Any benefits or services we make available through third parties (including without limitation VISA U.S.A. Inc.) are not a part of this Agreement but are subject to the terms and restrictions outlined in the applicable benefits brochures or other documents or internet web sites provided or made available to you from time to time. You agree that we may give information about you and your Credit Card Account to any third party reasonably needing the information to provide you with such benefits or services. You also agree that we or any third party providing any Credit Card Account-related benefits or services may change, add, or delete benefits or services at any time without notice.

## **11. MISCELLANEOUS**

**A. Certain Waivers.** You waive the right of "presentment" and "notice of dishonor." "Presentment" means the right to require us to demand payment of amounts due under this Agreement. "Notice of dishonor" means the right to require us to give notice to other persons, that amounts due under this Agreement have not been paid. You also waive demand for payment, protest, notice of protest and all other notices and demands, to the fullest extent permitted by applicable law.

**B. Assignment.** We may assign your Credit Card Account and our rights under this Agreement to our affiliates or to some other financial institution or company without advance notice to you. That entity will take our place in this Agreement if we do this. You may not assign or transfer your Credit Card Account or any of your responsibilities under this Agreement to any other person.

**C. Evidence.** You agree that we may use a copy, microfilm, microfiche or digital image of any Statement or other document to prove what you owe us and that the copy, microfilm, microfiche or digital image will have the same validity as the original.

**D. Captions and Interpretation.** The captions used in this Agreement are for convenience only. They do not affect the meaning of the paragraphs in this Agreement. In this Agreement, use of the singular includes the plural and use of the plural includes the singular.

**E. Severability.** If any part of this Agreement is held to be invalid, the rest will remain in effect.

**F. Delay in Enforcement/No Waiver.** We may delay or waive enforcing any of our rights or remedies under this Agreement or under applicable law without losing any of those rights or remedies. Even if we do not enforce our rights or remedies at any one time, we may enforce them at a later time.

**G. Entire Agreement.** The Agreement is the entire agreement between you and us relating to your Credit Card Account. The Agreement replaces any other agreement relating to your Credit Card Account that you and we made earlier or at the same time. In the event of a conflict between this Personal Credit Card Agreement and any other document (including the other documents that are collectively called the Agreement), this Personal Credit Card Agreement will control unless otherwise expressly provided in the other document.

*Your Billing Rights: Keep This Document For Future Use*

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

*What To Do If You Find a Mistake on Your Statement*

If you think there is an error on your bill, write to us at:

TD Bank  
P.O. Box 84037  
Columbus, GA 31908-4037

In your letter, give us the following information:

- *Credit Card Account information:* Your name and Credit Card Account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your bill.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing*. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

*What Will Happen After We Receive Your Letter*

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your bill, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.
- *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees.

We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first \$50.00 of the amount you question even if your bill is correct.

*Your Rights If You Are Dissatisfied With Your Credit Card Purchases*

If you are dissatisfied with the goods or services that you have purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50.00. (**Note:** Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your Credit Card Account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* at:

TD Bank  
P.O. Box 84037

Columbus, GA 31908-4037

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

**Active Duty Service Members and Dependents:** The following important notice applies if you are an active duty service member or a dependent of one at the time you request an Account. Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: the costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account). If you would like more information regarding your account, please call us at 1-877-488-3712.

### Interest Rate and Fee Schedule

The Interest Rate and Fee Schedule is incorporated into and made a part of your Personal Credit Card Agreement. Please read and keep this Schedule with your Agreement for your records.

Interest Rates and Interest Charges	
<b>Annual Percentage Rate (APR) for Purchases:</b>	<b>24.49%</b> , based on your creditworthiness. All APRs will vary with the market based on the Prime Rate.
<b>APR for Balance Transfers:</b>	<b>24.49%</b> , based on your creditworthiness. All APRs will vary with the market based on the Prime Rate.
<b>APR for Cash Advances:</b>	<b>26.74%</b> This APR will vary with the market based on the Prime Rate.
<b>How to Avoid Paying Interest on Purchases:</b>	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.
<b>Minimum Interest Charge:</b>	If you are charged interest, the charge will be no less than \$1.00.
<b>For Credit Card Tips from the Consumer Financial Protection Bureau:</b>	<b>To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at <a href="http://www.consumerfinance.gov/learnmore">http://www.consumerfinance.gov/learnmore</a>.</b>
Fees	
<b>Annual Fee:</b>	<b>\$29</b>
<b>Transaction Fees:</b> • Balance Transfers • Cash Advances • Foreign Transactions	Either <b>\$5</b> or <b>3%</b> of the amount of each transfer, whichever is greater. Either <b>\$10</b> or <b>5%</b> of the amount of each cash advance, whichever is greater. <b>None</b>
<b>Penalty Fees:</b> • Late Payment • Returned Payment	Up to <b>\$37</b> Up to <b>\$37</b>

**How We Will Calculate Your Balance:** We use a method called "Average Daily Balance (including Current Transactions)." See your account agreement for more details.

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

**Margins:**  
For Purchases, 19.74% will be added to the Index  
For Balance Transfers, 19.74% will be added to the Index  
For Cash Advances, 21.99% will be added to the Index

The corresponding DAILY PERIODIC RATES as of December 11, 2019 are:  
For Purchases, 0.0670959%  
For Balance Transfers, 0.0670959%  
For Cash Advances, 0.0677808%

**Index:** Prime Rate as of December 11, 2019 is 4.75%

# **Exhibit 2**



## TD Cash Secured Credit Card



**Build or repair your credit and earn Cash Back** on everyday purchases. Use it like any credit card to make purchases and earn rewards

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### What you get

#### Rewards details:

- **Earn 3% Cash Back on dining purchases**
- **Earn 2% Cash Back** at grocery stores<sup>1</sup>
- **Earn 1% Cash Back** on other eligible purchases\*

\*[Read terms and conditions](#) for important information about APRs, fees, eligible purchases, balance transfers and program details.


Apply at a TD Bank

Compare

### What is a secured credit card?

A secured credit card is a credit card that requires a security deposit, which is held as collateral in a savings account. The deposit in the savings account "secures" the credit line for the card.



A secured credit card helps you build or rebuild your  credit, whether that means growing your credit history or improving your credit score by making on-time payments. Establishing good credit is an important step to reaching financial goals, like buying a car or house, or paying for higher education.

Plus, with the TD Cash Secured Card, you can earn Cash Back on purchases\*, so you get the benefit of earning rewards while building credit.

## How it works

Grow your credit history or improve your credit score while earning rewards like Cash Back.

- **Your savings account secures your credit card**  
When you apply for the TD Cash Secured Card, you'll also open a TD Simple Savings account to hold your security deposit.<sup>2</sup> This means money in the savings account is held as collateral for the card
- **Your savings deposit is your credit line**  
Once approved for the secured card, you'll open a TD Simple Savings account and have 15 days to deposit funds. These funds will be your credit line. So if you deposit \$300, the limit on your card will be \$300
- **Your savings account will be frozen, so don't overfund it**  
Only deposit the amount you are approved for. If you are approved for \$300 and deposit \$700, your credit line will still be \$300

- **Once you fund your card, you'll receive it in the mail**



When your savings account is opened, funded and frozen, TD Bank will mail your new secured card to you. Activate it and start building your credit

- **Use it just like any credit card**  
Make purchases and earn rewards, all with the same convenience and security of a TD Bank Credit Card. Then, pay your bill each month

- **The key is to pay your balance on time each month**  
If you use and maintain the card and keep it in good standing, you may be eligible to graduate to an unsecured TD Bank Credit Card<sup>2</sup>

## Find out how to build or repair your credit



### Understanding your credit score & report

Learn about your credit score and what steps you can take to improve it

[Find out more](#)



### Building a good credit score

Learn how to build  improve your credit

[Find out more](#)




### Credit scores & reports interactive guide

Get information on your credit score, how it's calculated and how to protect it

[Find out more<sup>3</sup>](#)

## Rates and fees for TD Cash Secured Credit Card

Rates and fees	What you pay
Credit Line	\$300–\$5,000
Annual Percentage Rate (APR) for Purchases	24.49% variable APR
APR for Balance Transfers	24.49% variable APR
Balance Transfer Fee	\$5 or 3% of transfer whichever amount is greater
Minimum Interest Charge	\$1

Rates and fees	 What you pay
APR for Cash Advances	26.74% variable APR
Cash Advance Fee	\$10 or 5% of advance whichever amount is greater
Annual Fee	\$29 annual fee *
Foreign Transaction Fee	\$0
Late Payment	Up to \$37

**Need more information?**

Take a look at our [terms and conditions](#) or the [Personal Credit Card Agreement for TD Cash Secured Credit Card](#).

Benefits with your TD Cash Secured Card



Digital Wallet

Add your TD cards to your mobile device to simplify your online, in-store and in-app purchases



Visa Zero Liability<sup>4</sup>

Enjoy Visa security on purchases, plus protection against unauthorized charges

Find out how  Find out more<sup>3</sup>



### Instant credit card replacement

If your card is lost or stolen, get an immediate replacement at a TD Bank



### Contactless Payments

Learn more about the convenience and security of contactless payments

Find a TD Bank

Find out more

## Already have a TD Credit Card?

Manage your card, pay your bill, set up alerts, view and redeem rewards, check your credit score and more. [Get started](#)

## Apply for a TD Cash Secured Card

In person

Visit a TD Bank near you to apply and open a TD Simple Savings account.



Find a TD Bank

### Important Disclosures

[View the Personal Credit Card Agreement for TD Cash Secured.](#)

\*[Read important terms and conditions](#) for details about s, fees, eligible purchases, balance transfers and program details.

<sup>1</sup>Groceries purchased from superstores and/or warehouse clubs may only earn 1% Cash Back. Eligible purchases do not include purchases of any cash equivalents, money orders, and/or gift cards or reloading of gift cards.

<sup>2</sup>For details, read the [Personal Credit Card Agreement for TD Cash Secured](#), [important terms and conditions for TD Cash Secured](#), and [TD Simple Savings Account Guide](#).

<sup>3</sup>By clicking on this link you are leaving our website and entering a third-party website over which we have no control.

Neither TD Bank US Holding Company, nor its subsidiaries or affiliates, is responsible for the content of third party sites hyper-linked from this page, nor do they guarantee or endorse the information, recommendations, products or services offered on third party sites.

Third party sites may have different Privacy and Security policies than TD Bank US Holding Company. You should review the Privacy and Security policies of any third party website before you provide personal or confidential information.

<sup>4</sup>Visa's Zero Liability Policy does not apply to certain commercial card and anonymous prepaid card transactions or transactions not processed by Visa. Cardholders must take care in protecting their card and notify TD Bank immediately of any unauthorized use.

The Contactless Symbol and Contactless Indicator are trademarks owned by and used with permission of EMVCo, LLC

# **Exhibit 3**

Secured Card job aid

Rewards Structure:

TD Cash Secured Accounts opened prior to 04/23/2020: you earn three (3) Points for each one dollar (\$1) on Dining Purchases, two (2) Points for each one dollar (\$1) on Grocery Store Purchases, and one (1) Point for each one dollar (\$1) on other Purchases.

TD Cash Secured Accounts opened on and after 04/23/2020: you earn one (1) Point for each one dollar (\$1) on all eligible purchases.

Graduation:

We will begin automatic monthly reviews for eligibility for TD Cash Unsecured Credit card after you use and maintain your Secured credit card for 7 consecutive Billing Cycles. Graduation is not guaranteed for all accounts, and it will be determined based on your credit score at time of monthly review and your existing credit card account activity and payments with TD Bank.

Account Closure: Customers who wish to close the account can do so in two ways:

- 1) For accounts with a \$0 balance, funds will be released into the savings account in:
  - ~ 3-5 days from closure date for accounts with no pending transactions.
  - ~7-10 business days for accounts that have transactions/payments pending.
- 2) For accounts with a balance, funds will be released into the savings account in:
  - Customer using dedicated collateral savings linked to credit card to satisfy balance
    - ~5-7 days from closure date for accounts with no pending transactions.
    - ~7-10 business days for accounts that have transactions/payments pending.
  - Customer wants to use an account other than the dedicated collateral account linked to satisfy the balance
    - Instruct customer to call back after payment has posted to close the account.(agent will revert to opt 1)

Internal



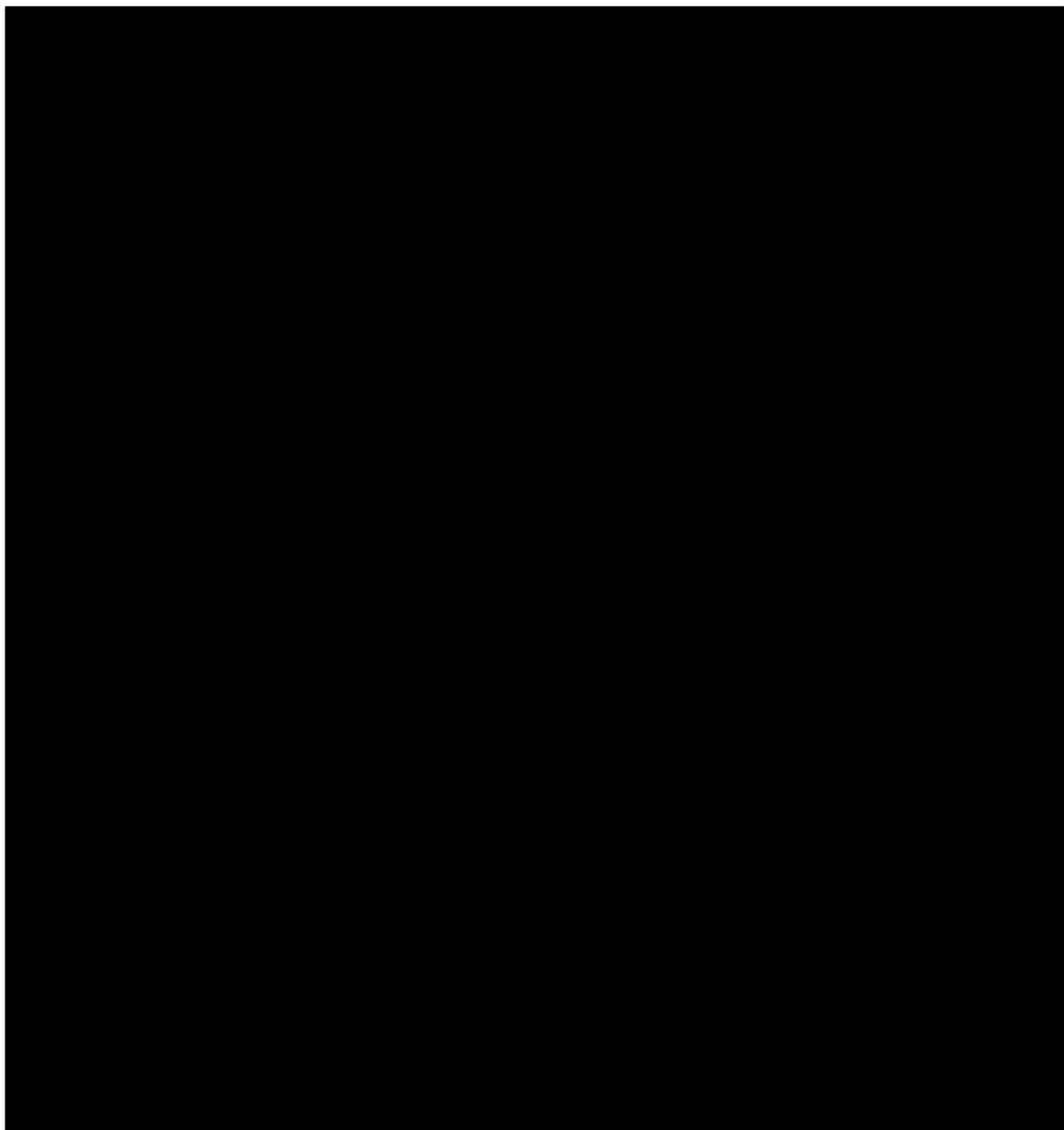
# **Exhibit 4**

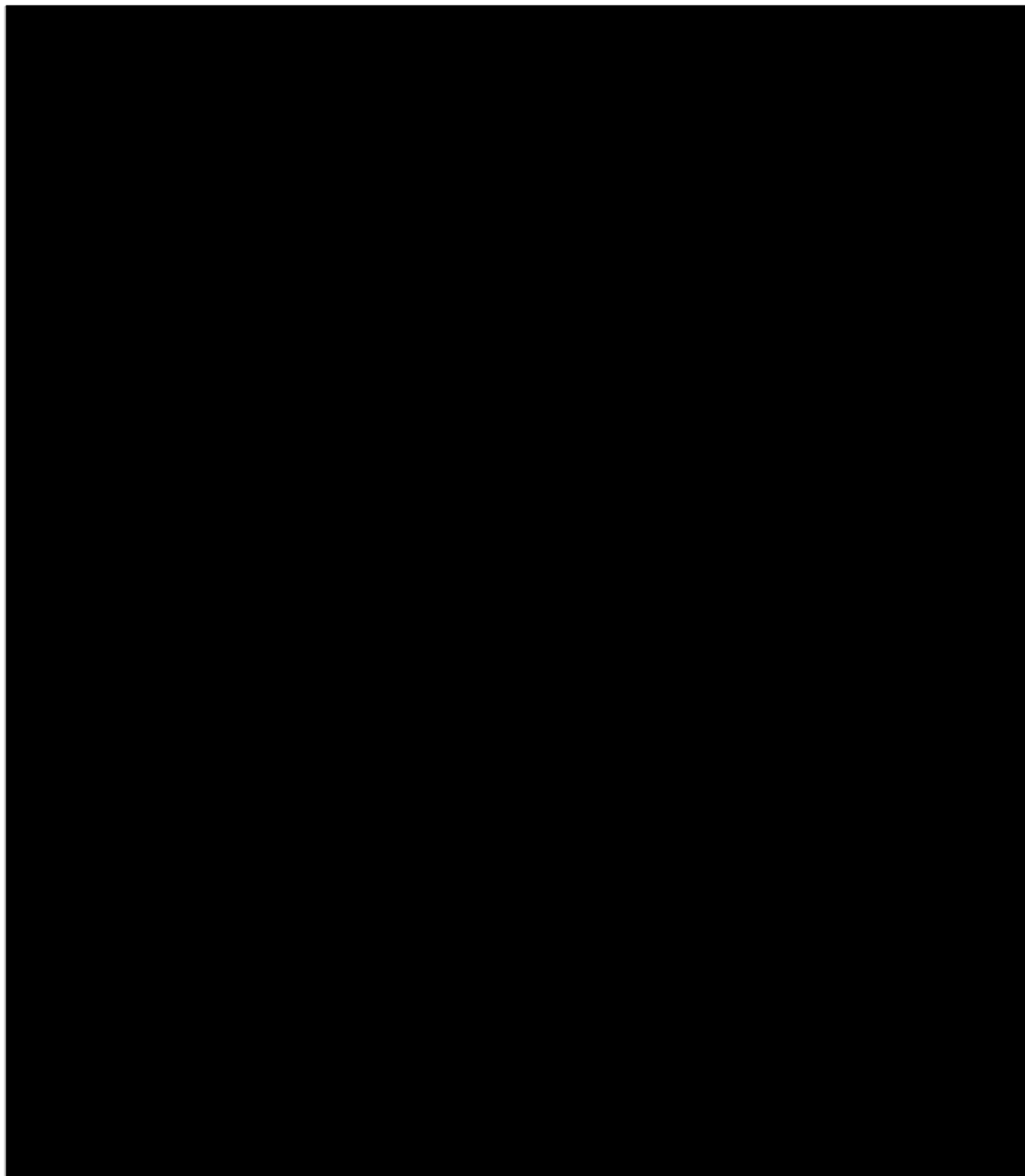


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<b>Manual Name</b>	<b>US Bankcard Secured Product Upgrade Strategy Manual</b>
<b>Business Unit</b>	<b>US Credit Cards &amp; Unsecured Lending Credit Management</b>
<b>Effective Date Begin</b>	<b>In Production as of May 25, 2015</b>
<b>Effective Date End</b>	<b>Currently in Production</b>

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# **Exhibit 5**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

NATALIE CAMPAGNA, GLORIA  
DEVAULT, AMANDA FARMER, PHILIP  
PAGLIARO, and YAAKOV ROZINER, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

TD BANK, N.A.,

Defendant.

Civil Action No. 1:20-cv-18533-RMB-SAK

**DEFENDANT’S RESPONSES TO PLAINTIFFS’  
FIRST INTERROGATORIES TO DEFENDANT TD BANK, N.A.**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Local Civil Rule 33.1, Defendant TD Bank, N.A. (“TD Bank”) hereby sets forth its responses and objections (the “Responses and Objections”) to Plaintiffs’ First Interrogatories to Defendant TD Bank, N.A. (“Interrogatories”), including the definitions and instructions therein.

TD Bank’s Responses are based solely on facts reasonably known to TD Bank at the time they are made. TD Bank reserves the right to supplement, amend, or otherwise modify these Responses and Objections. TD Bank also reserves the right to use or rely on, at any time, subsequently discovered information or information omitted from the Responses and Objections as a result of mistake, error, oversight, or inadvertence. Nothing in these Responses and Objections should be construed as waiving any rights or obligations that otherwise might be available to TD Bank, nor should TD Bank’s answering of any Interrogatory be deemed an admission of the existence, relevance, authenticity, or admissibility in evidence of the information requested or these Responses.

TD Bank is prepared to meet and confer with Plaintiffs concerning its Responses to these Interrogatories.

### **GENERAL OBJECTIONS**

1. TD Bank objects to the Interrogatories to the extent they purport to require the provision of information that is protected by the attorney-client privilege, the attorney work-product doctrine, the common interest privilege, the bank examination privilege, the confidential supervisory privilege, and/or any other applicable privilege, immunity or protection, or the disclosure of which is not permitted by federal, state, or any other applicable law or regulation. Specific objections on the grounds of privilege are provided for emphasis and clarity only, and the absence of such a specific objection shall not be interpreted as evidence that TD Bank does not object to an Interrogatory on the basis of an applicable privilege, immunity, or protection. TD Bank will not provide any information or produce any documents that are privileged or otherwise protected from discovery by the attorney-client privilege, the attorney work-product doctrine, the common interest privilege, the bank examination privilege, the confidential supervisory privilege, and/or other applicable privilege or immunity, or the disclosure of which is not permitted by federal, state, or any other applicable law or regulation, and will redact any such information that is included in documents produced in response to these Interrogatories.

### **INSTRUCTIONS**

1. TD Bank objects to the Instructions to the extent they purport to broaden the obligations required by, or are otherwise inconsistent with, the Federal Rules of Civil Procedure, the Local Rules of the District of New Jersey, or any other applicable rule or law.

2. TD Bank objects to Instruction No. 5 as overly broad and unduly burdensome, and not relevant to any party's claim or defense to the extent it purports to require TD Bank to supplement its Responses until the time of hearing or trial in this action. TD Bank also objects to

Instruction No. 5 to the extent it calls for documents not within its possession, custody, or control as courts have construed those terms pursuant to Federal Rule of Civil Procedure 34(a). TD Bank will supplement its Responses based on information or documents that are within its possession, custody, or control (as courts have construed those terms pursuant to Federal Rule of Civil Procedure 34(a)) and of which it becomes aware between the time it serves these Responses and Objections and the close of factual discovery in this case.

3. TD Bank objects to Instruction No. 6 as overly broad and unduly burdensome to the extent it purports to impose on TD Bank an obligation to provide information on a privilege log that exceeds its obligations under Federal Rule of Civil Procedure 26(b)(5)(A) and the terms set forth in the Stipulated Order Regarding Discovery of Electronically Stored Information (the “ESI Protocol”), Dkt. 44. In responding to the Interrogatories, TD Bank will provide information on a privilege log pursuant to the terms set forth in the ESI Protocol.

### **TIME FRAME OF INTERROGATORIES**

1. TD Bank objects to the Time Frame of Interrogatories as overly broad and unduly burdensome to the extent it calls for the identification of information or production of documents from January 1, 2010 to the present. In responding to the Interrogatories, TD Bank will construe the Relevant Time Period to be the time period from May 1, 2015 to the present (the “Relevant Time Period”), as May 2015 is the month during which TD Bank introduced an automated review process to review TD Cash Secured Card holders’ eligibility for graduation to an unsecured credit card.

### **DEFINITIONS**

1. TD Bank objects to the definitions of “You,” “Your,” and/or “Defendant” as overly broad and unduly burdensome, including to the extent that they purport to include its

“former officers, directors, employees, attorneys, agents, and representatives,” and to the extent it purports to include “any affiliated entities, including but not limited to any non-profit entities devoted in whole or in part to financial education or financial literacy of bank customers.” TD Bank also objects to the definitions of “You,” “Your,” and/or “Defendant” as vague and ambiguous, in particular to the extent the terms “non-profit entities devoted in whole or in part to financial education or financial literacy of bank customers” are not defined. TD Bank further objects to the definitions of “You,” “Your,” and/or “Defendant” to the extent they call for the identification of information or production of documents not in the possession, custody, or control of TD Bank. In responding to the Interrogatories, TD Bank will consider “You,” “Your,” and/or “Defendant” to mean TD Bank.

2. TD Bank objects to the definition of “Documents” as overly broad and unduly burdensome. In responding to the Interrogatories, TD Bank will consider “Documents” to mean any Communications, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.

3. TD Bank objects to the definition of “Communication” as overly broad and unduly burdensome, including to the extent it purports to include “any oral utterance made, heard, or overheard to another person or persons, whether in person or by telephone or otherwise, as well as every written document and every other mode of intentionally conveyed meaning.” In responding to the Interrogatories, TD Bank will consider “Communication” to mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

4. TD Bank objects to the definition of “Identify,” when referring to a person or entity, as overly broad and unduly burdensome, including to the extent it purports to include



giving the person or entity's telephone number. TD Bank also objects to the definition of "Identify," when referring to a person or entity, to the extent it seeks information not within TD Bank's possession. In responding to the Interrogatories, TD Bank will consider "Identify," when referring to a person or entity, to mean to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

5. TD Bank objects to the definition of "Identify," when referring to a document, as overly broad and unduly burdensome, including to the extent it purports to include stating "the title of the document" and "the current custodian of the document." TD Bank also objects to the definition of "Identify," when referring to a document, to the extent it seeks information not within TD Bank's knowledge. In responding to the Interrogatories, TD Bank will consider "Identify," when referring to a document, to mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

6. TD Bank objects to the definition of "Personal Credit Card Agreement" and "Agreement" as overly broad and unduly burdensome, including to the extent it purports to include "all versions of the written account agreement applicable to TD Cash Secured credit card customers, including any and all amendments, revisions, and/or modifications thereto, and all related documents which incorporate the Personal Credit Card Agreement or are incorporated thereby." In responding to the Interrogatories, TD Bank will consider "Personal Credit Card Agreement" and "Agreement" to mean the written Personal Credit Card Agreement between TD Bank and TD Cash Secured Card holders (including the TD CashSM Secured Important Credit Card Terms and Conditions), the Interest Rate and Fee Schedule to that Agreement, and the





relevant to any party’s claim or defense, and outside the scope of Judge King’s order limiting discovery in this case to “whether there was an automatic *review* of the [TD Cash Secured Card] account.” Tr. at 9:22-23 (emphasis added); *see also id.* at 10:8-16 (noting that Judge Bumb “declined to move this case forward on ... [a] promise to automatically upgrade accounts after seven months without default ... so there should be no discovery in that area”). TD Bank also objects to this Interrogatory as overly broad and unduly burdensome, including to the extent it requires TD Bank to describe “each instance” in which TD Bank did not graduate a TD Cash Secured Card holder who maintained their account without default for seven months, and to state “for each occurrence: the date the decision was made” and “the criteria used to make such a determination.”

Subject to and without waiving the foregoing objections, TD Bank states that, since introducing the automated review process in May 2015, TD Bank evaluates TD Cash Secured Card holders each month [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



# **Exhibit 6**



**Personal**

- Online Banking
- Mobile Banking
- Checking
- Savings and Money Market
- CDs
- IRAs
- Credit Cards**
- Debit Cards
- Prepaid Cards
- Mortgage
- Home Equity Loans & Lines
- Personal Loans
- Foreign Exchange Services
- Cross-Border Banking (U.S. & Canada)
- Private Client Banking & Lending
- Financial Tips and Tools
- Small Business
- Commercial

## You May Be Eligible for a TD Unsecured Credit Card

If you currently have a TD Secured Credit Card account and are interested in an unsecured personal TD Credit Card, you may do so by completing an unsecured personal [credit card application](#).

### Here's How It Works

If you have held a TD Secured Credit Card account in good standing for at least 24 consecutive billing cycles, you may apply for an unsecured personal TD Credit Card.

Simply [complete an application](#) for any of our current unsecured personal credit cards. Upon receipt of your application, we will review your TD Secured Credit Card account to ensure it has been open and in good standing for at least 24 consecutive billing cycles. We will then review your application in its entirety to determine your creditworthiness in accordance with our standard procedures for review of unsecured personal credit card applications, including, but not limited to, obtaining a credit report to determine your eligibility.

Our decision to approve or decline your application for an unsecured personal TD Credit Card will have no impact on your existing TD Secured Credit Card account. Your existing TD Secured Credit Card account will remain open and available for use, subject to the terms outlined in your TD Secured Credit Card Agreement, unless you request its closure\*.

### To Apply for a TD Unsecured Credit Card

You can [apply online](#), visit your [nearest TD Bank location](#) or simply call 1-888-561-0608.

\*To close your TD Secured Credit Card account, please call 1-888-561-8861.