



6440 Gibson S.E.
P.O. Box 80570
Albuquerque, NM 87198-0570
(505) 254-4369
(800) 880-5328

ARBITRATION AND WAIVER OF CLASS ACTION AGREEMENT

Agreement to Arbitrate. This Arbitration and Waiver of Class Action Agreement (“Arbitration Agreement”) is entered into pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (“FAA”) and shall be interpreted and enforced in accordance with the FAA to the fullest extent possible notwithstanding any state law to the contrary. You and Kirtland Federal Credit Union (herein, “Kirtland Credit Union”, “Credit Union,” “we” or “us”) agree that upon the election of either party, any Claims (as defined herein) between you and us will be resolved by binding arbitration, and not through litigation in any court (except for matters brought in small claims court). The term “account” means any one or more share or deposit accounts you have with us.

Opt-Out Notice. YOU HAVE A RIGHT TO OPT OUT OF THIS ARBITRATION AGREEMENT, AS DISCUSSED BELOW. UNLESS YOU OPT OUT OF ARBITRATION, YOU AND WE ARE WAIVING THE RIGHT TO HAVE OUR DISPUTE HEARD BEFORE A JUDGE OR JURY, OR OTHERWISE TO BE DECIDED BY A COURT OR GOVERNMENT TRIBUNAL. YOU AND WE ALSO WAIVE ANY ABILITY TO ASSERT OR PARTICIPATE IN A CLASS OR REPRESENTATIVE BASIS IN COURT OR IN ARBITRATION. ALL DISPUTES, EXCEPT AS STATED BELOW, MUST BE RESOLVED BY BINDING ARBITRATION WHEN EITHER YOU OR WE REQUEST IT.

Claims Subject to Arbitration. Claims or disputes between you and us arising out of, affecting, or relating to your accounts, the services or products we provide to you, or your relationship with us (each, a “Claim”), even if the Claim(s) are threatened, arise out of, affect or relate to conduct that occurred prior to the Effective Date, are subject to arbitration, unless you opt out as described below. Any Claims arising from or relating to this Arbitration Agreement are also included. Claims are subject to arbitration, regardless of what theory they are based on or whether they seek legal or equitable remedies. Arbitration applies to any and all such Claims.

This Arbitration Agreement does not prevent you from submitting any issue relating to our services or products, or your accounts with us, for review or consideration by a federal, state, or local governmental agency or regulatory entity, nor does it prevent such agency or entity from seeking relief on your behalf. Additionally, you and we have the right to pursue a Claim in a small claims court instead of arbitration, if the Claim is in that court’s jurisdiction and proceeds on an individual basis.

Initiating Arbitration. Either the Credit Union or you can make the decision to resolve a specific Claim through arbitration, even if either party already filed a lawsuit in court based on the Claim, by: (1) filing in court a motion to compel arbitration; (2) following the Notice of Arbitration process below; or (3) initiating an arbitration proceeding against the other party.

Notice of Arbitration. A party who intends to seek arbitration must first send a written notice of the dispute to the other party (“Notice of Arbitration”). The Notice of Arbitration shall be deposited in the U.S. mail, postage prepaid and addressed to the party at its mailing address. Our current mailing address for Notice of Arbitration is: Kirtland Credit Union, Attn: Arbitration Matters, c/o Compliance, 6440 Gibson Blvd SE, Albuquerque, NM 87108. You are responsible for notifying us of any name or address change. We are only required to attempt to communicate with you at the most recent address you have provided to us. If you have agreed to receive other notices from us electronically, then we may send you a Notice of Arbitration electronically. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought.

Effective Date. This Arbitration Agreement will become effective 31 days after we have provided it to you. This is referred to as the “Effective Date”. However, you have the option to opt-out of this Arbitration Agreement prior to that date. If you choose to opt-out, this agreement will not become effective. The specific procedure to opt-out of this Arbitration Agreement is described in the “Opt-Out Process” section, below.

Opt-Out Process. You have the right to opt-out of this Arbitration Agreement, provided you notify the Credit Union in writing of your intent to do so within 30 days after you first receive this Arbitration Agreement. Your opt-out will not be effective and you will be deemed to have consented and agreed to the Arbitration Agreement unless your notice of intent to opt out is received by the Credit Union in writing at one of our branches, via mail or other delivery service to Kirtland Credit Union, Attn: Arbitration Matters, c/o Compliance, 6440 Gibson Blvd SE, Albuquerque, NM 87108, via email to ArbitrationOptOut@kirtlandcu.org, or via secure message through online or mobile banking, within such 30-day time period. Your notice of intent to opt out can be a letter that is signed by you stating “I elect to opt out of the Arbitration Agreement” or any words to that effect. If you fail to opt-out within this 30-day time period, this Arbitration Agreement will apply without limitation, regardless of whether 1) your account is closed; 2) you pay us in full any outstanding debt you owe; or 3) you file for bankruptcy. In the event you opt-out, it shall not affect other terms and conditions of your account agreement or your relationship with the Credit Union.

Class Action Waiver. YOU AND WE AGREE NOT TO:

1. SEEK TO PROCEED ON ANY CLAIM IN ARBITRATION AS A CLASS CLAIM OR CLASS ACTION OR OTHER COMPARABLE REPRESENTATIVE PROCEEDING;
2. SEEK TO CONSOLIDATE IN ARBITRATION ANY CLAIMS INVOLVING SEPARATE CLAIMANTS (EXCEPT FOR CLAIMANTS WHO ARE ON THE SAME ACCOUNT), UNLESS ALL PARTIES AGREE;
3. BE PART OF, OR BE REPRESENTED IN, ANY CLASS ACTION OR OTHER REPRESENTATIVE ACTION BROUGHT BY ANYONE ELSE; NOR
4. SEEK ANY AWARD OR REMEDY IN ARBITRATION AGAINST OR ON BEHALF OF ANYONE WHO IS NOT A NAMED PARTY TO THE ARBITRATION.

Severability. If the terms relating to class or representative action proceedings in this Arbitration Agreement are legally unenforceable for any reason with respect to a Claim, then this Arbitration Agreement will be inapplicable to that Claim, and the Claim will instead be handled through litigation in court rather than by arbitration. Further, any such litigation shall be brought in the county in which the Credit Union is located. However, if any terms of this Arbitration Agreement not relating to class or representative action proceedings are legally unenforceable, the remaining provisions in this Arbitration Agreement will remain fully enforceable.

Parties to Arbitration. Claims in arbitration will proceed on an individual basis, on behalf of the named parties only. No arbitrator shall have authority to entertain any Claim on behalf of a person who is not a named party, nor shall any arbitrator have authority to make any award for the benefit of, or against, any person who is not a named party. Arbitration applies whenever there is a Claim between you and us. If a third party is also involved in a Claim between you and us, then the Claim will be decided with respect to the third party in arbitration as well, and it must be named as a party in accordance with the rules of procedure governing the arbitration. No award or relief will be granted by the arbitrator except on behalf of, or against, a named party.

For purposes of arbitration, "you" includes any person who is listed on your account or the product(s) or service(s) we provide to you, and "we" or the "Credit Union" includes Kirtland Federal Credit Union and all third parties who are regarded as agents or representatives of ours in connection with a Claim. (If we assign your account to an unaffiliated third party, then "we" includes that third party.) The arbitration may not be consolidated with any other arbitration proceeding.

Arbitration Process and Location. The party filing a Claim in arbitration must select either: JAMS or the American Arbitration Association ("AAA") as the arbitration administrator. That organization will apply its consumer code of procedures in effect at the time the arbitration claim is filed. If there is a conflict between that code of procedures and this arbitration provision and/or this Arbitration Agreement, this arbitration provision and this Arbitration Agreement will control. In the event that JAMS or the AAA is unable to handle the Claim for any reason, then the matter shall be arbitrated instead by a neutral arbitrator selected by agreement of the parties (or, if the parties cannot agree, selected by a court in accordance with the FAA), pursuant to the AAA rules of procedure.

The arbitrator will decide the Claim in accordance with all applicable law, including recognized principles of equity and statutes of limitations, and will honor all claims of privilege recognized by law. The arbitrator will have the power to award to a party any damages or other relief provided for under applicable law. A single arbitrator will conduct the arbitration and will use applicable substantive law, including the Uniform Commercial Code, consistent with the FAA and the applicable statutes of limitations or conditions precedent to suit, and will honor claims of privilege recognized at law. The arbitrator can award damages or other relief provided for by law to you or us, but not to anyone else. The arbitrator's authority is limited to the Claims between you and us.

Rules and forms may be obtained from, and Claims may be filed with, JAMS (1-800-352-5267 or www.jamsadr.com) or the AAA (1-800-778-7879 or www.adr.org). A copy of the applicable rules can also be requested in person in a Credit Union branch.

Arbitration hearings will take place in the federal judicial district that includes your address at the time the Claim is filed, unless the parties agree to a different place.

Arbitration Costs and Fees; Attorneys' Fees and Costs. We will pay any costs that are required to be paid by us under the arbitration administrator's rules of procedure. Even if not otherwise required, we will reimburse you up to \$500 for any initial arbitration filing fees you have paid. We will also pay any fees of the arbitrator and arbitration administrator for the first two days of any hearing. If you win the arbitration, we will reimburse you for any fees you paid to the arbitration organization and/or arbitrator. All other fees will be allocated according to the arbitration administrator's rules and applicable law. If you consider that you are unable to afford any fees that would be yours to pay, you may request that we pay or reimburse them, and we will consider your request in good faith.

You are responsible for any attorneys' fees you incur in the arbitration. However, if you prevail on your Claim in arbitration, we will pay your reasonable attorneys' fees.

Appeal. The arbitrator's decision will be final and binding on the parties. A party can file a written appeal to the arbitration administrator within 30 days of award issuance. The appeal must request a new arbitration in front of three neutral arbitrators designated by the same arbitration administrators. The panel will reconsider all factual and legal issues, following the same rules of procedure, and will make decisions based on majority vote. Any final arbitration award will be binding on the named parties and enforceable by any court having jurisdiction.

Frivolous Claims. If the arbitration finds that either the substance of your Claim or the relief you seek is frivolous or brought for an improper purpose (as measured by the standards set forth in the Federal Rule of Civil procedure 11(b)), then the payment of all fees will be governed by the arbitration administrator's rules and applicable law. In that case, you agree to reimburse us for all monies previously disbursed by us that are otherwise your obligation to pay under the arbitration administrator's rules and applicable law. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based.

Modifications to this Arbitration Agreement. We reserve the right to modify this Arbitration Agreement, upon providing you 30 days' notice prior to any changes taking effect and will provide you the opportunity to opt out of those changes. If we make any future change to this Arbitration Agreement, other than a change to our address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to our address for Notice of Arbitration, in which case the changes will not apply to you; however, this Arbitration Agreement, as in effect immediately prior to the changes you rejected, will survive.

Confidentiality. We each agree to keep the arbitration proceedings, all information exchanged between us, and any settlement offers confidential, unless otherwise required by law or requested by law enforcement or any court or governmental body. However, we may each disclose these matters, in confidence, to our respective accountants, auditors, and insurance providers.

Active Military Members and Dependents. Any terms or conditions herein contrary to the provisions of the Military Lending Act ("MLA") are void for the period(s) during which you are a covered borrower under the MLA.