MLG - 5399230

IN THE COUNTY COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR FLAGLER COUNTY, FLORIDA

SMALL CLAIMS DIVISION
CASE NO. 2025 SC 001840

VELOCITY INVESTMENTS, LLC
Plaintiff,

vs.

RAMON MARRERO
Defendant.
_____________________________/

STATEMENT OF CLAIM

COMES NOW the Plaintiff, VELOCITY INVESTMENTS, LLC**,** by and through its undersigned attorney, sues Defendant RAMON MARRERO , and alleges:

GENERAL ALLEGATIONS

1. This is an action for damages in an amount less than or equal to $8,000.00, exclusive of interest, costs and attorney fees, and comes within the jurisdiction of this Court.
2. Plaintiff is a foreign corporation authorized to bring this action pursuant to Fla. Stat. § 607.1501 (2)(a).
3. Defendant is a resident of FLAGLER County, Florida.
4. All conditions precedent to the bringing of this action has been performed, have occurred or have been waived.

COUNT I

(BREACH OF CONTRACT)

5. Plaintiff realleges the allegations of paragraph 1-4.

6. Commencing on or about 04/20/2021 the Defendant and CROSS RIVER BANK ('Creditor') entered into a Loan Agreement (the 'Agreement') allowing Defendant to receive loan proceeds in an amount equal to the amount financed in the Agreement. A copy of the Loan Agreement is attached hereto and incorporated herin as composite Exhibit 'A'. A Copy of the Loan Agreement was sent to the Defendant.

7. In connection with the Agreement an account (account number: XXXXX3122) was created for the Defendant's loan (the 'Account').

8. Defendant obtained cash, products and/or goods and services in accordance with the Agreement.

9. Pursuant to the Agreement and the Account created thereby, the Creditor extended credit and/or issued funds to the Defendant, but the Account remains unpaid.

10. By using that credit and/or accepting those funds, and/or by receiving the benefit thereof, the Defendant performed in accordance with the Agreement and is bound by the terms and conditions thereof.

11. Plaintiff has purchased the debt incurred by Defendant and is the legal owner and holder of the debt.

12. Demand for payment has been made upon the Defendant and the Defendant has breached the Agreement by failing and/or refusing to repay the full balance due.

13. As a direct and proximate result of the Defendant's breach, Plaintiff has suffered damages in the amount of $4,225.67.

WHEREFORE, Plaintiff demands judgment against the Defendant for the sum of $4,225.67, plus costs, and such other and further relief as the Court may deem just and proper.

WHEREFORE, Plaintiff demands judgment against Defendant for the sum of $4,225.67 plus costs, and such other and further relief as the Court may deem just and proper.

Mandarich Law Group, LLP

/s/ Carolyn Karettis

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DESIGNATION OF EMAIL ADDRESS

Pursuant to Fla. R. Jud. Admin. 2.516 Plaintiff's Counsel hereby designates
florida@mandarichlaw.com
as its primary email address for the receipt of pleadings.

EXHIBIT A

Upgrade Card Personal Credit Line Agreement

This Agreement contains a Power of Attorney Provision and an Arbitration Agreement.

Last Revised: January 11, 2021

This Upgrade Card Personal Credit Line Agreement ("Agreement") is entered into between you ("you") and Cross River Bank, a New Jersey-chartered FDIC-insured bank ("CRB," "we," or "us"). This Agreement, and any future changes to it, is your contract with us. Upgrade, Inc. ("Upgrade") operates a national online consumer loan marketplace platform, located at www.upgrade.com ("Site"), through which you may request and apply for unsecured consumer installment loans or other credit. Upgrade will also administer and service this Agreement on behalf of CRB.

The Upgrade Card allows you to obtain funds from us from time to time by requesting Draws up to the Credit Limit set forth herein and in the Truth in Lending disclosures given to you. The Credit Limit will equal the amount of credit extended to you under the initial Upgrade Card Loan (the amount of credit for which you are approved). As you repay a draw, the Credit Limit will not be replenished by the amount of the repayment as it would be in an open-end line of credit arrangement. Under the Agreement, any amount advanced will permanently reduce the amount available for subsequent advances under the initial Upgrade Card Loan. After an amount is advanced, that amount is repayable over 36 months in substantially equal monthly payments.

To permit you to obtain new Draws equal to the amount of principal you have repaid on prior Draws up to the Credit Limit, you agree that we may, based on your creditworthiness, authorize additional Draws up to the amount of principal that has been repaid under such prior Draws up to the Credit Limit. Instead of authorizing such additional Draws from time to time as principal is repaid under the Upgrade Card Loan, you agree that we may offer and you will have accepted an Additional Upgrade Card Loan by your continued use of the Upgrade Card after you have exhausted your current Upgrade Card Loan. The credit extended to you under the additional Upgrade Card Loan will equal the amount of credit provided in the initial Upgrade Card Loan.

The outstanding balance of all of your Draws at any given time cannot exceed your Credit Limit. Each Draw is subject to approval by us based on your creditworthiness, and we may at any time change the amount of your Upgrade Card Loan, your Credit Limit and the interest rate and other terms that apply to a Draw in our sole discretion. The reasons we may change these terms include, but are not limited to, changes in laws or regulations, changes to your individual credit profile, and changes to overall economic and market conditions. You may obtain Draws by requesting a transfer of funds to your bank account via ACH or via a Card access device. You hereby request that a Card be issued to you to access the Credit Limit available under this Agreement.

1. **Definitions**

   1. "Annual Percentage Rate" or "APR" means your cost of credit displayed as a yearly percentage rate. The rate includes your interest rate and the other terms of your account as of the time of calculation.

   2. "Billing Cycle" means the time period between billing statements. Each billing statement shows a statement closing date that is also the last day of the previous billing cycle.

   3. "Card" means a card or similar access device that allows you to request Draws with participating merchants.

   4. "Covered Draws" means, for each Promissory Note, all Draws requested and received by you during a given Billing Cycle that have the same payment term and interest rate that are evidenced by that Promissory Note. All Covered Draws for a given Billing Cycle that have the same payment term and interest rate will be evidenced by one or more Promissory Notes by the end of that Billing Cycle, but the total amount of Promissory Notes for any Billing Cycle will never exceed the amount of Draws received by you during that Billing Cycle.

   5. "Credit Limit" means the maximum amount of Draws that you are allowed to have outstanding at any point in time, under your Personal Credit Line.

   6. "Draw" means a transfer of funds from us to you (or a third party, in the case of a Purchase) pursuant to a request made by you under this Agreement and approved by us to be repaid over a specified term. Each Draw is subject to credit approval by us. A Draw request may be made through the dashboard accessible on your computer at upgrade.com or through the use of a Card. You agree to repay each Draw in monthly installments over the approved repayment term.

   7. "Draw Funding Date" means the date that we initiate a transfer of funds for your benefit or use via the Automated Clearing House (“ACH”) network or a credit or debit card network.

   8. "Minimum Draw Amount" means the smallest dollar amount you may request for a single Draw under your Personal Credit Line. We will provide you with your Minimum Draw Amount prior to your final submission of your Draw request.

   9. "Monthly Payment" means the total amount due each month for outstanding unpaid Draws, plus applicable

interest and any other charges that you may owe us under this Agreement.

10. "Monthly Payment Due Date" means the date your monthly payment is due.

11. "Upgrade Card Personal Credit Line", "Upgrade Card" or "PCL" means an account through which you may access an unsecured, closed-end consumer loan offered by CRB that may be requested in a series of Draws in amounts up to your Credit Limit consisting of one or more Upgrade Card Loans.

12. "Promissory Note" means documentation evidencing your unilateral promise to repay all Draw amounts requested and received by you during a given Billing Cycle pursuant to the agreed-upon terms.

13. "Purchase" means your use of your Card or Card number to access your Upgrade Card Personal Credit Line to buy or lease goods or services or make other transactions.

14. "Statement Closing Date" means the last day of each billing cycle. You will receive an electronic statement on your dashboard that displays your Monthly Payment and your Monthly Payment Due Date.

15. "Upgrade Card Loan" means the loan that we have extended you to permit Draws up to the Credit Limit.

16. "we" or "us" or "our" or "CRB" means Cross River Bank, a New Jersey state bank.

17. "you" or "your" means the person who opened the Upgrade Card.

2. **Use of Your Upgrade Card Personal Credit Line.** You may use your PCL account for personal, family, or household purposes. You agree not to request Draws or use any Draw proceeds to pay post-secondary education expenses, to buy or sell securities, or for any illegal purpose. Your Upgrade Card Personal Credit Line may not be used to make a payment on any other loan or account issued by us or serviced by Upgrade. We will not be responsible if you engage in illegal activity.

3. **Terms of Your Upgrade Card Personal Credit Line.**

3.1 Upgrade Card Personal Credit Line Description.. Your Upgrade Card Personal Credit Line is an account through which you may access your Upgrade Card Loan, with loan proceeds that may be requested and received in a series of multiple Draws, up to your Credit Limit of $3,000.00. You can request these Draws which are subject to credit approval by us using your Card or through your online account dashboard.

3.2 Initial Upgrade Card Loan. The initial Upgrade Card Loan will extend you a loan in an amount equal to your Credit Limit.

3.3 Additional Upgrade Card Loans. **By continuing to use your Upgrade Card Personal Credit Line, you agree that you are requesting that a new, separate and additional Upgrade Card Loan in the same amount as the initial Upgrade Card Loan be made available to you once you have exhausted the Draws available in your current Upgrade Card Loan.** Each Upgrade Card Loan will be made in increments of $3,000.00, equal to the credit extended to you under the initial Upgrade Card Loan. Each time you are approved for an additional Upgrade Card Loan, we will send you an additional Truth in Lending Disclosure reflecting the terms of that new Upgrade Card Loan. **By continuing to use your Upgrade Card Personal Credit Line after you have exhausted your current Upgrade Card Loan, you agree that you are accepting the terms of your next Upgrade Card Loan and that those terms will apply to any Draws taken from your next Upgrade Card Loan.**

From time to time and as you make payments on your PCL account, your payment history and credit risk profile will be evaluated to determine if you can be approved for an additional Upgrade Card Loan in an amount that equals your initial Upgrade Card Loan amount of $3,000.00. You understand and agree that you may not be approved for additional Upgrade Card Loans. You understand that the Credit Limit may include amounts available for Draws from more than one Upgrade Card Loan. The maximum number of additional Upgrade Card Loans that may be extended under this Agreement including the initial Upgrade Card Loan is eight (8) per year. Regardless of whether you're approved for additional Upgrade Card Loans, the outstanding principal balance owed on your PCL account at any given time may not exceed your Credit Limit, $3,000.00. If you do not want to request additional Upgrade Card Loans, you may close your account to future Draws and Upgrade Card Loans by emailing support@upgrade.com or calling 1-855-997-3100.

3.4 Outstanding Balance Limitation. At any point in time, the outstanding principal balance owed on your PCL cannot exceed your Credit Limit of $3,000.00. If a Draw attempt, whether made through your Card or the online dashboard, would cause your outstanding account balance to exceed $3,000.00 it may be declined.

4. **Use of the Site/Draw Requests.** Under this Agreement, you may request Draws in amounts ranging from your Minimum Draw Amount up to your available credit under your Credit Limit through your account dashboard at upgrade.com. Draws may also be requested by use of the Card. All approved Draws are originated and funded by CRB. By entering into this Agreement, you agree to comply with Upgrade's Terms of Use and all other rules or procedures set forth and described on the Site. By submitting a Draw request, you agree to receive the proceeds in the amount requested and you agree to repay timely all installments required under

this Agreement and any associated Promissory Note. You understand that each application or Draw request is subject to CRB's loan underwriting criteria, which may change from time to time.

5. **Disclosures and Statements.** When you accept your Upgrade Card Personal Credit Line, we provide you with an estimated Truth in Lending Disclosure for the initial Upgrade Card Loan that is calculated based on the assumption that you will upon opening your Upgrade Card make a Draw that exhausts the initial Upgrade Card Loan. Upon your request for additional Upgrade Card Loan(s) by using the Upgrade Card under Section 3 of this Agreement, we will send you an estimated Truth in Lending Disclosure for each such additional Upgrade Card Loan prior to the time credit will be extended to you that is calculated based on the assumption that you will make a Draw for the full amount of the additional Upgrade Card Loan. The Finance Charge and Total of Payments listed on the Truth in Lending Act disclosures are estimates based upon the assumption that all Monthly Payments will be made on time. If Monthly Payments are made before or after the applicable due dates or if you do not draw the full Upgrade Card Loan amount, the actual amount of Finance Charge and Total of Payments may be less or more than that what appears in the Truth in Lending Disclosure.

   For each group of Covered Draws, we will provide you with a disclosure that summarizes the repayment terms for that group of Covered Draws. Finally, we will send you a statement after each Statement Closing Date. All of these disclosures will be provided to you in your account dashboard at upgrade.com.

6. **Authorization to Obtain Your Credit Report.** By entering into this Agreement and requesting a Personal Credit Line or a Draw, or for an additional Upgrade Card Loan, you authorize Upgrade and CRB, and their agents, servicers, and assigns to obtain your credit report from one or more consumer reporting agencies, such as TransUnion, Experian, or Equifax. You acknowledge that CRB and Upgrade may use the credit report for any purpose permitted by law, including: (i) to authenticate your identity; (ii) to make credit decisions; (iii) to determine your current debt-to-income ratio; and (iv) to obtain your credit score. By proceeding with your application or Draw request you authorize us to contact third parties, potentially including your employer, to verify the information in your application and your credit report without further notice to you.

7. **Limited Power of Attorney for Executing Your Promissory Notes.** You hereby grant to Upgrade a limited power of attorney and appoint Upgrade and its designees as your true and lawful Attorney-in-Fact and agent, with full power of delegation, substitution, and re-substitution, for you and in your name, place, and stead, in any and all capacities, to complete and execute one or more Promissory Notes with respect to each Billing Cycle in which you received a Draw, in the form attached herein as Exhibit A, but which together incorporate the aggregate dollar amount of all related Draws for that Billing Cycle, less the amount of any payments made and applied to the principal amount of those Draws prior to the date of the related Promissory Note. At the end each Billing Cycle, Upgrade will use this limited power of attorney to execute, for each combination of rate and term applicable to the Draws you received during such Billing Cycle, one or more Promissory Notes. The aggregate amount of the Promissory Notes issued will never exceed the aggregate amount of Draws received by you during the related Billing Cycle. You further authorize Upgrade to perform each and every act necessary to be done in connection with executing each Promissory Note as you might or could do in person, and to approve, execute, and deliver the provisions of any instruments, documents, agreements, powers, releases, and certificates related to each Promissory Note and perform each and every action required, including but not limited to any legal or beneficial assignment of each Promissory Note. This Power of Attorney is limited to the purpose described above and will expire automatically upon the termination of this Agreement. You may revoke this Power of Attorney by emailing support@upgrade.com or calling 1(855) 997-3100 and closing your PCL account. If your PCL account is closed you still remain responsible for obligations under this Agreement prior to closure. However, if your Draw request or application has been approved, you must revoke this Power of Attorney prior to the proceeds being transferred to your bank account. Once each Promissory Note is signed by Upgrade as your Attorney-in-Fact on your behalf, it is deemed executed and is thereafter your binding obligation. You further understand and agree that you must repay all Draw amounts you receive with interest thereon. Even if a Promissory Note is not executed at the end of the Billing Cycle, you must repay all amounts you received pursuant to the terms you agreed to at the time of Draw.

8. **TCPA Consent.** By providing us with your mobile telephone number, you expressly consent to be contacted by us, our agents, representatives, affiliates, or anyone calling on our behalf including Upgrade, for any and all purposes arising out of your relationship with us, your use of Upgrade's website and services, or any agreement you have entered into with Upgrade or us. You agree we may contact you in any way including SMS text messages, calls using prerecorded messages or artificial voice, and calls and messages delivered using an automated telephone dialing system or an automated texting system. You understand that automated messages may be played when the telephone is answered, whether by you or someone else. You also agree that representatives may leave you messages on your answering machine, voice mail, or via text if you don't answer. Standard calling and text messaging rates will apply, based on your cellular telephone carrier and service plan.

   During the online application process performed by Upgrade on our behalf, you may be asked to provide your prior express written consent to receive prerecorded calls and texts to your mobile device for marketing purposes. We or Upgrade will not use autodialed or prerecorded calls or texts to contact you for marketing purposes unless you provide us with that prior express written consent.

   You understand that you do not have to consent to receive any autodialed or prerecorded calls or texts to your mobile phone number in order to use or enjoy our services and products. If you have already provided your consent, you may withdraw your consent to receive autodialed or prerecorded calls or texts to your mobile phone number by contacting Upgrade by email at support@upgrade.com or by calling Upgrade customer support at 1-(855) 997-3100.

9. **Account Servicing.** You acknowledge that your account will be serviced by Upgrade. You also agree that Upgrade may delegate the servicing of your account to a third party in its sole discretion without prior consent or notice.

10. **Military Lending Act.** 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 dependents 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 fees charged (other than certain participation fees for a credit card account). Your payment obligation is shown on the Truth in Lending Act disclosure. Please call 1-(855) 511-7676 toll free to have this disclosure provided to you orally.

    You are a "Covered Borrower" if you are entitled to special protections for service members and their dependents pursuant to a determination made in accordance with 32 C.F.R. § 232.5(b) and have not ceased to be a Covered Borrower. You are not a Covered Borrower, or cease to be a Covered Borrower, if you are not a member of the armed forces serving on active duty or a dependent of such member, as defined under 32 C.F.R. § 232.3(g). This Agreement shall be interpreted to comply with the Military Lending Act, including its restrictions on permissible terms and limitations on interest, charges, and fees. The limitations on interest and fees apply to individuals while they are Covered Borrowers, provided such individuals are Covered Borrowers as of the date they execute this Agreement. As applied to Covered Borrowers: (1) any interest, charges, or fees in excess of the permitted limit shall be reduced by the amount necessary to satisfy that limit and any amounts collected in excess of the permitted limit shall be refunded by crediting your account or by making a direct payment to you; (2) Section 18 (Arbitration) and Section 24 (Limitation of Liability) of this Agreement (see below) shall not apply; and (3) any other provision of this Agreement that is inconsistent with the Military Lending Act shall not apply.

11. **Billing Cycle.** Your first Billing Cycle begins when you make your first Draw and ends on your first Statement Closing Date, which will be determined by us. Subsequent Billing Cycles will begin on the day after each Statement Closing Date and will end on the next Statement Closing Date. You will receive a monthly statement for each Billing Cycle at least twenty-one (21) days prior to your Monthly Payment Due Date. Each monthly statement covers one Billing Cycle. Statements are available on your dashboard on *www.upgrade.com*.

12. **How We Calculate Interest.**

    Interest Calculation. Interest will accrue on Draws and be calculated on a 365/366 day year basis for each full month and each partial month based on the interest rate disclosed on the Truth in Lending Act disclosure applied to the unpaid outstanding amounts for the actual number of days the funds are outstanding for such full or partial month. Your interest is calculated by dividing the interest rate by 365/366 to arrive at a daily periodic rate for that Draw. Each day, we take the outstanding balance on the Draw (as recorded at the close of business on the previous day) and multiply it by the daily periodic rate. The result is the interest accrued on the Draw for that day. The interest you owe for each Billing Cycle will be included in your Monthly Payment so that the Covered Draw will fully amortize it over the repayment period. Interest will start accruing for each Covered Draw that you receive from CRB on the Draw Funding Date and will continue to accrue until all amounts owed are paid in full. As a result, if your first Monthly Payment is due more than 30 days after the Draw Funding Date, your Draws will have accrued more than 30 days of interest at the time your first Monthly Payment is due, but your repayment schedule will always be calculated to provide for substantially equal monthly payments.

13. **Fees.** We will not charge you any fees to use your Upgrade Card Personal Credit Line.

14. **Payments.**

    14.1 Promise to Pay. When you request a Draw or otherwise use your account, you promise to pay the total amount of that Draw plus all interest, charges, and other amounts that you may owe us, regardless if we decline any subsequent Draw request, lower your Credit Limit, or close your account.

    14.2 Allocation of Your Payments and Prepayments. You will receive a statement showing your recent Draws and the amount of your current Monthly Payment at least twenty-one (21) days before your Payment Due Date. The Monthly Payment shown on your statement will reflect the principal and interest associated with the aggregate of your outstanding unpaid Draws. Your Monthly Payment amount will be applied first to the accrued interest, and then to any scheduled principal payment, on each Draw or collection of Draws. If you pay an amount that is less than your Monthly Payment as shown on your statement, the amount you pay will be applied to each Draw or collection of Draws in proportion to the outstanding payment due on each Draw as included in the Monthly Payment. If you pay more than your Monthly Payment amount, then the excess amount will be applied first to any accrued but unpaid interest, and then to outstanding principal, on each Draw or collection of Draws in proportion to the outstanding balance on each Draw at the time of the payment. **YOU WILL NOT BE ABLE TO PREPAY OR PAY DOWN ANY ONE DRAW OR COLLECTION OF DRAWS FASTER THAN ANY OTHER DRAW OR COLLECTION OF DRAWS.**

14.3 Other Payment Terms. We may accept partial payments, late payments, or payments with restrictive writing without losing any of our rights under this Agreement. The words “paid in full” or other restrictive writing on or with payments shall have no effect, and our acceptance of those payments shall in no way operate as an accord and satisfaction of your obligation.

14.4 Your Monthly Payment. Your Monthly Payment reflects the principal and interest associated with your outstanding unpaid Draws. Your Monthly Payment is calculated to allow you to pay down each outstanding Draw according to its agreed-upon schedule.

14.5 Minimum Monthly Payment. If your monthly payment for a collection of Covered Draws is calculated to be less than $5.00, then your minimum monthly payment for that collection of Covered Draws will be $5.00. If you owe less than $5.00 for a collection of Covered Draws, then your minimum monthly payment will be the total outstanding balance for that collection of Draws. If you have only one Covered Draw for a certain rate and term combination, and the Monthly Payment is calculated to be less than $5.00, then your minimum monthly payment for that Draw will be $5.00. Your total Monthly Payment will be reflected on your monthly statement and will reflect all prior activity (other collections of draws taken on your PCL account and payment), and may be higher than $5.00.

15. **Default.** You will be in default of this Agreement if:

a. you fail to make any required Monthly Payment in full by its Monthly Payment Due Date; or

b. you fail to perform any of your obligations required under this Agreement; or

c. any representation made by you in, or in connection with your Upgrade Card application, account or Draw request is false in any material respect when made; or

d. any of the following occurs (each a "Bankruptcy Event"): (1) you make an application for the appointment of a receiver, trustee or custodian or a receiver, trustee or custodian is appointed for you or a majority of your assets; (2) you initiate or consent to any legal proceedings under the Bankruptcy Code, or equivalent law providing for the relief of debtors; (3) you make an assignment for the benefit of creditors; or (4) you have a petition in bankruptcy or similar relief of debtors filed against you, which is not withdrawn or discharged within thirty (30) days of being filing; or

e. you die.

16. **Remedies.** If you are in default under this Agreement, we may take any remedy allowed by law, including but not limited to requiring immediate repayment of your total outstanding balance. We may also require you to pay all costs and expenses incurred in the collection of your account, and we may also require you to pay all reasonable attorneys’ fees associated with the collection of your account if your account is referred to a non-employee attorney.

In the event that we exercise any of our rights or remedies under this Agreement, you will continue to be in default until such time that you pay to us all amounts due to us and you have cured any and all defaults. Our failure to take any action or delay taking any action related to your default, does not waive, or imply a waiver of, any of our rights under this Agreement.

17. **Credit Availability.**

17.1 Personal Credit Line Credit Limit. Before executing the Agreement, we will provide you with a Truth in Lending Act Disclosure that discloses your approved initial Upgrade Card Loan amount and the associated interest and charges. If you accept the terms, you may request in a series of Draws in United States dollars in any amount up to the total amount of your Upgrade Card Loan or your remaining available Credit Limit, whichever is less. Draws requested via ACH will be subject to the Minimum Draw Amount disclosed to you. Draw requests are subject to credit approval, including additional credit underwriting that we may undertake. As you use your Upgrade Card Loan, you agree that we will periodically determine whether to approve you for an additional Upgrade Card Loan as provided in Section 3.2 so we can make the principal amount you repay available for future Draws. We will base this decision on your payment history with us and on information we receive from third parties such as credit reporting agencies. You understand that, based on information reviewed at the time of your payment submission, the principal amount you repay will not become available for future Draws under your Credit Limit unless you have been approved for an additional Upgrade Card Loan.

17.2 Changes to Your Upgrade Card Personal Credit Line. From time to time, we may make changes to your Upgrade Card Personal Credit Line. These changes can include raising or lowering the amount of your Upgrade Card Loan or your Credit Limit and raising and lowering your interest rate. We will base these decisions on your payment history with us and on information we receive from third parties including credit reporting agencies, which we will review on a monthly basis.

a. Credit Limit Changes. We may raise or lower the amount of your Upgrade Card Loan or your Credit Limit without your consent at any time. We will base this decision on your payment history with us and on information we receive from third parties including credit reporting agencies.

b. Changes to Your Interest Rate. We may raise or lower your interest rate for future Draws. We will base this decision on your payment history with us and on information we receive from third parties including credit reporting agencies. If we make any changes to your interest rate, we will present you with a new Truth in Lending Act disclosure showing the details of your Upgrade Card Personal Credit Line with the new rate. You must read, understand, and agree to the disclosure and the new rate in order to request future Draws. The new interest rate will only apply to future Draws. Draws that are outstanding at the time of the change will not be affected in any way.

17.3 Draw Requests. When you request a Draw, we may review your payment history and information we receive from third parties including information from credit reporting agencies to determine whether to approve your Draw request. You understand that we may decline your Draw request based on the information reviewed at the time of the request.

17.4 **Account Suspension or Closure. We reserve the right to suspend or close your account if you are in default, if there are changes to your credit score or other risk factors based on a soft inquiry, if there are changes to market conditions, if there are changes to law or regulation, if it is necessary to prevent fraud, or for any other reason. Your repayment obligations under this Agreement continue even if your account is suspended or closed.**

18. **Arbitration.**

PLEASE READ THE FOLLOWING ARBITRATION AGREEMENT CAREFULLY AND UNDERSTAND THAT IT LIMITS YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND US. UNLESS YOU REJECT THIS PROVISION AS PROVIDED BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY, BUT WILL NOT HAVE THAT RIGHT IF ANY PARTY ELECTS ARBITRATION PURSUANT TO THIS ARBITRATION PROVISION. 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 ANY PARTY.

Rejection of This Arbitration Agreement. You may opt out of this Arbitration Agreement (as defined below) for all purposes by sending an arbitration opt out notice to CRB, c/o Upgrade, Inc., 275 Battery Street, 23rd Floor, San Francisco, CA 94111, Attention: Legal Department, which is received at the specified address within 30 days of the date of your electronic acceptance of the terms of this Agreement.

Arbitration Agreement. You agree either you or CRB or Upgrade may elect to have any dispute between you and CRB or you and Upgrade (a "Dispute") be resolved exclusively by arbitration. However, no party may elect arbitration for any Dispute filed in small claims court, so long as the Dispute is individual (non-class, non-representative basis) and pending only in that court. A Dispute is any unresolved disagreement between us that arises out of or relates in any way to this Agreement, the Upgrade Card or the relationship between you and us (including Upgrade and any assignee or holder). A Dispute also includes any disagreement about whether this arbitration agreement ("Arbitration Agreement") is enforceable or valid, the meaning of this Arbitration Agreement, and whether a disagreement is a "dispute" subject to binding arbitration as provided for in this Arbitration Agreement. However, in the event of a default, nothing in this Arbitration Agreement shall preclude us from exercising the lawful remedies of a creditor under applicable law, including, but not limited to set off. The scope of this Arbitration Agreement shall be given the broadest possible interpretation that is enforceable.

Unless otherwise agreed to in writing by the parties to this Arbitration Agreement, the arbitration, including the selecting of the arbitrator, will be administered by the Judicial Alternatives and Mediation Services ("JAMS"), under its Streamlined Arbitration Rules (the "Rules") by a single neutral arbitrator agreed to by the parties within thirty (30) days of the commencement of the arbitration. In the event that the parties are not able to agree on an arbitrator within 30 days, one will be selected by JAMS. In the event that JAMS is not available to administer the arbitration, either of us may petition a court with jurisdiction to appoint an arbitrator.

Notwithstanding the provisions of this Agreement specifying the governing law of this Agreement, the arbitration provisions of this Agreement will be governed exclusively by the Federal Arbitration Act (Title 9 of the U.S. Code).

Either party may initiate the arbitration process by filing the necessary forms with JAMS. To learn more about arbitration, or to obtain a copy of the JAMS arbitration rules you can call JAMS at 1-800-352-5267 or review the materials on their website at www.jamsadr.com. In the case of a conflict between the rules of JAMS and this Arbitration Agreement, this Arbitration Agreement shall control.

If you initiate the arbitration, you will be required to pay the first one hundred seventy-five dollars ($175) of any filing fee. We will pay any filing fees in excess of one hundred seventy-five dollars ($175) and we will pay all of the arbitration fees and costs. If we initiate the arbitration, we will pay all of the filing fees and all of the arbitration fees and costs. We will each bear all of our own attorney's fees and costs except that you are entitled to recover your attorney's fees and costs if you prevail in the arbitration and the award you receive from the arbitrator is higher than our last written settlement offer, or if applicable law provides you a right to recover attorney's fees and costs.

The arbitration shall be held in the federal judicial district where you reside. Disputes must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis, and the arbitrator will not award relief for or against anyone who is not a Party. In the event the preceding sentence is deemed unenforceable for any reason by an arbitrator or a court of competent jurisdiction, such determination shall automatically render the remaining arbitration provisions (but not the jury trial waiver provisions) of this Section 18 unenforceable as to the affected dispute(s).

Subject to the foregoing provisions regarding attorney's fees and costs, the arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant under this Arbitration Agreement. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any transaction other than yours. All statutes of limitations that are applicable to any dispute shall apply to any arbitration between us. Judgment on any arbitration award may be entered in any court having jurisdiction.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY, BUT WILL NOT HAVE THAT RIGHT IF ANY PARTY ELECTS ARBITRATION PURSUANT TO THIS ARBITRATION PROVISION. 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 ANY PARTY.

19. **Registration of Draw Owners.** If you receive a funded Draw pursuant to this Agreement, you appoint Upgrade, Inc. as your authorized agent (in such capacity, the “Draw Registrar”) to maintain a book-entry system (the “Register”) for recording the owner of the Draw and related Promissory Note (the “Draw Owners”). The person or persons identified as the Draw Owners in the Register shall be deemed to be the owner(s) of such Draw and related Promissory Note for purposes of receiving payment of principal and interest on such Draw and Promissory Note and for all other purposes. You acknowledge that the Draw Registrar maintains the only authoritative copy of the Promissory Note. With respect to any transfer by a Draw Owner of its beneficial interest in the Draw and related Promissory Note, the right to payment of principal and interest on each Draw shall not be effective until the transfer is recorded in the Register.

20. **Term and Termination.** The term of this Agreement shall commence on the date that you electronically sign the Agreement (“Effective Date”) and shall continue for a period of five (5) years unless terminated earlier. Even though the Agreement is terminated, your repayment obligations will nevertheless remain. If you receive eight (8) Upgrade Card Loans within a single twelve (12) month period and you would like to request a ninth Upgrade Card Loan in that same period, then you will be asked to enter into a new agreement with us, and this Agreement shall terminate as to any new Draws and any remaining availability under Upgrade Card Loans under this Agreement, but shall remain in effect for your obligations incurred hereunder. We may terminate this Agreement in our sole discretion, with or without cause, by providing you with notice of the termination. The reasons we may terminate this Agreement include, but are not limited to, changes in laws or regulations, changes to your individual credit profile, and changes to overall economic and market conditions. If we determine that you have committed fraud, made a material misrepresentation, or otherwise failed to abide by the terms of any Agreement you have entered into with us, including the Upgrade Terms of Use, we may, in our sole discretion, terminate this Agreement and disable your dashboard for the PCL account. All Draws outstanding at the time of termination plus applicable interest and charges shall remain in full force and effect until paid in full, regardless of the termination of this Agreement. The following provisions shall also survive the expiration or earlier termination of this Agreement: Sections 2, 6, 7, 8, 9, 12, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, and 26.

21. **Amendment.** We reserve the right to amend this Agreement at any time by adding, deleting, or changing provisions of this Agreement. All amendments will comply with the requirements of applicable federal and New Jersey law, including all required notice provisions.

22. **Assignment.** You may not assign or transfer your rights or obligations under this Agreement without our prior written consent. We may assign or transfer all or a portion of this Agreement and the related documents to a third party or an affiliate. Our rights under this Agreement shall inure to the benefit of our successors and assigns and your obligations under this Agreement shall be binding upon your heirs, personal representatives and permitted assigns. Promissory Notes under this Agreement may be sold, transferred or assigned by us.

23. **No Warranties.** UNLESS SPECIFICALLY PROHIBITED BY APPLICABLE LAW, WE MAKE NO WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ADDITIONALLY, WE MAKE NO CLAIM OR GUARANTEE AS TO THE ACCURACY OF ANY INFORMATION PROVIDED OR SITE CONTENT. THIS WARRANTY DISCLAIMER IS NOT APPLICABLE TO RESIDENTS OF KANSAS OR WISCONSIN.

24. **Limitation of Liability.** IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS OR SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE EFFECT THAT THIS AGREEMENT MAY HAVE UPON YOUR FOREIGN, FEDERAL, STATE, OR

LOCAL TAX LIABILITY.

25. **Choice of Law.** Unless expressly provided otherwise in this Agreement, this Agreement shall be governed by federal law and, to the extent not preempted by federal law, the laws of the State of New Jersey without regard to any conflict of laws provision.

26. **Miscellaneous.**

26.1 Entire Agreement. This Agreement together with the Upgrade Terms of Use and your Consent to Conduct Business Electronically represents the entire agreement between you and CRB regarding your use of the Upgrade platform to request an Upgrade Card or Draws from us, and supersedes all prior and contemporaneous communications, whether written or oral, between you and CRB with regard to your use of the Upgrade platform to request an Upgrade Card or Draws from us.

26.2 Electronic Transactions and Disclosures. This Agreement includes your express consent to electronic transactions and disclosures, which consent is contained in the document titled "Consent to Conduct Business Electronically," the terms of which are expressly incorporated herein in their entirety.

26.3 Notices. You consent to receive all notices and communications required in connection with this Agreement by email to the email address you registered with us when you created your Upgrade account. Delivery of such notices and communications shall be deemed to be made upon transmission. By registering an email address with Upgrade, you acknowledge that you have ownership and control over the email account associated with that address and you understand that we may send personal, private, confidential communications, including but not limited to collections-related communications, to you at that address. If your email address or any other contact information changes, you acknowledge that you must update your registered email address through the Upgrade website, contact Upgrade at support@upgrade.com or call 1-(855) 997-3100 to update your contact information.

26.4 Severability and Waiver. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect. No failure or delay by either party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy.

26.5 Third-Party Beneficiary. Upgrade is not a party to this Agreement, but you agree that Upgrade is a third-party beneficiary and is entitled to rely on the provisions of this Agreement, including without limitation your representations, covenants, and agreements herein. The parties agree that there are no third-party beneficiaries other than Upgrade.

26.6 Unauthorized Use of Your Account. If you believe there is unauthorized access or use of your account, please contact Upgrade at support@upgrade.com or call 1-(855)-997-3100.

26.7 Phone Monitoring. We may monitor and record any phone calls we, Upgrade or any subsequent account servicer has with you.

26.8 State Law Notice and Disclosure.

COLORADO RESIDENTS: This Agreement shall be governed by Colorado law, except where otherwise preempted or authorized by federal law, including that any “interest” terms as contemplated by 12 U.S.C. § 1831d shall be governed by 12 U.S.C. § 1831d and the laws of CRB’s home state.

26.9 NOTICE TO CUSTOMER.

(a) DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT, EVEN IF OTHERWISE ADVISED.

(b) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

(c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND THE FINANCE CHARGE DISCLOSED MAY BE LESS.

EXHIBIT A

NON-NEGOTIABLE PROMISSORY NOTE

Date: ______________, 20__ ("Effective Date")

Borrower Name and Address: ______________

1. PROMISE TO PAY. I promise to pay to CRB or any other holder of this promissory note (“Note”), the principal amount of $___________, together with interest at the interest rate and charges as set forth below, until paid in full. The principal amount disclosed herein represents the aggregate amount of funds transferred to me or on my behalf by CRB under my Upgrade Card Personal Credit Line in respect of the Covered Draws (as defined in the Upgrade Card Personal Credit Line Agreement) for this Note, less the amount of any payments made by me and applied to the principal amount of the Covered Draws prior to the date hereof. As used herein, the “Covered Draws” for this Note include all Draws [identified on Schedule I hereto.] [(as defined in the Upgrade Card Personal Credit Line Agreement) having [a term of ____ months and an interest rate of ___%] [the number of required monthly payments described in Section 3.a. below and the interest rate described in Section 3.c. below] that were received by me during the previous Billing Cycle.] I promise that I will use the funds received for the purpose that I have previously indicated when requesting the funds, and I agree not to use the funds to pay any post-secondary student loan, to buy or sell securities, or for any illegal purposes.

2. THIS NOTE IS NON-NEGOTIABLE.

3. INTEREST AND PAYMENTS.

a. Payment Timing and Application. Principal and interest shall be paid in _________ monthly installments of $__________ as discussed herein. My first Monthly Payment will be due on _____________. All other Monthly Payments will be due on the same day of each following month ("Subsequent Due Date") until __________, when all principal, and interest payable and owing under this Note are due. If my Subsequent Due Date is the 29th, 30th or 31st and the current month is shorter, my payment will be on the last day of the month. All payments or prepayments will be applied in the agreed-upon manner as described in Section 14 of the Upgrade Card Personal Credit Line Agreement.

b. Accrual. Interest will accrue on Draws and be calculated on a 364 or 365-day year basis for each full month and each partial month based on the interest rate disclosed on the Truth in Lending Act disclosure applied to the unpaid outstanding amounts for the actual number of days the funds are outstanding for such full or partial month. Your interest is calculated by dividing the interest rate by 364/365 to arrive at a daily periodic rate for that Draw. Each day, we take the outstanding balance on the Draw (as recorded at the close of business on the previous day) and multiply it by the daily periodic rate. The result is the interest accrued on the Draw for that day. The interest you owe for each Billing Cycle will be included in your Monthly Payment so that the Covered Draw will fully amortize it over the repayment period. Interest will start accruing for each Covered Draw that you receive from CRB on the Draw Funding Date and will continue to accrue until all amounts owed are paid in full. As a result, if your first Monthly Payment is due more than 30 days after the Draw Funding Date, your Draws will have accrued more than 30 days of interest at the time your first Monthly Payment is due, but your repayment schedule will always be calculated to provide for substantially equal monthly payments.

c. Interest Rate. Interest on the Covered Draw or group of Covered Draws evidenced by this Note shall accrue at a rate of ____% per year until all amounts owed are paid in full.

d. Maturity. When this Note matures, I agree to pay in full any unpaid amounts due under this Note.

e. Payment Method. Payment may be made by check or electronic funds transfer. Payment by check may be made by sending a personal check: (1) by standard US Mail to: Upgrade, Inc., Dept. LA 24576, Pasadena, CA 91185-4576, or (2) by courier (FedEx, UPS, etc.) to: Upgrade, Inc. 24576, 14005 Live Oak Ave., Irwindale, CA 91706-1300. We may change these addresses from time to time, and we will notify you of the new address for payments.

f. This Note evidences the outstanding indebtedness incurred by me in connection with each Covered Draw received by me during the Billing Cycle and is not intended to be a substitution or novation of (1) any indebtedness incurred by me or (2) the Upgrade Card Personal Credit Line Agreement, all of which shall continue in full force and effect as evidenced hereby.

4. ASSIGNMENTS. I may not assign or transfer my rights or obligations under Note without the prior written consent of CRB or any other holder of this Note. A holder of this Note may assign or transfer all or a portion of this Note and the related documents to a third party or an affiliate.

5. GOVERNING LAW. Unless expressly provided otherwise in this Note, this Note shall be governed by federal

law and, to the extent not preempted by federal law, the laws of the State of New Jersey without regard to any conflict of laws provision.

6. STATE LAW NOTICE AND DISCLOSURE.

COLORADO RESIDENTS: This Note shall be governed by Colorado law, except where otherwise preempted or authorized by federal law, including that any “interest” terms as contemplated by 12 U.S.C. § 1831d shall be governed by 12 U.S.C. § 1831d and the laws of CRB’s home state.

SIGNATURE:

NAME OF BORROWER (AND CO-BORROWER IF ANY)
[redacted]DE ACCOUNT NUMBER
BY: UPGRADE, INC.
ATTORNEY-IN-FACT FOR BORROWER AND CO-BORROWER (if any)
(Signed Electronically)

Schedule I
Covered Draws

Description	**Amount**	**Date**

Original Document hash: yuRGEnqTemr5QTPJAmxq+F+mFw1+ViK28pG08e9NSGg=