BEFORE THE ATTORNEY GENERAL AND
THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE
STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF THE INVESTIGATION OF CANVAS CREDIT
UNION

Respondent.

THIS ASSURANCE OF DISCONTINUANCE ("AOD") is made between the Attorney General of the State of Colorado ("Attorney General") and the Administrator the Uniform Consumer Credit Code (collectively, the "Administrator"), C.R.S. § 5-1-101, *et seq.* ("UCCC") and Respondent Canvas Credit Union ("Canvas" or "Respondent"), arising out of the Administrator's investigation into Respondent's compliance with the UCCC and its rules, including 4 CCR 902-1:8 ("Rule 8") and the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.* ("CCPA"), the Respondent agreeing pursuant to C.R.S. § 5-6-110 that it will not engage in the conduct described herein in the future.

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the Administrator and the Respondent, as follows:

1.   The Attorney General is the Attorney General for the State of Colorado. C.R.S. § 24-31-101. The Attorney General is responsible for the enforcement of the CCPA. C.R.S. § 6-1-103.

2.   The Administrator is the Administrator of the UCCC. *See* C.R.S. § 5-6-103. Among other things, she is authorized to enforce compliance with the UCCC and its rules, and conduct investigations of possible violations of them. *See* C.R.S. § 5-6-101, *et seq.*

3.   Respondent Canvas is a Colorado state-chartered credit union with a principal office located at 9990 Park Meadows Drive, Lone Tree, CO 80124.

4.   The Administrator has jurisdiction over Respondent and the subject matter of this AOD under C.R.S. § 5-6-110. The AOD applies to all consumer credit transactions entered into with consumers in Colorado in accordance with C.R.S. § 5-1-201 ("Colorado consumers"). The AOD applies to any alleged unfair conduct committed by Respondent in Colorado. C.R.S. § 6-1-107.

5.   Guaranteed Automobile Protection ("GAP") means an agreement structured as either an insurance policy or a contractual term that relieves the

consumer of liability for the deficiency balance remaining after the payment of all insurance proceeds for property damage upon the total loss of the consumer's automobile that was collateral securing the consumer loan, whether the loss occurred from the total destruction of the vehicle or theft. *See* Rule 8(a). The contract between the consumer and the creditor related to GAP shall hereinafter be referred to as the "GAP Waiver."

6. Among other things, Respondent acts as a creditor under C.R.S. § 5-1-301(17) by purchasing from auto dealers retail installment sales contracts ("RISCs") that include GAP purchased by Colorado consumers.

7. After being served with a Civil Investigative Demand ("CID") by the Administrator, Respondent provided information to her concerning refunds on GAP for RISC's they purchased. Respondent represents that all information provided to the Administrator in connection with the CID and as part of settlement discussions forming the basis of this AOD regarding GAP and GAP refunds is true, accurate, and complete, to the best of its knowledge.

8. Rule 8(h) provides:

If the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral, and if no GAP claim has been made, the creditor must refund to the consumer the unearned fee or premium paid for GAP. If GAP was provided as a contractual term, the refund shall be made using a pro-rata method.

9. The Administrator contends that Respondent violated Rule 8(h). Respondent denies that it violated Rule 8.

10. The CCPA protects Colorado consumers from unfair and deceptive trade practices, C.R.S. § 6-1-105 *et seq.* The Attorney General contends that Respondent violated the CCPA by failing to pay GAP refunds of unearned GAP fees owed to Colorado consumers. Respondent denies that it violated the CCPA and contends that it did not engage in any unfair or deceptive trade practices.

11. Respondent represents that, as of January 30, 2023, it will alter its business practices to ensure that, from that date forward, it will make refunds to consumers of unearned GAP fees if the consumer credit sale or consumer loan is prepaid prior to maturity and if no GAP claim has been made ("GAP Refunds"). Prior to January 30, 2023, Respondent had been making refunds of unearned GAP fees when the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral, and Respondent agrees to continue this practice.

12.   Respondent represents to the Administrator that it performed a self-audit of all transactions with Colorado consumers that paid off a RISC with GAP coverage during the Applicable Period.[1] Respondent represents that it identified all transactions with Colorado consumers potentially owed GAP Refunds within the Applicable Period.

13.   For each Colorado consumer identified, Respondent will provide within twenty-eight (28) days of the execution of this AOD (date of execution is the "Effective Date") to the Administrator a list identifying (i) the name and address of the consumer, (ii) the total amount of the refund due to each consumer as provided below in paragraph 14(b), and (iii) the basis for the refund (i.e., an early payoff or a repossession). Respondent will provide the list to the Administrator in a native Microsoft Excel format and represent that the list is true, accurate, and complete for the Applicable Period. This list contains personal identifiable information and shall be maintained confidentially by the Administrator in accordance with state and federal laws.

14.   To remediate the conduct described herein, for which Respondent denies liability, Respondent agrees as follows:

    a.   together with all related or affiliated entities, and its officers, directors, shareholders, managers, members, principals, subsidiaries, heirs, successors, and assigns, together with all other persons, corporations, associations, or other entities acting under the entities' direction and control, or in active concert or participation with Respondent, or by whom Respondent may be employed or contracted with, Respondent agrees it shall issue GAP Refunds within 90 days from an early payoff of a RISC with GAP made on or after January 30, 2023, and without awaiting a request from consumers, as provided in paragraph 11. However, if the early payoff of a RISC is made after the Effective Date but before or on January 29, 2023, Respondent will issue a refund on or before May 1, 2023.

    b.   Respondent shall pay refunds pro rata to the consumers identified in paragraph 13. These refunds shall total $2,600,000. Respondent shall calculate the refunds owed to Colorado consumers by calculating the unearned portion of the GAP fee considering the loan date, the payoff date, and the amount of the fee. This amount is payable to the "Attorney General of the State of Colorado", along with any interest thereon, in trust by the Attorney General, to be used in the Attorney General's sole discretion for reimbursement of attorneys' fees and costs, the payment of consumer restitution, if any, and for consumer or creditor educational purposes, for future consumer credit or consumer protection

---

[1] The Applicable Period means October 29, 2018, to October 29, 2021.

enforcement, or public welfare purposes. The Administrator and the Attorney General elect, in lieu of making the payment directly to the Attorney General in the first instance, to direct Respondent to refund to Colorado consumers, on behalf of the Administrator and the Attorney General, any refunds owed to Colorado consumers under this AOD. To the extent that Respondent is unable to locate any Colorado consumers entitled to a refund or to otherwise pay a refund to a Colorado consumer within one-hundred and fifty (150) days, after one-hundred and fifty (150) days such unpaid refunds shall be paid to the Administrator in accordance with paragraph 15 below.

15.   Respondent shall make the refunds, as follows:

a.   <u>Refunds</u>. Respondent shall attempt to make any refunds due hereunder within forty-six (46) days after the Effective Date. All refunds shall be made by Automated Clearing House network ("ACH") transfer directly to the consumer's account with the Respondent. If ACH is unavailable, Respondent must issue the refunds by check. If any refund by check is undeliverable or returned on the first attempt, Respondent shall exercise reasonable efforts and due diligence to re-attempt the refund for one-hundred and fifty ("150") days in accordance with paragraph 15(d) below.

b.   <u>Transmittal Letter</u>. Concurrently with any refunds, Respondent shall send each consumer a letter via email, where Respondent has an email on file, or via postal service where it has no email on file, the form and contents of which has been pre-approved by the Administrator. The letter shall inform the consumer that Respondent agreed to provide refunds of GAP fees to consumers in the amount provided following an investigation by the Administrator, who works on behalf of the Attorney General. The letter will identify an electronic transfer and/or an enclosed check and the amount of the refund, and state that if the consumer does not accept payment within one-hundred and fifty (150) days, the money will be paid over to the Attorney General, in trust. A template of the transmittal letter is attached as **Exhibit A.**

c.   <u>Proof of Refunds</u>. Within one-hundred and sixty (160) days after the Effective Date, Respondent shall provide the Administrator with evidence reasonably acceptable to the Administrator, that Respondent timely sent refunds to consumers, such as copies of checks or confirmations of electronically transmitted funds via ACH. Respondent shall also update the list referenced in paragraph 13 at this time identifying which consumers received payments.

4

d. Refund Outstanding Beyond One-Hundred and Fifty (150) Days. Within one-hundred and fifty (150) days after the Effective Date, Respondent shall stop payment on outstanding refund checks and cease all attempts at ACH transfers, and pay to the Administrator, within thirty (30) days thereafter, the total amount of any and all refund amounts that remain outstanding, whether because they were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise.

16. Respondent Canvas shall pay to the Office of the Attorney General an additional one hundred thousand dollars ($100,000) in lieu of reimbursement to the Office of the Attorney General for its costs in investigating this matter. This amount shall be held, along with any interest thereon, in trust by the Colorado Attorney General to be used in the Attorney General's sole discretion for attorneys' fees and costs, restitution, for future consumer or creditor educational purposes, for future consumer credit or consumer protection enforcement, public welfare purposes. This amount shall be due upon the Effective Date.

17. At Respondent's expense and at the Administrator's option, and upon reasonable notice to Respondent's counsel, Respondent shall permit the Administrator to inspect books and records related to GAP Refunds once, at any time within normal business hours, and to conduct a follow-up inspection. The inspection must occur within one (1) year of the Effective Date and shall be conducted solely to enable the Administrator to determine and verify the accuracy and thoroughness of Respondent's self-audit and its compliance with this AOD.

18. All payments due the Administrator or the Attorney General hereunder shall be deemed paid upon the receipt of the payment. Respondent may pay by check or ACH transfer. Respondent shall endeavor to make its respective payments in two payments; pursuant to paragraphs 15 and 16. Checks shall be made payable to the "Colorado Department of Law." The check should be mailed to: "Administrator, UCCC, attn: Kevin Burns and Miriam Burnett, 1300 Broadway, 6th/7th Floor, Denver, CO 80203." Wire transfer instructions will be provided upon request for an ACH transfer.

19. This AOD fully resolves the issues between the Attorney General, Administrator, and Respondent arising out of the particular issues, allegations, or charges raised by the Attorney General or Administrator against Respondent concerning the GAP-related refunds to consumers under the UCCC and the CCPA up to and including the date of this release. This release does not apply to any GAP practices other than the specific refund issue described herein and does not apply to other claims arising under Rule 8, including but not limited to, claims for conduct concerning the failure to properly calculate GAP benefits in accordance with Rule 8. The Attorney General and Administrator provide this

limited release to Respondent, including any subsidiaries, officers, or employees, from any and all further investigation, claims, violations, allegations, fines, fees and penalties for the specific refund issue set forth herein and only that issue, whether they accrued or may have accrued as a result of any consumer credit sale transaction entered into by Respondent on or before the execution date of this AOD.

20. This AOD is binding upon all the officers, directors, employees, shareholders, managers, members, principals, affiliates, trade names, and successors of the Respondent, and it stipulates to its terms as indicated below.

21. This AOD represents the entire agreement between the parties. No party is relying on any prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD. No prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD shall have any force or effect.

22. Any modification of this AOD must be in writing, signed by each of the parties or by authorized representatives of each of the parties hereto.

23. This AOD is entered into for purpose of resolving only the matter described herein. Nothing in this provision affects Respondent's right to take legal positions in litigation in which the Administrator is not a party.

24. The date this AOD is executed by all of the parties shall be the Effective Date of this AOD for all purposes hereunder.

25. This AOD may be executed in counterparts, and it may be executed by facsimile or by electronic transmission of signature pages, and as executed shall constitute one agreement.

26. For the purpose of construing or interpreting this AOD, the parties agree that it is to be deemed to have been drafted equally by all parties hereto and shall not be construed strictly for or against any party.

AGREED AND STIPULATED TO BY:

CANVAS CREDIT UNION

By: _Benjamin D Greiving_

Benjamin Greiving
General Counsel
9990 Park Meadows Dr.
Lone Tree, CO 80124
Telephone: (303) 639-2128

DATE: _12/20/2022_

COLORADO ATTORNEY GENERAL

By: _Nikolai Frant_

NIKOLAI FRANT
Department of Law
Consumer Protection Section
Consumer Credit Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: (720) 508-6111
E-Mail: Nikolai.frant@coag.gov

DATE: _12/21/22_

ADMINISTRATOR, UCCC

By: _Nikolai Frant_

NIKOLAI FRANT

APPROVED AS TO FORM:

RESPONDENT CANVAS CREDIT UNION

By: _Benjamin Saul_

Benjamin M. Saul
2101 L Street, N.W., Suite 1000
Washington, DC 20037
Telephone: (202) 331-3123
E-Mail: saulbe@gtlaw.com

DATE: _12/20/22_

Canvas - Exhibit A

[Name]
[Address]

Re: Auto Loan No. []: GAP Fee Refund

Dear [Name]:

We are writing regarding the above-referenced auto loan. At the time you purchased your vehicle, you also purchased Guaranteed Asset Protection (GAP). According to our records, you financed your vehicle, including the cost of GAP, with Canvas. We understand that you paid your loan off early.

Canvas has agreed to provide refunds for unearned portion of GAP fees to consumers in the amount provided following an investigation by the Colorado Attorney General. We have [enclosed a check/ credited your Canvas account] in the amount of [$ ----]. [If you do not cash the enclosed check in one hundred fifty (150) days, the amount otherwise payable to you will be paid to the Colorado Attorney General.]

If you have questions, please contact us at [phone number].

Very truly yours,

[signature]