



# Ditch Witch® Platinum Card Agreement

## IMPORTANT INFORMATION: ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

Federal law requires us to obtain, verify, and record information that identifies everyone who opens an account. This is required to help in the government's fight against terrorism and money laundering activities. This also protects you against fraud.

This means that when we process the application we are required to ask for your business name, address, federal tax ID number, and other information that will allow us to verify the identity of the business.

If the nature of your business requires us to look for your personal guaranty, in addition to your business' credit bureau report, a personal credit bureau report will be obtained, and we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**GENERAL:** Each business entity submitting the application for a Ditch Witch Platinum Card Account ("Account") applies for an Account with HSBC Retail Credit (USA) Inc. In this Agreement, the words "you" and "yours" refer to the business entity applying for an account, the words "we", "us" and "our" refer to HSBC Retail Credit (USA) Inc. and the word "Seller" refers to Ditch Witch. Any person using the Account with the express or implied permission of you ("Authorized User") is bound by the terms of this Agreement.

If we accept your application to open an Account, we will extend credit and make advances so that you may purchase goods and services for business purposes from the Seller.

**ACCEPTANCE OF AGREEMENT:** The use of your Account by you or an Authorized User, means you accept this Agreement.

**PROMISE TO PAY:** You agree to pay in U.S. dollars for all purchases, late charges, over-limit fees, return check charges, and other charges or fees under this Agreement incurred by you or an Authorized User plus collection costs, including court costs and reasonable attorney fees.

**BUSINESS PURPOSE:** You represent that (1) you are (a) a valid business entity in good standing under the laws of the jurisdiction of your organization; or (b) a qualified religious, educational or other non-profit entity; or (c) a government agency or instrumentality; (2) this Application and Agreement is executed by a duly authorized representative on your behalf; and (3) this Account will be used for business purposes only as defined in the Truth-in-Lending Act and Regulation Z and that purchases under this Account are not subject to the Truth-in-Lending Act or state statutes governing consumer credit purchases for personal, family or household purposes.

**CREDIT LINE:** You agree that we may establish a credit line for your convenience and that your credit purchases, at any one time, will not exceed the amount of your credit line established by us. You will be advised of your credit line when your Account is approved. You agree that we may terminate or reduce your credit line at any time.

**PAYMENTS:** You agree that any payment may be returned to you if your check is (i) not drawn on U.S. dollars on deposit in the U.S.; (ii) missing a signature; (iii) drawn with different numeric and written amounts; (iv) endorsed with a restrictive endorsement; (v) postdated; (vi) drawn on a credit account issued by us or our affiliates; or (vii) not paid on presentment. Payments received after 1:00 pm will be credited on the next business day. Payment checks must be accompanied by the remittance portion of your billing invoice and your account number must be written on the check; otherwise your payment may not be credited to your account and it may be returned to you. If you send us a communication concerning a disputed debt, including an instrument tendered as full satisfaction of a debt such as a payment marked "payment in full" or similar notation, send it only to: P.O. Box 4160, Carol Stream, IL 60197-4160.

**REPAYMENT TERMS:** You agree to pay a Minimum Monthly Payment in an amount (rounded to the next highest dollar) which is the greater of: (1) 3% of the balance as shown on your billing statement; or (2) \$25. When your balance is less than \$25, the Minimum Monthly Payment will be your balance. You may at any time pay the entire New Balance shown on your billing statement, but each month you must pay at least the Minimum Monthly Payment by the payment due date indicated on such billing statement.

**FINANCE CHARGES:** Your account has a variable rate feature and therefore the daily periodic rate and corresponding Annual Percentage Rate may change monthly. Finance Charges for each billing cycle equal the Average Daily Balance, including current purchases, times the Daily Periodic Rate times the number of days in the billing period. The Annual Percentage Rate will be 8.9% above the highest Prime Rate (and the Daily Periodic Rate will be 1/365<sup>th</sup> of this figure) as published in *The Wall Street Journal* Money Rates Section on the first/last day of the calendar month which immediately precedes the Change Date for that billing period. If the first/last day of the month is not a business day, we will use the Prime Rate in effect on the next business day thereafter. The Annual Percentage Rate for the Default Rate will be 12.9% above the Prime Rate disclosed above. The Average Daily Balance is the total of the outstanding Balances for all days in the billing period divided by the number of days in that billing period. The outstanding Balance is (1) the unpaid balance, including new purchases, plus (2) any unpaid Finance Charges; and other Charges and fees, if any, less (3) all credits and payments received in the billing period on or before that billing date. If the previous balance shown on the monthly statement is zero and you pay the new balance in full by the payment due date, you will not have to pay finance charges on the new balance amount.

**LATE PAYMENT FEE:** If you fail to pay the Minimum Monthly Payment when due, you agree to pay a Late Payment Fee of \$35.

**PERSONAL GUARANTOR:** Guarantor waives any and all notices regarding this Guaranty and the Account. Guarantor consents to and waives any and all notices regarding the release of the whole or any part of the indebtedness, the settlement or compromise of differences, the acceptance or release of security or any other form of obligation for the Company's indebtedness and anything whatsoever, whether or not specified in this paragraph, which may be done or waived by or between us and the Company or the Company's representatives or other creditors in a bankruptcy proceeding or under any other circumstances. The obligation of guarantor is primary and unconditional, and covers all existing and future indebtedness of the Company to us. This obligation shall be enforceable before or after proceeding against the Company or against any security held by us and shall be effective regardless of the solvency or insolvency of the Company at any time, the extension or modification of the indebtedness of the Company by operation of law, or the

subsequent incorporation, reorganization, merger, or consolidation of the Company, or any other change in the Company. This Guaranty does not create an obligation to us to extend or continue to extend credit to Company. Our records relating to the Account shall be admissible in evidence in any action or proceeding involving this Guaranty and the records shall be prima facie proof of the items therein set forth. This Guaranty shall for all purposes be deemed to be made in and shall be governed by the laws of the State of Delaware. This Guaranty shall be binding upon Guarantor, his or her legal representatives, and assigns and shall inure to the benefit of us and our successors and assigns. Guarantor acknowledges that he or she is an owner of, or partner in, as applicable, the Company and further acknowledges receipt of consideration for this Guaranty.

**APPLICATION OF PAYMENTS:** We may apply your payments in any order determined by us.

**SECURITY:** (Except in Montana & New York) You are giving us and we are retaining a purchase money security interest under the Uniform Commercial Code in the goods being purchased under this Agreement until the debt for the goods is paid in full. This permits us, under certain circumstances as provided by law, to take back, or repossess, the goods if you default under the terms of this Agreement.

**DEFAULT:** The following are events of default under this Agreement:

- You do not pay any payment when due.
- You make any false or misleading statement on your credit application or fail to supply us with updated financial statements within 30 days of our request.
- You file for bankruptcy or a bankruptcy petition is filed against you.
- Any natural person guaranteeing payment of this Agreement dies, declares bankruptcy or has a bankruptcy petition filed against him or her.
- There is an event that occurs which in our reasonable discretion causes the prospect of payment by you to be significantly impaired.
- The goods securing this Agreement are lost or destroyed.
- You breach any other terms of this Agreement.

In the event of default, we may demand the entire unpaid balance be paid immediately. If you are in default and we refer your Account to an attorney and/or collection agency for collection, we may charge you our collection costs, including court costs and reasonable attorneys' fees, when and as permitted by applicable law. We also reserve our rights and remedies pertaining to repossession and resale of any repossessed goods as provided under applicable law. We agree to pay you a surplus, if any, resulting from a resale of repossessed goods, and you agree to pay us a deficiency, if any, when permitted by law.

All liabilities of the Company and of the Guarantor shall mature immediately upon the insolvency of the Company, its inability to meet its obligations as they become due, the appointment of a receiver, custodian or trustee for the Company or any of its property, the filing of a voluntary or involuntary petition for relief in bankruptcy, reorganization, or arrangement, the making of an assignment for the benefit of creditor, or the calling of a meeting of creditors by the Company, or if any of the foregoing events shall occur with respect to any Guarantor.

**ARBITRATION:** Any claim, dispute, or controversy between you and us (whether based upon contract; tort; intentional or otherwise; constitution; statute; common law; or equity and whether pre-existing, present or future), including initial claims, counter-claims, cross-claims and third party claims, arising from or relating to this Agreement or the relationships which result from this Agreement, and except as provided below, the validity or enforceability of this arbitration clause, any part thereof or the entire Agreement ("Claim"), shall be resolved, upon the election of you or us, by binding arbitration pursuant to this arbitration provision and the applicable rules or procedures of the arbitration administrator selected at the time the Claim is filed. The party initiating the arbitration proceeding shall have the right to select one of the following arbitration administrators (the "Administrator"): the National Arbitration Forum ("NAF") or the American Arbitration Association ("AAA"). The arbitrator shall be a lawyer with more than ten years experience or a retired or former judge. We agree not to invoke our right to arbitrate an individual Claim you may bring in small claims court or an equivalent court, if any, so long as the Claim is pending only in that court. The rules and forms of the NAF and AAA may be obtained by writing to these organizations at the addresses and websites listed below. Our address for service of process under this provision is HSBC Retail Credit (USA) Inc., c/o HSBC Business Solutions, P.O. Box 4160, Carol Stream, IL 60197-4160.

Any participatory arbitration hearing that you attend will take place in the city nearest to your residence or your primary place of business where a federal district court is located or at such other location as agreed by the parties. The parties shall bear the expense of their respective attorneys' fees, except as otherwise provided by law.

This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1 - 16 (the "FAA"). The arbitrator shall apply applicable substantive law consistent with the FAA and provide written reasoned findings of fact and conclusions of law. Judgment upon the award may be entered in any court having jurisdiction. The arbitrator's award will be final and binding except for: (a) any appeal right under the FAA; and (b) any appeal of Claims involving more than \$100,000. For such Claims, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider de novo (i.e., in its entirety) any aspect or all aspects of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs (i.e., the amounts owed to the Administrator and the arbitrators), regardless of its outcome. However, we will consider in good faith any reasonable request for us to bear up to the full costs of the appeal.

This arbitration agreement shall survive termination of your Account as well as the repayment of all amounts borrowed hereunder. If any portion of this arbitration agreement is deemed invalid or unenforceable under any law or statute consistent with the FAA, it shall not invalidate the remaining portions of this arbitration agreement or the Agreement. In the event of a conflict or inconsistency between the rules and procedures of the Administrator and this arbitration agreement, this arbitration agreement shall govern. Notwithstanding any language in this arbitration provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any organization that has in place a formal or informal policy that is inconsistent with and purports to override the terms of this arbitration provision, including the Class Action Waiver Provision defined below. No class actions or private attorney general actions in court or in arbitration or joinder or consolidation of any Claim with the claim of any other person are permitted in arbitration without the written consent of you and us. The validity and the effect of the preceding sentence (herein referred to as the "Class Action Waiver Provision") shall be determined exclusively by a court and not by the Administrator or any arbitrator. Neither the Administrator nor any arbitrator shall have the power or authority to waive, modify or fail to enforce the Class Action Waiver Provision, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable.

**THE PARTIES ACKNOWLEDGE THAT THEY HAD A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY, BUT WILL NOT HAVE THAT RIGHT IF EITHER PARTY ELECTS ARBITRATION. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO LITIGATE SUCH CLAIMS IN A COURT BEFORE A JUDGE OR JURY UPON ELECTION OF ARBITRATION BY EITHER PARTY.**

You may contact, obtain the arbitration rules of, or file a Claim with NAF or AAA as follows:

National Arbitration Forum	American Arbitration Association
P.O. Box 50191	1150 Connecticut Ave, NW, 6 <sup>th</sup> Floor
Minneapolis, MN 55405	Washington, DC 20036-4104
www.arb-forum.org	www.adr.org
Code of Procedure	Commercial Dispute
Resolution Procedures	Rules and Procedures

As used in this arbitration provision, the term "we", "us", and "our" shall mean HSBC Retail Credit (USA) Inc., its parents, subsidiaries, affiliates, predecessors, successors, assigns, and each of their officers, directors and employees.

**CHANGE OF TERMS:** We may change or terminate any terms, conditions, services or features of your Account or this Agreement (including increasing your late charges) at any time. We may also add new terms, conditions, services or features to your Account or this Agreement. We may impose any change in terms or any new terms on your outstanding balance as well as on subsequent transactions and balances. To the extent required by law, we will notify you in advance of any change in terms or any new terms by mailing a notice to you at your address as shown on our records.

**UPDATED FINANCIAL INFORMATION:** Upon request, you agree to promptly give us accurate business and personal financial statements.

**CREDIT INVESTIGATION:** You give us the right to investigate your business and/or personal credit history, as applicable. You authorize us to furnish information about the Account to credit reporting agencies and others who may lawfully receive the information including our affiliates.

**LIABILITY FOR UNAUTHORIZED USE:** You agree that this Agreement controls all purchases made on this Account from the Seller by you or any Authorized User. You will promptly notify us, in writing, at the address indicated on your monthly statement of the loss, theft, or unauthorized use of this Account. Except as provided below, you will not be responsible for any unauthorized purchases made after we receive written notice from you. You agree to promptly review your monthly statements and notify us, in writing, at the address indicated on your statement of any errors or unauthorized purchases which are contained on the statement. If you do not notify us, in writing, of an error or unauthorized purchase within 60 days of receipt of the statement on which the information is contained, the statement will be presumed to be correct and all purchases contained on the statement will be presumed to be authorized.

**LIABILITY FOR USE:** If we do not deliver a credit card that may be used to access an account or cards are issued in the name of the business entity only then you acknowledge that you are agreeing to be liable for all purchases charged to your Account by any person providing your account number to a Seller. You agree that you will keep your account number confidential, and notify us immediately if you have any reason to suspect that anyone other than your officers, employees, or agents you have authorized to use the Account have obtained access to your account number.

**CANCELLATION OF ACCOUNT:** We and you have the right to cancel this Agreement/Account, as it relates to future purchases, at any time without default. You, of course, remain obligated to pay for all purchases made prior to cancellation and the security interest in goods purchased under this Agreement continues in full force and effect.

**CANCELLATION OF CARD:** You may cancel the Card of an Authorized User by notifying us, in writing, at the address indicated on your monthly statement. You will not be responsible for any unauthorized purchase after we receive written notice from you.

**USE OF DATA:** Notwithstanding any other verbal or written communications or representations to the contrary, the Company and all Users agree that we or our servicers or assigns can collect and use data concerning the Company, Authorized Users, this application and transactions involving your Account and can sell or transfer such data to our affiliates, servicers or assigns, except as provided by law. You may direct us not to share with our affiliates or subsidiaries certain information (other than transactions or experience information) about you by writing to us at HSBC Business Solutions, P.O. Box 4160, Carol Stream, IL 60197-4160.

**ASSIGNMENT:** You agree that we may sell, assign or transfer our rights to your Account without written notice. You may not sell, assign, participate or transfer your rights under this Agreement without our prior written consent.

**MONITORING PRACTICES:** You agree that our supervisory personnel may listen to and record telephone calls between you and our representatives in order to evaluate the quality of our service to you and other cardmembers.

**ENTIRE AGREEMENT:** This is our entire Agreement and no oral changes can be made.

**CHOICE OF LAW:** This Agreement is governed by the laws of the State of Delaware.

**NOTICE FOR OHIO RESIDENTS:** The Ohio laws against discrimination require that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

**NOTICE FOR WASHINGTON RESIDENTS:** Washington State law against discrimination prohibits discrimination in credit transactions because of race, creed, color, national origin, sex or marital status. The Washington State Human Rights Commission administers compliance with this law.

**NOTICE FOR IOWA RESIDENTS:** Do not sign this Application before you read it. You are entitled to a copy of this form. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.

**NOTICE FOR MAINE RESIDENTS:** We may request a consumer report in connection with your application for credit. You may ask whether a consumer report was obtained by us and we will tell you the name and address of the consumer reporting agency, if a report was obtained.

**NOTICE FOR VERMONT RESIDENTS:** A consumer credit report may be requested in connection with this application or in connection with updates, renewals or extensions of any credit granted as a result of this application. Upon your request, you will be informed whether or not such a report was requested and, if so, the name and address of the agency that furnished the report.