I. BINDING ARBITRATION LANGUAGE WITH A CLASS ACTION WAIVER: It is important to note that Oklahoma Courts have not specifically addressed and have intentionally sidestepped determining whether Class Action Waivers are enforceable or “unconscionable”. Oklahoma law does tend to favor Arbitration clauses unless they are considered “unconscionable”. Whether the provisions are unconscionable are determined based on the circumstances existing at the time of making the contract in light of the general commercial background of the parties and whether the clauses are so one-sided as to oppress and unfairly surprise one of the parties.

ARBITRATION AND CLASS ACTION WAIVER - Please review this section carefully, as it affects your legal rights. Arbitration of a claim will result in the loss of any right to participate in a class action lawsuit related to the claim arbitrated.

a. Arbitration Procedures. Except if you opt out as provided below, unless prohibited by Federal or Oklahoma law you agree to arbitrate any claim or cause of action you have against the Credit Union or its directors, officers, employees and agents arising from or related in any way to this Agreement or any account, product, or service you have or have had with us, including claims arising out of federal, state or local governmental statutes, rules, regulations or ordinances. This arbitration provision applies regardless of whether the claim or dispute is based in contract, tort, or otherwise. Any claim or dispute will be resolved by individual (not class-wide) binding arbitration instead of a lawsuit or other resolution in court. Any arbitration hearing will be in Oklahoma within 50 miles of your residence at the time the arbitration is commenced, unless otherwise mutually agreed.

b. Arbitrators and Arbitration Rules. Arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Claims shall be heard by a panel of three arbitrators. Within 15 days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The place of arbitration shall be in Oklahoma within 50 miles of your residence, unless you and we otherwise agree. The arbitration shall be governed by the laws of the State of Oklahoma. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in-person hearings. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these limits prior to accepting appointment. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrators, all of their costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witnesses. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non- paying party in the absence of evidence presented as provided for above.

c. Effect of Arbitration Award. The arbitrators’ decision and award will be final and binding on all parties, except for any right to appeal provided by the Federal Arbitration Act, and may be entered in any court, state or federal, having jurisdiction. Any relief available in a court of law can be awarded by the arbitrators.

d. Federal Arbitration Act. This Agreement is considered a transaction in interstate commerce. As such, the Federal Arbitration Act (9 U.S.C § 1, et seq.) governs the interpretation and enforcement of this arbitration provision. Any issue concerning the validity or enforcement of this arbitration provision, or whether it applies to any specific claim or dispute will be determined by the arbitrators.

e. **CLASS ACTION WAIVER**. Unless prohibited by applicable law, arbitration will be solely brought in your individual capacity and be solely between You and Us. You do not have the right to participate in a class action in court or arbitration, either as a class representative or class member. No arbitration between you and us may be joined or consolidated with any other arbitration. Under no circumstances shall there be any class action in arbitration. You acknowledge that this Class Action Waiver is material and essential to the arbitration of any claims or disputes and is non-severable from this arbitration provision. If the Class Action Waiver is limited, voided or found unenforceable, then this arbitration provision (except for this sentence) shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver.

f. **RIGHT TO OPT OUT**. You may opt out of this Arbitration and Class Action Waiver section by notifying us by calling us at (918-362-1400) or sending a written notice to us at Western Sun Federal Credit Union, (4620 W Kenosha St | Broken Arrow, OK 74012) Your notice must include your name, address, and account number, and state your choice to opt out of this Arbitration and Class Action Waiver section. We must receive your notice within thirty (30) days after this Agreement was delivered or otherwise made available to you. If you fail to opt out within this thirty (30) day period, you will be deemed to have consented to the resolution of your claims against us through binding arbitration. Opting out of arbitration will not terminate or affect any other rights you or we have under this Agreement. If you opt out, you must opt out of all the terms of this Arbitration and Class Action Waiver Section. You may not opt out of only some terms.

g. **INAPPLICABILITY TO CREDIT UNION CLAIMS AGAINST YOU**. This entire section pertaining to Arbitration is applicable only to claims you may have against the Credit Union and is not applicable to claims the Credit Union may have against you. For example, if you default on a debt owed to the Credit Union, the Credit Union may file a lawsuit against you in Oklahoma State Court or Federal Court to obtain judgment on the debts, replevin collateral for the debts, and otherwise collect in any matter permitted under Oklahoma and/or Federal law where applicable.

II. AVAILABLE BALANCE: We agree with the CUNA's recommendation on this one. The credit union is in a better position to describe the differences between available and actual balances so we will leave these changes to you. Just make sure to indicate that the overdraft/NSF fees are based on the available balance and not necessarily the actual balance.

III. MECHANICS OF DEBT CARD PREAUTHOIZATION HOLD: The CUNA provides some good language to include in your account agreements. Please be sure to include your specific overdraft fee in the example language given.

IV. MULTIPLE NSF FEES ON SAME TRANSACTIONS: We recommend adding the following language to your account agreements and fee schedules: "Because we may charge a service fee for an NSF item each time it is presented, we may charge you more than one service fee for any given item."

V. REGULATION E CONSENT FORM: We agree with the recommended language by the CUNA here. Instead of "Account Agreement", use "Membership Agreement". Also include the Optional sentence if you offer overdraft protection services and reference the specific section of the Membership Agreement which deals with that.

VI: POSTING ORDER OF TRANSACTIONS: We agree that it would be helpful to spell out the order of transactions for both credits and debits in an account agreement. The credit union is in the best position to draft these.