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## Website Usage Agreement

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PLEASE READ THIS WEBSITE USAGE AGREEMENT (THE "AGREEMENT") CAREFULLY BEFORE USING THIS SITE

This website (the "Site") is owned by Synchrony Bank, a federal savings bank headquartered in Utah (referred to herein as "Bank"), from whom you may obtain certain deposit accounts and other banking-related services (together the "Products"). Incorporated into this Website Usage Agreement by reference are: (i) all other policies described in the Site; (ii) the terms and conditions which govern the Products; (iii) all additional restrictions displayed on the Site, as this Agreement may be updated from time to time by the Bank; and (iv) the Online Privacy Statement and [Privacy Notice](#) applicable to this Site. These documents, taken together, are collectively referred to herein as the "Agreement". This Agreement governs your use of the Site and the various services provided therein.

BY USING THIS SITE, YOU AGREE TO THE TERMS OF THE AGREEMENT JUST AS IF YOU HAD SIGNED IT. IF YOU DO NOT AGREE TO ABIDE BY THE AGREEMENT, DO NOT USE THE SITE OR ACCESS MATERIALS FROM THE SITE.

This Agreement applies exclusively to your access to and use of the Site and does not alter the terms or conditions of any other agreement you may have with Bank, including any Product agreement.

### **CHANGES AND TERMINATION**

**TO THE AGREEMENT:** The Bank reserves the right, in its sole discretion, to amend or terminate this Agreement in whole or in part, at any time, without notice and liability, including, without limitation, if the Bank believes you have breached this Agreement. Any change to this Agreement will be effective when posted on the Site. You agree that your use of the Site after we have posted any changes constitutes consent to those changes. The Bank may terminate the authorization and rights granted herein, which may terminate your access to the Site.

TO THE SITE: The Site may implement required or automated updates, modifications and re-installations. These updates, modifications and re-installations may occur on a periodic or as needed basis without notice to you. In addition, the Bank may terminate, change, suspend or discontinue any aspect of the Site, including the availability of any features of the Site, at any time. The Bank may remove, modify or otherwise change any content, including that of third parties, on or from the Site. The Bank also may impose limits on certain features and services or restrict your access to the Site without notice or liability. The Bank may terminate your use of the Site at any time in its sole discretion.

### **RESTRICTIONS ON USE OF THE SITE**

The Site may be used by you only for the following purposes: obtaining information about the Products; obtaining and submitting applications for one or more of the Products; reviewing the status of your Product(s); accessing your Products; and obtaining customer service assistance regarding your Product(s).

In order to use the Site, you must be:

- At least 18 years old, and
- A legal resident of the United States.

If you do not satisfy the above restrictions on use, you are not permitted to use the Site or to access Materials from the Site.

Your access to certain applications and features that communicate with the Site, as applicable, are subject to restriction and/or revocation (such as being shut down) for security purposes or according to consistently applied content-protection policies. You understand and agree that this would likely result in content that was previously available for use being unavailable thereafter.

### **MONITORING**

The Bank has no obligation to monitor the use of the Site. You acknowledge and agree that the Bank reserves the right to, and may from time to time and consistent with the Privacy Statement and Notice, monitor any and all use of this Site for operational or other purposes. During monitoring, information may be examined, recorded, copied, and used for authorized purposes in accordance with our Online Privacy Statement and [Privacy Notice](#) and applicable privacy laws and regulations. Use of the Site constitutes consent to such monitoring. In particular, the Site may implement automated monitoring. As part of that process, the Site may create a unique system identification for your registered PC and/or registered portable device for security-related and tamper-detection purposes.

The Bank also reserves the right to investigate suspected violations of the Agreement and other potentially illegal conduct, including without limitation fraud. Any violation of the Agreement or of any applicable law or regulation may be referred to law enforcement authorities.

### **OWNERSHIP OF CONTENT**

The Site, including past, present, and future versions, information, content available for download, domain names, images, photographs, animation, video, source code, object code, HTML and other code, audio, music, text, applets, and the “look and feel” of the Site (collectively, the “Materials”), are owned, controlled or licensed by the Bank, its subsidiaries or affiliates, and protected from unauthorized use, copying and dissemination by U.S. and international copyright, trademark, patent and other laws, rules, regulations, and treaty provisions. In addition, the Site is protected, among other ways, under copyright laws as a collective work and/or compilation pursuant to applicable United States, Canadian and foreign laws. Any permitted copies, derivations and modifications of the Site are owned by the Bank or its licensors.

You agree to comply with all copyright laws worldwide in your use of the Site and to prevent any unauthorized copying of the Materials. Except as expressly provided herein, the Bank does not grant any express or implied right to you under any patents, trademarks, copyrights or trade secret information. In addition to this Agreement, the Bank reserves the right to take appropriate measures to protect copyright of the Site and its contents. You agree not to remove or modify any copyright or trademark notices or other legal notices on the Site, including without limitation, in any authorized print-outs made from the Site.

No part of the Materials on the Site may be reproduced or transmitted in any form and by any means without the express written consent of Bank, and such consent shall be contingent on the following:

- You must retain, on all copies of the Materials accessed, all copyright and other proprietary notices contained in the Materials.
- You may not modify the Materials in any way or reproduce or publicly display, perform, or distribute or otherwise use them for any public or commercial purpose without the Bank's prior written consent.
- You must not transfer the Materials to any other person without the Bank's prior written consent.

You cannot use any of the trademarks or protected copyright Materials found on and/or within the Site except as specified herein and in accordance with applicable law. You may not copy, display or use any of the trademarks or protected copyright Materials without the prior written permission of the Bank that owns the Materials. Any unauthorized use may violate United States, Canadian and foreign trademark laws, the laws of privacy and publicity, and civil or criminal statutes. Nothing contained on the Site should be construed as granting by estoppel or otherwise, any license or right of use to any trademark.

The authorizations contained in this Agreement which grant you the right to access the Site, its Materials and Products is not a license or transfer of title therein.

Notwithstanding the information above, you may print out account statements and information that pertains to your account.

#### **INFORMATION PROVIDED BY YOU:**

The Bank does not want you to, and you should not, send any confidential or proprietary information to the Bank via the Site, except in the manner provided to you for secure transmissions. You agree that, except as provided in Bank's Online Privacy Statement, any information that you or individuals acting on your behalf provide through the Site (the "User Feedback") will not be considered confidential or proprietary. By providing any such User Feedback through the Site, you grant Bank an unrestricted, irrevocable, worldwide, royalty-free license to use, reproduce, display, publicly perform, transmit and distribute such User Feedback without any consideration due and owing to you for such use, and you further agree that Bank is free to use any ideas, concepts or know-how that you or individuals acting on your behalf provide through the Site. Neither the Bank nor its service providers and affiliates shall be subject to any obligations of confidentiality regarding submitted information, except as agreed by the Bank or as otherwise restricted by the Online Privacy Statement and/or by applicable law. You further recognize that Bank does not want you to, and you warrant that you shall not, provide any User Feedback to Bank that is defamatory, threatening, obscene, harassing, or otherwise unlawful, or that incorporates the proprietary content of another.

#### **USER CONDUCT:**

In using the Site, you agree:

- Not to disrupt or interfere with the security of, or otherwise abuse, the Site, or any services, system resources, accounts, servers or networks connected to or accessible through the Site or affiliated or linked websites.
- Not to disrupt or interfere with any other user's enjoyment of the Site or affiliated or linked Sites.
- Not to upload, post or otherwise transmit through or on the Site any viruses or other harmful, disruptive or destructive files.
- Not to use or attempt to use or access another person's Product, account or personal information, or create or use a false identity on the Site.
- Not to attempt to obtain unauthorized access to the Site or portions of the Site which are restricted from general access.

In addition, you agree that you are solely responsible for actions and communications undertaken or transmitted under your Product, and that you will comply with all applicable local, state and federal laws and regulations, which relate to your use of or activities on the Site.

#### **THIRD-PARTY SITES**

As a convenience to you, the Site may provide, links to websites operated by other entities. If you use these third-party sites, you will leave the Bank's Site. If you decide to visit any linked site, you do so at

your own risk and it is your responsibility to take all protective measures to guard against viruses or other destructive elements. The Bank makes no warranty or representation regarding, and does not endorse, any linked websites or the information appearing thereon or any of the products or services described thereon. Links do not imply that the Bank or the Site sponsors, endorses, is affiliated or associated with, or is legally authorized to use any trademark, trade name, logo or copyright symbol displayed in or accessible through the links, or that any linked site is authorized to use any trademark, trade name, logo or copyright symbol of the Bank or any of its respective affiliates or subsidiaries. You are strongly encouraged to exercise caution and to use good judgment and discretion when obtaining or transmitting information on any third party sites.

### **PROMOTIONS**

The Site may contain or offer sweepstakes or other promotions, which may be governed by a separate set of rules that describe the sweepstakes or promotion and may have eligibility requirements, such as certain age or geographic area restrictions. It is your responsibility to read those rules to determine whether or not your participation, registration or entry will be valid and to determine the sponsor's requirements of you in connection with the applicable sweepstakes or promotion.

### **DISCLAIMER**

THE SITE AND ITS MATERIALS MAY CONTAIN INACCURACIES AND TYPOGRAPHICAL ERRORS. THE BANK DOES NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE MATERIALS OR THE RELIABILITY OF ANY ADVICE, OPINION, STATEMENT OR OTHER INFORMATION DISPLAYED OR DISTRIBUTED THROUGH THE SITE. YOU ACKNOWLEDGE THAT ANY RELIANCE ON ANY SUCH OPINION, ADVICE, STATEMENT, MEMORANDUM, OR INFORMATION SHALL BE AT YOUR SOLE RISK. UNDER NO CIRCUMSTANCES WILL THE BANK BE LIABLE FOR ANY LOSS OR DIRECT, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES CAUSED BY YOUR RELIANCE ON THIS INFORMATION OR FOR THE RISKS ASSOCIATED WITH THE PRODUCTS. THE BANK RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO CORRECT ANY ERRORS OR OMISSIONS IN ANY PORTION OF THE SITE. THE BANK MAY MAKE ANY OTHER CHANGES TO THE SITE, THE MATERIALS AND THE PRODUCTS, PROGRAMS, SERVICES OR PRICES (IF ANY) DESCRIBED IN THE SITE AT ANY TIME WITHOUT NOTICE.

THE BANK DOES NOT MAKE ANY WARRANTY THAT YOUR USE OF THIS SITE OR THE MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED. THE BANK ASSUMES NO RESPONSIBILITY FOR ANY DAMAGES THAT MAY BE SUFFERED BY YOU, INCLUDING, BUT NOT LIMITED TO, LOSSES FROM DELAYS, NON-DELIVERIES OF CONTENT OR ANY COMMUNICATIONS, ERRORS, SYSTEM DOWN TIME, MIS-DELIVERIES OR MISCOMMUNICATIONS, DATA BREACHES, NETWORK OR SYSTEM OUTAGES, FILE CORRUPTION, VIRUSES, OR SERVICE INTERRUPTIONS CAUSED BY THE NEGLIGENCE OF THE BANK, ITS RESPECTIVE AFFILIATES, ITS RESPECTIVE LICENSORS, OR YOUR OWN ERRORS AND/OR OMISSIONS. THE SITE, THE INFORMATION AND MATERIALS ON THE SITE, AND ANY SOFTWARE MADE AVAILABLE ON THE SITE, ARE PROVIDED "AS IS", "AS AVAILABLE", and ON A "WITH ALL FAULTS" BASIS AND WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER THE BANK NOR ANY OF ITS PARENT, SUBSIDIARY, COMPANIES, AFFILIATES, SUPPLIERS OR LICENSORS NOR THEIR EMPLOYEES, MANAGERS, OFFICERS, AGENTS AND VENDORS (COLLECTIVELY, THE "GE PARTIES") MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO: (A) THE SITE; (B) MATERIALS ON THE SITE; (C) CONTENT SUBMITTED TO THE SITE; AND/OR (D) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TO THE BANK OR VIA THE SITE. YOU AGREE THAT YOUR USE OF THE SITE IS AT YOUR SOLE RISK. SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

THE GE PARTIES DO NOT WARRANT THAT YOUR USE OF THIS SITE IS LAWFUL IN ANY PARTICULAR JURISDICTION, AND THE GE PARTIES SPECIFICALLY DISCLAIM SUCH WARRANTIES. BY ACCESSING OR USING THE SITE, YOU REPRESENT AND WARRANT

THAT YOUR ACTIVITIES IN CONNECTION WITH THE SITE ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SITE.

**LIMITATION OF LIABILITY; WAIVER**

UNDER NO CIRCUMSTANCES WILL THE GE PARTIES BE LIABLE TO YOU FOR ANY LOSS OR DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, FOR ANY DIRECT, INDIRECT, ECONOMIC, EXEMPLARY, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES THAT ARE DIRECTLY OR INDIRECTLY RELATED TO: (A) THE SITE; (B) THE MATERIALS ON THE SITE; (C) CONTENT SUBMITTED TO THE SITE; (D) YOUR USE OF, INABILITY TO USE, OR THE PERFORMANCE OF THE SITE; (E) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY THE GE PARTIES OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR USE OF THE SITE; (F) ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT OR OTHER INTELLECTUAL PROPERTY OWNERS; (G) ANY ERRORS OR OMISSIONS IN THE SITE'S TECHNICAL OPERATION; OR (H) ANY DAMAGE TO ANY USER'S COMPUTER, MOBILE DEVICE, OR OTHER EQUIPMENT OR TECHNOLOGY INCLUDING, WITHOUT LIMITATION, DAMAGE FROM ANY SECURITY BREACH OR FROM ANY VIRUS, BUGS, TAMPERING, FRAUD, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER LINE OR NETWORK FAILURE OR ANY OTHER TECHNICAL OR OTHER MALFUNCTION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF FORESEEABLE OR EVEN IF THE GE PARTIES HAVE BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT (INCLUDING, WITHOUT LIMITATION, WHETHER CAUSED IN WHOLE OR IN PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OR DESTRUCTION OF THE SITE). IN NO EVENT WILL THE GE PARTIES BE LIABLE TO YOU OR ANYONE ELSE FOR LOSS, DAMAGE OR INJURY, INCLUDING, WITHOUT LIMITATION, DEATH OR PERSONAL INJURY.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT WILL THE GE PARTIES TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED TEN UNITED STATES DOLLARS (\$10.00).

YOU AGREE THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES OR INJURIES THAT ARISE OUT OF THE GE PARTIES' ACTS OR OMISSIONS, THE DAMAGES, IF ANY, CAUSED TO YOU ARE NOT IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF ANY WEB SITE, PROPERTY, PRODUCT, SERVICE, OR OTHER SITE CONTENT OWNED OR CONTROLLED BY THE GE PARTIES, AND YOU WILL HAVE NO RIGHTS TO ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION OR EXPLOITATION OF ANY WEB SITE, PROPERTY, PRODUCT, SERVICE, OR OTHER SITE CONTENT OWNED OR CONTROLLED BY THE GE PARTIES.

BY ACCESSING THE SITE, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

**INDEMNIFICATION:**

When you use the Site, unless caused by the Bank's intentional misconduct or gross negligence, you agree to indemnify, defend (if requested by the Bank), and hold harmless the Bank and its service providers and affiliates and any other GE Parties from any and all third party claims, investigations, liability, judgments, settlements, damages, expenses and costs (including without limitation, attorney's

fees), caused by or arising from: (a) your use of the Site, the Materials, the services and the Products; (b) your breach or anticipatory breach of this Agreement; (c) your infringement (or the infringement by any other user of your account) of any intellectual property or other right of any third party; (d) any misrepresentation made by you; and (e) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental or quasi-governmental authorities, including, without limitation, all regulatory, administrative, and legislative authorities. You further agree to indemnify and compensate the Bank against any liability arising out of, or in connection with, transfers of funds to accounts with other financial institutions pursuant to your instructions as well as your cancellation of scheduled transfers and transactions. You will cooperate as fully required by the GE Parties in the defense of any claim or in any investigation. The GE Parties reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you will not in any event settle any claim without the prior written consent of a duly authorized employee of the GE Parties.

#### **COMMERCIALLY REASONABLE SECURITY PROCEDURES**

By using the Site, the Materials and/or any of the services and offerings contained therein you acknowledge and agree this Agreement sets forth your rights and obligations with respect to the Site and the Products made available thereon, all of which are commercially reasonable. You further agree to be bound by instructions that we may implement from time to time to ensure the security of the Site.

#### **INTERNATIONAL USE AND CHOICE OF LAW**

The Site is controlled, operated and administered by the Bank from its offices within the United States of America. Access to the Site from territories where its contents are illegal is prohibited. This Website Usage Agreement shall be governed by the laws of the State of Utah and the federal laws of the United States of America, without giving effect to conflict-of-law provisions. For all disputes arising from or related to the Site, you agree to submit to the personal and exclusive jurisdiction of the state and federal courts located in Utah.

#### **ARBITRATION/WAIVER OF JURY TRIAL**

##### **READ THIS ARBITRATION PROVISION CAREFULLY AS IT WILL HAVE A SUBSTANTIAL IMPACT ON HOW LEGAL CLAIMS YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED.**

Special Definition of “We,” “Us” and “Our.” Solely for purposes of this Arbitration Provision, the terms “we,” “us” and “our,” in addition to the meanings set forth in this Agreement, also refer to our employees, officers, directors, parents, controlling persons, subsidiaries, affiliates, successors and assigns. “We,” “us” and “our” also apply to third parties if you assert a Claim against such third parties in connection with a Claim you assert against us.

Claims Subject to Arbitration. A “Claim” subject to arbitration is any claim, dispute or controversy between you and us (other than an Excluded Claim or Proceeding as set forth below), whether preexisting, present or future, which arises out of or relates to the Agreement, your use of the Site, any prior agreement you have had with us, any transaction conducted with us in connection with the Site or Agreement, your use of the Site, or any prior agreement. “Claim” has the broadest possible meaning and includes initial claims, counterclaims, cross-claims, interpleaders, third-party claims and federal, state, local and administrative claims and claims which arose before the effective date of this Arbitration Provision. It includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity and includes claims for money damages and injunctive or declaratory relief. Upon the demand of you or us, Claim (s) will be resolved by individual (not class or class-wide) binding arbitration in accordance with the terms specified in this Arbitration Provision.

Excluded Claim or Proceeding. Notwithstanding the foregoing, “Claim” does not include: (A) Any dispute or controversy about the validity, enforceability, coverage or scope of this Arbitration Provision or any part thereof (including, without limitation, the Class Action Waiver set forth below and/or this sentence); all such disputes or controversies are for a court and not an arbitrator to decide. However, any dispute or controversy that concerns the validity or enforceability of the rules and regulations as a whole is for the arbitrator, not a court, to decide. (B) Any individual action brought by you in small claims court or your state’s equivalent court will not be subject to this Arbitration Provision, unless such action is transferred, removed, or appealed to a different court; (C) Your or our right to resort to self-help remedies such as the right of set off or the right to restrain funds in an account, to interplead

funds in the event of a dispute, to exercise any security interest or lien held in property, or to comply with legal process, or to obtain provisional remedies such as injunctive relief, attachment, or garnishment by a court having appropriate jurisdiction; or (D) Any individual action in court by one party that is limited to preventing the other party from using a self-help remedy and that does not involve a request for damages or monetary relief of any kind. The institution and/or maintenance of any such right, action or litigation shall not constitute a waiver of the right of either of the parties to compel arbitration regarding any other dispute subject to arbitration pursuant to this Arbitration Provision. Moreover, this Arbitration Provision will not apply to any Claims that are the subject of a class action filed in court that is pending as of the effective date of this Arbitration Provision in which you are alleged to be a member of the putative class for as long as such class action is pending.

Federal Arbitration Act. Notwithstanding any choice of law or other provision in this Agreement, the parties agree and acknowledge that the Agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act (Title 9 of the United States Code) ("FAA") shall govern its interpretation and enforcement and proceedings pursuant thereto. To the extent state law is applicable under the FAA; the law of the State of Utah shall apply.

Class Action Waiver. Notwithstanding any other provision of this Agreement, if either you or we elect to arbitrate a Claim, neither you nor we will have the right: (a) to participate in a class action, private attorney general action or other representative action in court or in arbitration, either as a class representative or class member; or (b) to join or consolidate Claims with claims of any other persons. No arbitrator shall have authority to conduct any arbitration in violation of this provision or to issue any relief that applies to any person or entity other than you and/or us individually. (Provided, however, that the Class Action Waiver does not apply to any lawsuit or administrative proceeding filed against us by a state or federal government agency even when such agency is seeking relief on behalf of a class of borrowers including you. This means that we will not have the right to compel arbitration of any claim brought by such an agency). The parties to this Agreement acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is non-severable from this Arbitration Provision. If the Class Action Waiver is limited, voided or found unenforceable, then the parties' 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. The parties acknowledge and agree that under no circumstances will a class action be arbitrated. Arbitration Procedures. If you or we elect to arbitrate a claim, the electing party must notify the other party in writing. This notice can be given after the beginning of a lawsuit and can be given in papers filed in the lawsuit. Otherwise, your notice must be sent to 170 Election Road, Suite 125, Draper, Utah 84020, Attn: General Counsel and our notice must be sent to the most recent address for you in our files. Any arbitration hearing that you attend must take place in a venue reasonably convenient to where you reside. If a party files a lawsuit in court asserting Claim(s) that are subject to arbitration and the other party files a motion to compel arbitration with the court which is granted, it will be the responsibility of the party prosecuting the Claim(s) to select an arbitration administrator in accordance with the paragraph below and commence the arbitration proceeding in accordance with the administrator's rules and procedures.

The arbitration will be administered by the American Arbitration Association ("AAA"), 1633 Broadway, 10th Floor, New York, NY 10019, [www.adr.org](http://www.adr.org), 1-800-778-7879 or JAMS, 620 Eighth Avenue, 34th Floor, New York N.Y. 10018, [www.jamsadr.com](http://www.jamsadr.com), 1-800-352-5267. The rules and forms of the AAA and JAMS may be obtained by writing to these organizations at the addresses listed above. If the AAA and JAMS are unable or unwilling to serve as administrator, the parties may agree upon another administrator or, if they are unable to agree, a court shall determine the administrator. No company may serve as administrator, without the consent of all parties, if it adopts or has in place any formal or informal policy that is inconsistent with and purports to override the terms of the Class Action Waiver in this Arbitration Provision. In the event of a conflict between the provisions of this Arbitration Provision, on the one hand, and any applicable rules of the AAA or JAMS or other administrator used or any other terms of this Agreement, on the other hand, the provisions of this Arbitration Provision shall control.

A single arbitrator will be appointed by the administrator and must be a practicing attorney with ten or more years of experience or a retired judge. The arbitrator will not be bound by judicial rules of procedure and evidence that would apply in a court, nor by state or local laws that relate to arbitration proceedings. The arbitrator will apply the same statutes of limitation and privileges that a court would

apply if the matter were pending in court. The arbitrator will take reasonable steps to protect customer account information and other confidential information if requested to do so by you or us. You or we may choose to be represented by counsel. In determining liability or awarding damages or other relief, the arbitrator will follow the applicable substantive law, consistent with the FAA, that would apply if the matter had been brought in court. The arbitrator may award any damages or other relief or remedies that would apply under applicable law to an individual action brought in court, including, without limitation, punitive damages (which shall be governed by the Constitutional standards employed by the courts) and injunctive, equitable and declaratory relief (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim).

At your written request, we will pay all filing, hearing and/or other fees charged by the administrator and arbitrator to you for Claim(s) asserted by you in an individual arbitration after you have paid an amount equivalent to the fee, if any, for filing such Claim(s) in state or federal court (whichever is less) in the judicial district in which you reside. (If you have already paid a filing fee for asserting the Claim(s) in court, you will not be required to pay that amount again). In addition, the administrator may have a procedure whereby you can seek a waiver of fees charged to you by the administrator and arbitrator. We will always pay any fees or expenses that we are required to pay by law or the administrator's rules or that we are required to pay for this Arbitration Provision to be enforced. The arbitrator will have the authority to award fees and costs of attorneys, witnesses and experts to the extent permitted by this Agreement, the administrator's rules or applicable law. However, with respect to Claim(s) asserted by you in an individual arbitration, we will pay your reasonable attorney, witness and expert fees and costs if and to the extent you prevail, if applicable law requires us to or if we must bear such fees and costs in order for this Arbitration Provision to be enforced. At the timely request of either party, the arbitrator shall write a brief explanation of the grounds for the decision.

A judgment on the award may be entered by any court having jurisdiction. Notwithstanding any provision in this Agreement to the contrary, we will not exercise any right of setoff to any arbitration award made to us unless and until the arbitration award is confirmed by a court having jurisdiction and becomes a final judgment and until any timely appeal thereof is completed.

**Severability and Survival.** If any part of this Arbitration Provision, other than the Class Action Waiver, is deemed or found to be unenforceable for any reason, the remainder shall be enforceable. This Arbitration Provision shall survive the closing of your account and the termination of any relationship between us, including the termination of this Agreement; any bankruptcy to the extent consistent with applicable bankruptcy law; changes to your Agreement or any related services we provide; and the transfer or assignment of your account or any related services we provide.

**Effect of Arbitration Award.** The arbitrator's award shall be final and binding on all parties, except for any right of appeal provided by the FAA. The arbitrator's award shall be final and binding on all parties, except for any right of appeal provided by the FAA. However, if the amount in controversy exceeds \$50,000, you or we can, within 14 days after the entry of the award by the arbitrator, appeal the award to a three-arbitrator panel administered by the Administrator. The panel shall reconsider anew any aspect of the initial award requested by the appealing party. The decision of the panel shall be by majority vote. Unless the parties agree otherwise and to the extent feasible, the appeal will be conducted pursuant to or modeled after the JAMS Optional Appeal Procedure, available at <http://www.jamsadr.com/rules-optional-appeal-procedure/>. Reference in this Arbitration Provision to "the arbitrator" shall mean the panel if an appeal of the arbitrator's decision has been taken. The costs of such an appeal will be borne in accordance with this paragraph. Any final decision of the appeal panel is subject to judicial review only as provided under the FAA. A judgment on the award may be entered by any court having jurisdiction.

**Notice and Cure; Special Payment.** Prior to initiating a Claim, you may give us a written Claim Notice describing the basis of your Claim and the amount you would accept in resolution of the Claim, and a reasonable opportunity, not less than 30 days, to resolve the Claim. Such a Claim Notice must be sent to us by certified mail; return receipt requested, at 170 Election Road, Suite 125, Draper, Utah 84020, Attn: General Counsel. This is the sole and only method by which you can submit a Claim Notice. Upon receipt of a Claim Notice, we will credit your account for the standard cost of a certified letter. If (i) you submit a Claim Notice in accordance with this Paragraph on your own behalf (and not on behalf of any other party); (ii) you cooperate with us by promptly providing the information we



reasonably request; (iii) we refuse to provide you with the relief you request before an arbitrator is appointed; and (iv) the matter then proceeds to arbitration and the arbitrator subsequently determines that you were entitled to such relief (or greater relief), you will be entitled to a minimum award of at least \$7,500 (not including any arbitration fees and attorneys' fees and costs to which you will also be entitled). We encourage you to address all Claims you have in a single Claim Notice and/or a single arbitration. Accordingly, this \$7,500 minimum award is a single award that applies to all Claims you have asserted or could have asserted in the arbitration, and multiple awards of \$7,500 are not contemplated.

**Waiver of Jury Trial and Class Action Waiver.** To the extent permitted by applicable law, with respect to any Claim or other dispute between you and us (as defined in the Arbitration Provision) that is tried in court rather than resolved by arbitration, you and we hereby agree (a) that the Claim or other dispute will be tried by a judge without a jury, and you and we knowingly, voluntarily, intentionally and irrevocably waive the right to trial by jury in such a proceeding and (b) that any such litigation will proceed in court on an individual basis and will not proceed as part of a class action.

### **ONLINE PRIVACY STATEMENT**

The Site has an Online Privacy Statement that describes the types of information that collected when you visit the Site and how the Bank uses and shares that information.

### **VIOLATIONS OF THIS AGREEMENT**

Bank reserves the right to seek all remedies available at law and in equity for violations of this Agreement, including the right to block access from a particular Internet address to the Site.

### **MISCELLANEOUS**

This Agreement constitutes the entire agreement between the Bank and you with respect to the terms of usage for the Site. The failure of the Bank to act with respect to a breach of this Agreement by you or others does not constitute a waiver and will not limit the Bank's rights with respect to such breach or any subsequent breaches. No waiver by the Bank of any of the terms of this Agreement will be of any force or effect unless made in writing and signed by a duly authorized office of the Bank. Neither the course of conduct between the parties nor trade practice will act to modify this Agreement. The Bank may assign its rights and duties under this Agreement to any party at any time without any notice to you. The Agreement may not be assigned by you without the Bank's prior written consent. The section titles in this Agreement are inserted only as a matter of convenience and have no legal or contractual effect. You agree that the Agreement will not be construed against the Bank by virtue of the Bank having drafted it. Subject to any contrary provision that may be contained in any applicable laws of the State of Utah, any cause of action you may have with respect to your use of the Site must be commenced within one (1) year after the claim or cause of action arises. If for any reason a court of competent jurisdiction or arbitrator finds any provision of this Agreement or portion thereof to be invalid or unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of this Agreement, and the remainder of this Agreement shall continue in full force and effect. In the event any of the terms or provisions of this Agreement shall be held to be unenforceable, the remaining terms and provisions shall be unimpaired and the unenforceable term or provision shall be replaced by such enforceable term or provision as comes closest to the intention underlying the unenforceable term or provision. This Agreement shall be subject to any other agreements you have entered into with the Bank.

You agree that you will be responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed to access and use the Site and that you are solely responsible for all fees and costs incurred in order to obtain or maintain access to and use the Site. You also agree to comply with all rules, laws and regulations that are applicable to your use of the Site, including, without limitation, those governing your transmission or use of any software or data.

### **CONTACTING BANK**

If you need to contact Bank, please contact customer service, Monday through Friday during normal business hours, at the phone number and/or email address provided on the Site. DATE: November 2012

FDIC insurance is up to \$250,000 per depositor, per insured bank, for each ownership category. Identity Theft Protection Services, are provided by Identity Theft 911.©

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