

# General Terms and Conditions

## Important to read

In consideration of Capital One Investing, LLC (“Capital One Investing,” “our,” “us,” or “we”) opening a brokerage account (“Account”) for the Account owner (“you” or “your”), you understand, acknowledge and agree to the terms and conditions set forth below (the “Agreement”). When used in this Agreement, the term “Services” refers to the brokerage and other services and website offered and operated by us.

## 1) Acknowledgments and Representation

### Receipt of Documents

By opening an Account with us, you are agreeing that you have received, read and understand the provisions in this Agreement and our Privacy Policy. When you click on “I Agree”:

### Capacity and Agreement to Terms and Conditions

- This indicates to us that the laws in your home state recognize you as being old enough and having the legal capacity to open an Account and to be bound by this Agreement.
- You are agreeing to all of the terms and conditions of this Agreement and our Privacy Policy.
- This is the same as manually signing this Agreement.

### Amendments of the Agreement

We may change this Agreement from time to time. We will notify you when this happens either through e-mail or an Account alert. When this Agreement is modified, you have 15 calendar days to notify us that you do not agree to the changes and that you would like to close your Account and terminate this Agreement.

- If 15 calendar days pass without you notifying us that you do not agree to the changes, you will be deemed to have accepted those changes to the Agreement. However, any changes to this Agreement that are required by law become effective immediately.

### For Self-Directed Accounts Only

Some of our customers open up self-directed Accounts. This means that these customers pick all of their own investments and assume all responsibility for their investments, including those that loss money. If you are opening a self-directed Account, then:

- We do not provide any type of financial advice on buy or sell transactions or any recommendations on any of your trades. You are solely responsible for determining the suitability of your own investment choices and investment strategies.
- You agree to complete all transactions in your Account through (i) the Capital One Investing website (“Website”) or (ii) through telephone orders, which are subject to an additional fee.
- You acknowledge that all orders are unsolicited and all transactions will be initiated by, and directed by, you. You

are responsible for all orders and all orders that you submit. All such orders are based on your own investment decisions and are at your own risk. We may accept and act on your instructions and you will not hold us responsible for following your orders or for any rejection or delay of your orders.

## Scope of Services and Communications

You agree that we do not provide legal or tax advice of any kind. You also agree to receive all communications from us via Account alerts on the World Wide Web or e-mail at your e-mail address on file with us. Such communications include, but are not limited to:

- confirmations of transactions;
- Account statements;
- tax documents;
- prospectuses and prospectus supplements;
- annual and semi-annual reports for registered investment companies;
- reorganization notices;
- proxy materials;
- notices of modifications to Capital One Investing's Privacy Policy or Agreement;
- annual and semiannual audited and unaudited reports for Capital One Investing and other basic communications.

A copy of this Agreement is available for your review on the Website.

If you saw a Capital One Investing advertisement on a bank or credit union website, and are opening an Account as a result, you acknowledge that your investments aren't guaranteed, aren't FDIC or NCUA insured, and may lose value. All securities purchased through us are subject to investment risk and you may lose all of the monies you invested.

We may retain the information and documents you provide to us. If you provide us with false information, we may close your Account and take legal action if appropriate.

## 2) Brokerage Services

### ShareBuilder®

We offer the **ShareBuilder Service**, or "**ShareBuilder**," which allows you to build a portfolio through periodic purchases of selected securities. Through ShareBuilder, you have the ability to invest specific dollar amounts in stocks, mutual funds and exchange-traded funds. Your dollar-based investments are aggregated with the purchases of other Capital One Investing customers and entered by us as market orders. Aggregation of ShareBuilder orders for the same securities helps us keep execution and processing costs to a minimum. The aggregated orders are allocated to individual customer Accounts based on their proportional participation in the entire transaction.

The ShareBuilder Service is on a transaction cycle and you have the ability to choose the frequency for your Account. The choices are one-time, weekly, bi-weekly or monthly. You can schedule the time to invest at a time that is convenient for you to fund your brokerage Account through an electronic funds transfer or other means. Once you have chosen a security and an investment day, you'll have your own ShareBuilder plan.

### Trade Now

Trades through "Trade Now" are standard brokerage transactions. Through us, you can make share-based buys and sells of most publicly traded securities. Trades are executed in a manner and time consistent with your instructions:

- market orders are routed for execution at the next available price;
- limit orders are executed at or above the limit price (for sell orders) or at or below the limit price (for buy orders).  
Limit order executions are not guaranteed;

- Sales of fractional shares (no whole shares) are priced at the next market close after the order is received.

Execution of trade Now trades cost more than execution of ShareBuilder transactions.

### **Capital One Advisors Managed Portfolios (the “Program”)**

The Program is a discretionary wrap-fee program sponsored and operated by our affiliate, Capital One Advisors, LLC (“COA”), for which we serve as the executing broker-dealer. Under the Program, COA, an investment adviser registered with the Securities and Exchange Commission (“SEC”), manages the assets in your Account on a discretionary basis in accordance with a model asset allocation portfolio you select. You pay for the investment advisory services provided by COA and the securities brokerage and administrative services we provide in a single bundled fee or “wrap fee.” This wrap fee and other important information about the Program are described in COA’s Wrap Fee Brochure for the Program that is filed with the SEC, a copy of which is available at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

If you participate in the Program, you acknowledge and agree that we do not provide any investment advice under the Program. Our role under the Program is limited to executing securities transactions directed to us by COA. COA is solely responsible for all investment advice provided to you under the Program, including the management of your assets. If you have questions about the Program, including the management of your Account assets under the Program, please e-mail COA at [COA@CapitalOne.com](mailto:COA@CapitalOne.com).

### **Stocks and ETFs**

We offer a broad range of securities covering approximately 90% of the US equity markets. Only stocks on our Stocks List may be purchased through us. The Stocks List is revised regularly at our sole discretion. Certain stocks that you purchase may be removed from the Stocks List. If this occurs, you understand and agree these stocks won’t be available for future purchase through us. If you have bought a stock through us, and it’s subsequently removed from the Stocks List, you can still hold or sell these shares.

Only stocks on our Stocks List that are listed on a National Securities Exchange (NYSE, AMEX or NASDAQ) may be transferred to your Account. We will return and/or reject certificates sent or electronically transferred to us that do not meet this requirement and you agree to hold us harmless for doing so.

### **Trailing Stops**

Trailing stops involve certain unique risks. If you are not willing to accept these risks, you must use a conventional order type, such as a market, stop or limit order. Our trailing stop service is provided “as is” and there may be delays, omissions or inaccuracies in the service. We are not responsible for trailing stop orders impacted by system failures or quote data issues. Trailing stop orders face risk from data transmission errors, including errors involving quote data. In the event of misquotes (e.g. a bad tick) or failure to receive a quote, orders may be erroneously delivered, or may fail to be delivered to the market center. On occasion, rapid quote movements or out of range quotes may trigger your stop condition. In an effort to avoid some of the market data risks, we exclude trades that:

- Are outside regular trading hours, such as pre-market or extended hours trading;
- Include certain indicators, such as those with a late report or that are out of sequence;
- Are outside the then existing best bid and offer in the market unless it is the third trade outside the best bid and offer.

Trailing stop orders also face risks from mechanical malfunction, system disruptions, certain types of corporate actions (e.g. cash dividends), and bad ticks, among other factors. You are responsible for reviewing and maintaining your trailing stop orders in order to avoid conflict or duplication of orders. Capital One Investing does not guarantee that conflicting orders will be prevented, and resolution of conflicting or erroneous trailing stop orders will be at your sole risk and expense. We, our agents, and information providers, cannot, and do not, guarantee the accuracy, sequence, completeness, timeliness, merchantability or fitness for a particular purpose of this service.

Neither Capital One Investing nor any of its agents and information providers, shall be liable to you or to anyone else for any loss caused in whole or in part by its negligence or omission in entering or not entering orders or interpreting, reporting, or delivering any information or data through this service. This includes your waiver for any consequential, special or similar damages, including but not limited to lost profits, trading losses, damages resulting from inconvenience, or loss of use of the service. This service may be discontinued or limited at any time and without prior notice.

Trailing stop orders have unique risks, and by continuing to utilize this service you acknowledge that you have read, understood and will abide by the above disclosures, Agreement as they are modified and posted on the applicable software, website or other electronic medium through which you access this feature. A trailing stop order is subject to automatic cancellation pursuant to the open order cancellation schedule.

### **The Trade Date**

The “Trade Date” is the market day a buy or sell is executed within your Account. The “Settlement Date” is the Trade Date plus three (3) business days for stocks and exchange-traded funds and one (1) business day for mutual funds and options.

### **Mutual Funds**

Mutual Funds may also be bought or sold through Capital One Investing. Mutual funds aren't FDIC insured, aren't guaranteed by a bank, and may lose value. You should read and carefully consider information contained in the prospectus, including, but not limited to investment objectives, risks, charges, and expenses. The prospectus may be found in several locations throughout the Website, including the Research and Trading sections.

## **3) Capital One Investing Mobile**

### **Acknowledgements**

By using our mobile application (“Capital One Investing Mobile”), you acknowledge and agree that you have read and understood the terms and conditions in this Section of the Agreement.

### **Network Usage**

While we do not charge a fee to use Capital One Investing Mobile your mobile service provider may charge you a data network usage fee.

### **Content and Service Limitations**

Most mobile devices have a limited screen size, which means regulatory disclaimers and other important content and notifications found on the Website may not appear within Capital One Investing Mobile. Before using Capital One Investing Mobile, you acknowledge you are familiar with the disclaimers, notifications and other information contained in the Website and you acknowledge that they also apply to your use of Capital One Investing Mobile. Further, we have made only certain services and market content available within Capital One Investing Mobile. Thus, you acknowledge and accept these limitations.

### **Market Data, News, Quotes, and Other Information**

Capital One Investing Mobile is for your personal use, only. Therefore, you agree not to retransmit or republish (in any form), the market data, news, and other information available in Capital One Investing Mobile. The information we provide to you is from third party sources, which we believe to be reliable. You accept that the information is presented to you on a best efforts basis and that we do not guarantee the accuracy or completeness of any information. You agree to waive any claims against us, our affiliates and our successors related to information provided from third party sources. You also acknowledge any third party information we provide to you through Capital One Investing Mobile does not constitute a recommendation to buy, hold or sell any security or an investment strategy.

## **Wireless Transmission Errors, Limitation**

You acknowledge that wireless coverage limitations, wireless data transmission errors, device errors, and other factors outside of our control can impair the reliability of data transmissions to and from your telephone or other mobile device while you are using or attempt to use Capital One Investing Mobile. This includes (but is not limited to) quotes or other market information, which may be corrupted or delayed due to wireless transmission errors. Thus, transactions you place might be delayed or lost due to such transmission errors, and other problems may occur that are beyond our control.

If you are experiencing connectivity problems, data transmission issues or other mobile device errors, we recommend that you complete the desired actions through the Website and not through Capital One Investing Mobile. You hereby waive any claims against us, our affiliates and successors relating to any and all errors, losses or other claims caused directly or indirectly by wireless coverage limitations, wireless data transmission errors, device errors, or Capital One Investing Mobile errors.

## **Data Security and Privacy**

Although we have employed encryption, firewalls, and other precautions to protect the security, integrity and confidentiality of data you transmit via Capital One Investing Mobile, wireless data transmissions are vulnerable to interception, and certain wireless devices are vulnerable to intrusion by persons seeking to exploit and misuse your data or data transmissions.

You agree to keep your mobile device secure and you accept all risk of loss or other harm caused by use of wireless communications to view, receive and transmit information and engage in transactions using Capital One Investing Mobile.

You waive any claims against us, our affiliates and our successors relating to losses or other harm caused by data security or other privacy breaches arising out of your use of wireless communications and Capital One Investing Mobile.

We use Adobe Analytics to track Capital One Investing Mobile app usage. Although we do not allow Adobe Analytics to capture or transmit any detailed transactional, banking, credit card, or other personal financial information, the data collected does include the nature of the service used and a unique customer identifier that we (not Adobe Analytics) can use to associate the data with individual customers. This data will be used to improve Capital One Investing Mobile and the services we offer. To learn more about Adobe Analytics, visit their website at [www.adobe.com/solutions/digital-analytics.html](http://www.adobe.com/solutions/digital-analytics.html).

## **Amendments**

At our sole discretion we may amend the terms and conditions applicable to Capital One Investing Mobile at any time. Such terms and conditions will be amended and notice to you will be provided in accordance with the provisions in Section 1 above. A copy of the terms and conditions applicable to Capital One Investing Mobile is available for your review on the Website and inside Capital One Investing Mobile.

## **4) Services and Charges**

When you buy or sell securities, we act as a broker or as a dealer . When you enter a buy or sell order, you agree to take full responsibility for this decision and to not hold us or any of our employees liable for your investment decisions.

We reserve the right to refuse any Account and to decline or change any order at our sole discretion.

You agree to pay all applicable costs, fees and charges (including any surcharges passed to us by exchanges) related to your Account that are set forth in the "Pricing" area of the Website. You also agree to pay all taxes that apply to transactions in your Account.

Transaction costs for the ShareBuilder Service come out of the specific dollar amount you invest for ShareBuilder investments.

When you make a Trade Now trade, transaction costs are added to the cost of the shares for buy orders, while transaction costs are deducted from the proceeds for sell orders.

All other charges may be deducted from your Account balance, or covered by an electronic funds transfer or separate payment.

See “Pricing Programs - Basic and Advantage” regarding a credit card payment option for subscription costs.

You should be aware that certain charges are set by and paid to third parties but are paid through us. For instance, if an agent for a corporate action imposes a charge on a security you hold, we reserve the right to pass this cost on to you.

We reserve the right to change our pricing and rates on the fees and charges for our Services at any time. We will do this by posting a modified Pricing & Rates schedule on the Website and sending you notice thereof in accordance with the provisions in Section 1 above.

You agree that a request to cancel a trade is only a request and, as such, cancellation of any given trade is not guaranteed. We will try to get your cancel request submitted, but markets move quickly. We process cancel order requests on a best efforts basis. If we are unable to cancel your order, you agree to be bound to it. As a general rule, market orders are subject to immediate execution and cannot be canceled during market hours.

Price quotes shown for stocks and exchange traded funds reflect the most recent price reported for that security in the market. Such quotes do not guarantee that your trade for that security will be executed at or near the quoted price. Share prices can change rapidly during the trading day, especially prices for low-priced and/or thinly traded shares, and quotes shown after the markets are closed often bear no relation to the price a stock or exchange traded fund might start trading at the next trading day. To protect yourself from unexpected price swings, you should consider using limit orders instead of market orders. If you place a market order and the trade executes in the market at a cost more than the estimated cost based on the displayed quote, you must pay the entire cost of the trade by Settlement Date, even if that amount exceeds the cash available in your Account.

## **5) Pricing Programs - Basic and Advantage**

### **Subscription Costs**

Once you have paid a monthly subscription cost for the Advantage Pricing Program, it isn't refundable. Also, your free ShareBuilder investments that aren't used in the current month aren't rolled forward to future months.

When you sign up for the Advantage pricing program, the subscription starts immediately. The subscription cost is not prorated based on number of days or weeks remaining in the month. In other words, the Advantage Pricing Program has a flat rate regardless of the day of the month you begin your subscription.

When the method you have chosen to pay the subscription cost either reverses or fails, we reserve the right to collect the subscription cost from your Account's cash balance. This is done to make sure the Advantage pricing program you have selected continues. However, if the monies aren't available in your cash balance at that time, your Advantage Pricing Program will change to Basic. Thus, we move you back to the Basic pricing program only if the subscription cost for Advantage cannot be collected from your Account's cash balance.

If your method of payment either reverses or fails, we reserve the right to appropriately re-calculate and/or assess transaction costs applicable under the Basic Pricing Program.

### **Pricing Program Order Cancellations**

A subscriber of the Advantage Pricing Program who cancels ShareBuilder investments on the fourth (or fifth) Monday or

Tuesday of any given month, should be aware this may result in the loss of one or more free automatic investments for that month. Depending on your number of scheduled investments, this might result in transaction costs on one or more of the automatic investments that should have been free under your pricing program. This may occur if, on the fourth Monday or Tuesday of a month, you cancel one or more automatic investments scheduled to occur that Tuesday, and those canceled orders have already been “written” by us as one of your free automatic investments for that month.

If this occurs and you are charged for transactions that should have been free, you will automatically receive a corresponding number of free automatic investment credits, which can be used in the following month. If you don't receive your automatic investment credits, please contact Capital One Investing Customer Service (see Section 30 for contact information).

### **Pricing Program: Changing and/or Unsubscribing**

In the event you change from the Basic Pricing Program to Advantage at any time during the month, you will want to re-enter any pending trades (including limit orders) in order to receive the lowered transaction costs available for Advantage Pricing Program subscribers.

When you change pricing programs, transaction costs on all trades that we have already processed are not refunded. However, automatic investments occurring prior to a change of pricing programs are included in the number of free ShareBuilder investments under the new pricing program for that month.

When you unsubscribe from the Advantage Pricing Program in the middle of the month, this doesn't result in any rebate of the Advantage subscription cost for that month. And, this move to the Basic Pricing Program becomes effective the beginning of the following month.

During the remainder of the month for which you have already paid an Advantage subscription cost, you continue to receive lowered investment transaction pricing and all other benefits of that particular pricing program.

## **6) Governing Laws and Jurisdiction**

By opening one or more Accounts with us and by agreeing to the terms and conditions of this Agreement,

- You acknowledge and agree that you, and anyone else you authorize to use your Account(s), are doing business in King County, State of Washington.
- This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, as they apply to agreements made and solely performed in Washington, excluding conflict of law provisions.
- Without limiting your right to file arbitration claims against Capital One Investing under FINRA Rule 12200 or its affiliates or successors, you consent to the personal jurisdiction and venue of the federal and state courts in King County, Washington for any court action or proceeding relating to your Account and you agree that all such claims by you against us or our affiliates or successors will be subject to the exclusive jurisdiction and venue of the federal and state courts in King County, State of Washington.
- Your brokerage Account will be subject to the rules, regulations, customs and practices of the exchanges, markets, clearing corporations, self-regulatory organizations, and applicable state and federal laws.

## **7) Service Not Available Outside the United States or to Non-Resident Aliens**

Our products, Services and Website aren't generally offered or available to anyone located outside the 50 U.S. states.

This includes U.S. citizens residing or working abroad.

Also, at this time, we don't accept Accounts for non-resident aliens who require a Form W-8 for tax-withholding.

We make no representation or guarantee regarding our compliance with local laws in foreign jurisdictions, or regarding the

appropriateness of our Website's content or its compliance with such local laws.

You understand that our Website is the only means of accessing your Account and completing your Capital One Investing brokerage transactions. Your inability to access the Website in certain foreign countries could result in your inability to access your brokerage Account or to complete transactions. You agree that we shall not be liable for any losses or damages you incur as a result of the unavailability of the Website from foreign countries.

## 8) Accuracy and Notification

You represent and warrant that the information you supplied on your Account Application and all other information that you furnish to us is accurate, and you agree to notify us by electronic communication of any changes in such information. You also agree to notify us by the same means if you are or become: a) employed or affiliated with a securities brokerage firm, bank, investment adviser, trust company, insurance company or securities exchange; or b) an officer, director, affiliate or 10% shareholder of a publicly traded company. We may rely upon all information you provide to us. You agree to indemnify and hold us and our successors and affiliates harmless from and against any and all damage, cost, judgment, liability, loss, demand, charges, claims, award, settlement, tax, penalty, action, expense or fee (including legal expenses, reasonable attorneys' fees, costs and expenses relating to investigating or defending any demands, charges or claims and costs of collection) of any nature, and claims therefore (collectively, "Losses") arising out of or relating to your failure to provide accurate information on your Account Application or otherwise or to update that information. You further represent that no other person has an interest in your Account except those persons you have disclosed in the Account Application.

## 9) Joint Accounts

Any joint Account holder may individually, without notice to other joint Account holders, authorize us to buy, sell, tender, or exchange securities in the Account and to receive any monies or securities into the Account. However, separate written instructions, manually signed by all Account holders, are required to disburse or transfer any assets out of the Account to an account not bearing the identical registration to the Capital One Investing Account. Where we receive a request from an individual joint Account holder to transfer assets out of the Capital One Investing Account to an account bearing the identical registration, then we may act upon such a request, without notice to other joint Account holders. Any notice, verbal, or written, we give to one joint Account holder will be considered given to all joint Account holders. Upon the death of any joint Account holder, the surviving joint Account holder(s) must give reasonably prompt notice to us. The surviving Account holder(s) will be the owner(s) of the Account and continue to be subject to the terms of this Agreement. Each Account holder is jointly and severally liable to us for any obligation or liabilities arising in connection with the Account. We may use reasonable discretion in making any disbursements or transfers in the name of the Account holders shown on the Accounts. If we become aware of a dispute between or among joint Account holders, we reserve the right, but are not obligated, to place restrictions on the Account and/or related Accounts and to maintain such restrictions until we are satisfied in our own discretion that the dispute has been resolved following receipt of satisfactory documentation or a notarized instruction signed by all Account holders. We may also, at the expense of the Account holders, commence or defend any action for or in the nature of interpleader to have the dispute resolved judicially. If a suit or proceeding for or in the nature of interpleader is brought by or against us, we may deliver the Account into the registry of the court, at which time we will be deemed to be and will be released and discharged from all further obligations and responsibilities under this Agreement.

## 10) No Obligations for Fiduciaries

Capital One Investing does not review any action or inaction of a fiduciary with respect to any Account, including any action or inaction taken by COA with respect to the Program, and disclaims any responsibility for determining (i) whether a fiduciary's conduct satisfies applicable standards of care, or (ii) the validity of a person's or entity's status, or capacity to serve, as a fiduciary. Any fiduciary using a Service agrees to indemnify and hold us, our successors and our affiliates harmless from and against any Losses arising out of or relating to any act, error or omission of the fiduciary. A custodian of a UTMA, UGMA or Education Savings Account is responsible for all activity in the Account and all transactions in the



Account will be deemed to be the result of actions of the custodian. The custodian agrees to indemnify and hold us, our successors and our affiliates harmless from and against any losses arising out of or relating to any act, error or omission of the custodian or the minor.

## **11) Account Approval/Termination and Authorization to Obtain Consumer Report**

This Agreement will be effective only upon our approval of your Account Application. As part of our Account opening procedures, and under other circumstances we reasonably deem appropriate, we may obtain one or more consumer reports on all potential and existing Account holders. Consumer reports may contain information bearing on your creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living. You hereby consent and authorize us or our authorized agents or successors to: (i) obtain from a consumer reporting agency one or more consumer reports on you to be used in evaluating whether to open and approve a new Account for you or on your behalf, or to maintain any such Account(s); and (ii) to provide to such consumer reporting agency any information you have provided to us in your Account Application. On written request, we will advise you whether we have obtained credit reports, and, if so, will provide the name and address of the reporting agency that furnished the report(s). You further authorize us to share such consumer report information with our parent corporation, Capital One Holdings, LLC. We reserve the right to report to consumer and securities credit reporting agencies any debit balance or negative credit information pertaining to any Account. We further reserve the right to reject an Account Application for any reason.

We may terminate any or all Services rendered under this Agreement or terminate an Account at any time and for any reason. The Account holder may close his or her Account at any time by giving notice to us in accordance with the instructions found by searching 'Close Account' on the Website. Upon termination, you will remain liable for any deficiencies or debit balances in the Account. You agree to reimburse us for any collection costs relating to any unsecured debit balance in your Account, including attorney's fees, court costs, and interest. This agreement to reimburse Capital One Investing for any collection costs does not apply to any claims submitted to arbitration under FINRA Rule 12200 or its successor.

## **12) Right of Offset and Liquidation**

All assets held in any Account, now or in the future, shall be subject to a general lien for discharge of any indebtedness you have to us. These assets shall be held by us as security for payment of any liability you may have with us. In the event you do not fully meet a settlement obligation, we may, without further notice, take action, including but not limited to: liquidating or canceling the transaction; transferring securities or money from any other of your Accounts; liquidating securities from any such Accounts and applying the proceeds from such sales to your debt or liability to us; and purchasing or borrowing securities to make delivery. You are responsible for commissions and all costs and losses arising from these actions.

## **13) Settlement**

All transactions are on a "cash only" basis. You agree that prior to placing a purchase order for securities, you will provide a valid and sufficient authorization to us for electronic funds transfers from an account at another financial institution(s) over which you have valid signatory authority and/or you will otherwise deposit sufficient funds with us on or before trade date. You also agree that prior to placing a sell order, you will present securities in "good delivery form" for deposit with us as necessary.

## **14) Non-Sufficient Funds Policies**

We reserve the right to cancel or cover any transaction which is the subject of a returned check or electronic funds transfer reclamation. A service fee will be charged for such instances. Securities held in an Account at Capital One Investing, LLC may be liquidated to cover any indebtedness to us. We also reserve the right to restrict your ability to withdraw funds until such time as we are reasonably assured that all deposits or other items in your Account have cleared.

## 15) Fraud

In case of fraud or theft by you, acting alone or in concert with others, involving, among other things, use of counterfeit checks, checks drawn on closed or non-existent Accounts, checks stolen from third parties, unauthorized electronic funds transfers from bank accounts belonging to others, attempted electronic transfers from non-existent Accounts or similar illegal or improper conduct involving Account funding or withdrawals, and including situations in which you have allowed third parties to use your Account in any such manner, we shall assess against you, in addition to all other fees, damages and penalties to which it may be entitled, a \$500 fee per forged, faked, fictitious, stolen or otherwise unauthorized item or transfer. This fee shall constitute liquidated damages to compensate Capital One Investing for the time and effort of its employees in rectifying said conduct.

## 16) Priority of Balance

If you're using the ShareBuilder Service, buy orders will only happen if your Account contains the exact cash balance needed to cover all specified purchases on the morning of your scheduled transactions. For example, if you have created a plan to buy three different securities, but you only have enough funds to cover two purchases, then no transactions will take place.

Requests for withdrawal of funds, or an order to buy a security via a standard trade have priority over scheduled ShareBuilder transactions, provided the withdrawal request or the trade order is received sufficiently in advance of a scheduled ShareBuilder transaction.

If a limit purchase order is entered, this unexecuted trade ties up funds in your cash balance, as it's deemed to have been executed for the purpose of calculating your available Account balance.

If you have a debit balance in an Account we may, at our option and without notice to you, switch-off a standing instruction to reinvest cash dividends in the Account or any of your Accounts in order to cover the debit balance. It is your responsibility to ensure that the reinvest dividend instruction is reset for all affected Accounts after the debit is covered.

## 17) Cash/Credit Balances

You agree that all credit balances in customer Accounts, including cash dividends or interest, monies received prior to any purchase settlement date, and net proceeds from liquidations, are transferred to a consolidated "sweep account." Also, sufficient monies to cover securities purchases in Capital One Investing customer Accounts are "swept" out of the appropriate sweep account on settlement date.

You may choose at any time between an independently managed money market mutual fund sweep account ("Money Market Cash Balance") or an FDIC insured bank deposit sweep account with Capital One, N.A. ("FDIC Insured Cash Balance").

**Rates can and will change without notice to you. It is your sole responsibility to monitor at all times which sweep option is best for you based on yield, applicable FDIC insurance coverage and other considerations, and to make timely and appropriate elections.**

Review and, if appropriate, change your current sweep account election by going to the Profile and Settings tab under Accounts, Overview on the Website. Changes to your sweep account election made before Noon Pacific Time on a regular business day are generally effective that day for purposes of starting or stopping FDIC coverage; changes at other times are generally effective the next business day for purposes of FDIC coverage.

The sweep accounts are held in the name of Capital One Investing. Those accounts hold monies in aggregate for the exclusive benefit of our customers.

In order to protect ourselves and our customers from fraudulent activity, we reserve the right to temporarily hold credit balances and to delay requested disbursements, regardless of whether the credit resulted from a cash deposit or a selling transaction. Disbursements may also be re-directed to a bank account previously used by the customer if we suspect fraud or money-laundering in connection with a more recently linked bank account. At our discretion, any disbursement holding period will generally be the customary time required to verify clearance of the originating deposit, depending upon the nature of the funds' transmittal (e.g. check, electronic transfer, wire, etc.). As circumstances dictate, we may also extend such hold in order to confirm the identity of the requestor or to take other steps we deem reasonable to prevent fraudulent activity.

### **Money Market Cash Balance**

The Money Market Cash Balance option for uninvested cash is invested in a money market mutual fund. The current 7-day yield on the Money Market Cash Balance is displayed on your Account Balances page.

The money market mutual fund is managed by a registered investment adviser. We reserve the right to change the money market mutual fund(s) used for this purpose or, in our discretion, to terminate this service. A complete prospectus for the money market mutual fund can be found by entering "money market prospectus" in the site search box found in the upper right corner of the Website. Please consider all investment objectives, risks and charges before investing.

Dividends paid by the money market mutual fund are calculated daily and posted to individual Accounts monthly. If less than \$0.000005 of dividends is accrued in a given day, the amount will be rounded down to \$0 and, therefore, you will not accrue dividends for that day.

Proportionate customer balances in the sweep account selected by the customer are reported in individual Account balances and statements. We reserve the right to change or terminate the Money Market Cash Balance option at any time.

Any amounts held in the Money Market Cash Balance are securities and, although the fund seeks to preserve its value, market fluctuations can occur and the fund may lose value. The Money Market Cash Balance is not insured by the FDIC, not bank guaranteed, and may lose value. The Money Market Cash Balance is, however, covered by SIPC insurance. To learn more about SIPC Account protection, enter "Account protection and SIPC" in the site search box found in the upper right corner of the Website.

### **The FDIC Insured Cash Balance**

The Federal Deposit Insurance Corporation (FDIC) is an independent agency of the United States government created to protect depositors in the event a bank fails and cannot refund depositors' money. The FDIC Insured Cash Balance option for uninvested cash is available to all Account holders. If you are opening a new brokerage Account, you and agree that your initial the cash sweep election will be the FDIC Insured Cash Balance, unless you indicate otherwise in the Account Application. You may change your election at any time. The current interest rate for the FDIC Insured Cash Balance is displayed on your Account Balances page.

The FDIC Insured Cash Balance is currently held at Capital One, N.A., member FDIC. Capital One Investing is a subsidiary of Capital One, N.A. Capital One, N.A. pays Capital One Investing administrative fees on a quarterly basis based on the total number of Capital One Investing Accounts eligible for the FDIC Insured Cash Balance sweep option. Interest will be accrued on the daily cash balance and will be posted for review. If less than \$0.000005 of interest is accrued in a given day, the amount will be rounded down to \$0 and, therefore, you will not accrue interest for that day.

Rates may vary and Capital One, N.A. has the right to make changes to those rates at any time. Interest rates may be lower than rates for other deposit programs available through Capital One, N.A. Be sure to consider all cash management options. Interest accruals and postings will be available for view on the Account Balances page of the Website. Interest postings will also be shown on monthly and yearly statements.

As of November 1, 2012, FDIC Insured Cash Balances are eligible for FDIC insurance up to \$250,000 (including interest and principal) per individual depositor and up to \$500,000 per joint depositors, subject to the limitation that such amounts are aggregated against all other similarly held deposits at Capital One, N.A. for purposes of calculating FDIC insurance limits. It is the responsibility of the Account holder to monitor their deposits at Capital One Investing and Capital One, N.A. to determine if they exceed the limits of available FDIC insurance. Additionally, FDIC coverage amounts may change at any time at the discretion of the FDIC and Capital One Investing makes no warranty against the possibility of such changes, the timing thereof, or the amount of advance notice thereof. Below is a summary of FDIC coverage limitations as of November 1, 2012.

An individual with multiple Accounts can be insured up to a total of \$500,000. So for example, if you have a single Account as well as a joint Account, you'll be insured up to \$250,000 for the single Account and up to \$250,000 per depositor on the joint Account. If a bank for any reason is unable to reimburse depositors, the FDIC steps in and does it for the bank – up to \$250,000 per ownership type (single or joint).

### A tabular example of an individual with multiple Accounts

Account Holder	Deposit Type	Account Balance
Jane	360 Savings	\$110,000
Jane	360 Checking	\$65,000
Jane	FDIC Insured Cash Balance - Capital One Investing Account	\$100,000
<b>Total Deposits</b>		\$275,000
<b>Amount Insured</b>		\$250,000
<b>Amount Uninsured</b>		\$25,000

Joint Accounts are deemed to be owned 50/50 and are FDIC-insured up to \$250,000 for each individual on the Account, equaling \$500,000 in total.

### A tabular example of a joint Account with multiple Accounts

Account Holder	Deposit Type	Account Balance
Jane & John	360 Savings	\$190,000
Jane	360 Checking	\$115,000
Jane	FDIC Insured Cash Balance - Capital One Investing Account	\$135,000
<b>Total Deposits</b>		\$440,000
<b>Amount Insured</b>		\$440,000

Although funds are held at Capital One, N.A., the only way to access those funds in your FDIC Insured Cash Balance is through your Capital One Investing Account. Any questions about your Account or balances should be addressed to our customer service team.

We reserve the right to change or terminate the FDIC Insured Cash Balance option at any time.

For additional information regarding FDIC coverage amounts you may contact FDIC, Deposit Insurance Outreach, at (877) 275-3342 (or 1-800-925-4618), or by visiting the FDIC website at <http://www.fdic.gov/deposit/deposits/>.

For customers participating in the Program designed and operated by COA, the cash managed in accordance with the model portfolios under the Program is not part of our sweep program and is not subject to the provisions of this section. While the cash in the model portfolios under the Program is allocated to an FDIC insured bank account provided by Capital One, NA, COA may change, in its sole discretion, the vehicle used for the cash at any time.

## 18) Selling Securities

Non-mutual fund shares acquired through the Capital One Investing Service may be sold through us via a Trade Now trade only. Such sales will be subject to our base commission charge, which are posted on the Website. Sell orders for fractional shares (no whole shares) are subject to the same commission as Trade Now trade market orders and are priced at the next market close after the order is received.

Sell orders are accepted only for shares actually owned by customers and in our possession and control. "Short sales" are not permitted.

See Section 25 below regarding sales (redemptions) of mutual fund shares.

## 19) Standing Instructions for Balance and Positions

Shares acquired through or deposited to Capital One Investing will be held in "street name" only. Shares will not be registered or transferred unless specifically requested by the customer. We may charge a separate fee to register and or deliver securities. Participants understand that we cannot transfer or deliver fractional shares of any security. Regular cash dividends paid by any individual company will be reinvested automatically, unless directed otherwise, which will increase the customer's share position in that company. Cash balances held at Capital One Investing whether resulting from a deposit, bank transfer, dividend or securities sale, will be held by Capital One Investing unless specifically requested by the customer.

## 20) Restricted Securities

- We will not handle the sale of restricted securities.
- You agree not to enter sell orders with us for securities that are subject to Rule 144 or 145(d) promulgated under the Securities Act of 1933.
- You agree to pay for any loss we incur in closing-out any and all such intentional or unintentional sale(s).

## 21) Order Flow Payment

We currently do not have an arrangement where we receive payment for directing order flow and do not receive compensation for securities transactions executed through designated exchanges, market makers, dealers or market centers.

## 22) Market Data, News and Other Information

You agree that the market data, news, and other information available to you through the Website are for your personal use, not for professional usage, and that you will not retransmit or republish this information in any form. You acknowledge that the information provided to you is obtained from sources believed to be reliable and is presented solely on a best efforts basis, and that no accuracy or completeness of the information is guaranteed. You waive any claims against us relating to such third party information and also acknowledge that the provision of such information does not constitute

a recommendation by us to purchase or sell any security. Quotes, including real-time quotes, are provided by third party providers and are believed to be reliable but are presented solely on a best efforts basis with no guarantee of accuracy, timeliness, or completeness. You waive any claims against us and against third party providers relating to such information.

By executing this agreement, you agree: (i) that you have read and agreed to be bound by the OTC Markets Subscriber Agreement and (ii) that Capital One Investing, LLC is not an agent of OTC Markets Group and is not authorized to add or to delete from the OTC Markets Subscriber Agreement and is not authorized to modify any provision of the OTC Markets Subscriber Agreement.

By executing this agreement, you also agree: (i) that you have read and agreed to be bound by the New York Stock Exchange Subscriber Agreement and (ii) that Capital One Investing, LLC is not an agent of the New York Stock Exchange and is not authorized to add or to delete from the New York Stock Exchange Subscriber Agreement and is not authorized to modify any provision of the New York Stock Exchange Subscriber Agreement.

## **23) Extraordinary Events**

You agree that Capital One Investing will not be liable to you or to third parties for losses incurred directly or indirectly by causes reasonably beyond its control, including but not limited to, government restrictions, natural disasters, severe weather conditions, wars, strikes, terrorist attacks, exchange or market rulings, interruptions of data processing services or communications, disruptions in orderly trading on any market or exchange, unauthorized access or operator errors.

## **24) Access to Services and Market Volatility**

Access to our electronic services, and hence, your brokerage Account, may be limited or unavailable during periods of market volatility, peak demand, systems upgrades, maintenance or for other reasons. You agree that we will not be liable to you for any losses or damages incurred by you (including lost profits, trading losses and similar damages) resulting from such access limitations or unavailability.

Additionally, with the exception of telephone orders, for which a higher fee is charged, you understand that the Website is the primary means of processing your brokerage transactions and that, in the event of an interruption of communications systems or other hardware or software malfunction, access to view and to transact in your brokerage Account could be delayed. In the event of a significant outage, we would undertake best efforts to process all transactions over the telephone through our Customer Service team, but would not be liable for any losses or damages you might suffer as a result of such delays or inability to access your Account or effect transactions.

You understand that when you place a market order, you will receive the price at which your order is executed in the marketplace. During periods of high volume, illiquidity, fast movement or volatility in the stock markets, the execution price received may differ from the quote provided on entry of an order, and you may receive partial executions of any order at different prices. You also understand that orders for larger numbers of shares are relatively more likely to receive executions at prices that vary from a given quote. You agree to pay or receive the prevailing market price at the time your market order is executed. You understand that limit orders may not be executed at any particular time, or at all, if there is not sufficient trading at or better than the limit price you specify.

## **25) Mutual Fund Transactions**

In the event that you purchase or hold a mutual fund, you agree to read and understand the terms of its prospectus. You understand that certain mutual funds reserve the right to change their purchase, exchange or redemption procedures and/or suspend or postpone redemptions under certain market conditions. You further understand that any mutual fund order entered with us is placed by us on a best efforts basis as prescribed and recognized by the individual fund, and that we are not responsible for unexecuted orders due to the failure of any communication system. You agree to be fully

responsible for understanding the information contained within the mutual fund prospectus and to hold us harmless for any deficiencies contained therein. You authorize us to act as your agent in the purchase and redemption of fund shares.

By making a mutual fund or mutual fund family available to you, however, Capital One Investing does not guarantee the appropriateness, fitness, or suitability of any mutual fund. We make no recommendation of any kind.

Make sure you read the mutual fund prospectus carefully before investing or sending money. You will find in it important details about your investment, including expenses and sales charges. Sales charges come in various forms; please make certain you understand any sales charges and fees you may pay and when you may pay them. See the Capital One Investing Pricing and Rates on the Website for a list of any transaction fees that may apply in addition to those fees or charges described in the mutual fund prospectus.

Mutual funds' past results are not a guarantee of future performance. The yield and total return on these securities reflect past performance and should not be considered an indication or guarantee of future performance.

You may invest in no-load, no transaction fee (NTF) funds through us without paying a sales load or transaction fee. You acknowledge that Capital One Investing reserves the right to change the funds available through the NTF program and to reinstate the transaction fees on any funds. See the Mutual Funds Research pages on the Website for a current list of NTF funds. Keep in mind that other costs and expenses may apply to continued investment in a no-load or no transaction fee fund and are described in the fund's current prospectus.

Investment minimums, exchange requirements, and the timing of fund distributions in an Account may differ from those applicable to positions held directly with a mutual fund. We pay distributions when we receive distributions. In particular, customers who liquidate positions in funds that accrue daily dividends may not receive the accrued dividend until the scheduled monthly payable date for the fund.

Mutual fund shares acquired through the Capital One Investing Service may be sold through us via a mutual fund sell order only. Except as to "no transaction fee" funds, such sales will be subject to our base commission charge applicable to mutual funds. In addition, you understand that mutual fund shares cannot be sold until the business day after the purchase settles.

Excessive, short-term or market timing trading practices may disrupt portfolio management strategies and harm fund performance. To minimize harm to a fund and its shareholders, mutual fund companies may reserve the right to reject any purchase order (including exchanges) from any investor whom they believe has a history of excessive trading or whose trading may be disruptive to the fund. You should consult your fund's prospectus for its specific short-term trading policy. We may restrict Account owners or Accounts that engage in excessive or disruptive trading from making mutual fund purchases. The purchase restriction may be temporary or permanent, and may apply only to certain mutual funds or all mutual funds. The decision to impose a purchase restriction may originate with a mutual fund company or may be made by us, if we believe such a block is warranted. You should consult your fund's prospectus for its specific definition of excessive trading. See our Investing Pricing and Rates on the Website for information on the charges relating to no transaction fee mutual fund shares sold within 90 days of their purchase.

The standard cut-off time for mutual fund orders is 3:30 PM Eastern time, but some funds may have earlier cut-off times as stated in their prospectus. The market may close earlier on holidays or for unforeseen circumstances. You understand that mutual fund purchase orders received by us and entered into our systems before the cut-off time will receive the share price calculated that business day. Orders received by us after the cut-off time will receive the share price calculated on the next business day. Communication or data processing delays may cause orders submitted too close to the applicable fund's cut-off time to be processed on a next business day basis.

## 26) Mutual Fund Disclosure

Capital One Investing receives revenue sharing payments from mutual funds and their distributors or other affiliates, based on the amount of these funds sold by us and/or held through us by our customers. These revenue sharing payments are in addition to the sales charges, 12b-1 fees and other fees and expenses paid by customers or the funds and disclosed in the fund's prospectus fee table. Revenue sharing payments give Capital One Investing a financial incentive to sell certain mutual funds, and therefore create a conflict of interest that you should consider in making your investment decisions regarding such funds.

Additionally, our clearing firm, Pershing LLC, may receive servicing fees from funds that participate in its no-transaction fee mutual fund program, in lieu of clearing transaction charges assessed to us. We share with Pershing in such fees for providing shareholder services. These fees may be considered revenue sharing and are a significant source of revenue for Pershing and us. These fees are paid in accordance with an asset-based formula.

The amount of compensation that we receive varies depending on the mutual fund purchased and the particular share class purchased, as mutual funds (and share classes) are priced differently. For additional information and potential conflicts of interest arising from such activities and other activities of Capital One Investing affiliates, see the fund prospectus and corresponding statement of additional information for each fund. You should carefully review these materials and consult with your financial advisor if you have any questions.

## 27) ShareBuilder Plan

If you set up a Capital One Investing ShareBuilder plan, you are authorizing us to purchase shares in the securities, in the dollar amount(s) and on the date(s) selected by you. We will implement those instructions by initiating fixed debits periodically from your cash balance, from your linked bank account or from some other source as may be selected by you and permitted by us. You understand that in order to establish a ShareBuilder plan that is linked to a bank account, you must first set up a link to that bank account. Such bank links are governed by applicable Automated Clearing House rules. You authorize us to honor all debit entries initiated by you or on your behalf from time to time through your available cash balance. All such debits are subject to sufficient collected funds in your designated account to pay the debit when presented.

If there is insufficient cash from your cash balance or linked bank account to purchase shares for a ShareBuilder plan, you understand that the automatic investment scheduled for that period may not take place. You understand and acknowledge that any change in ownership or cancellation of your Account, or any transaction returned for any reason, including but not limited to insufficient funds, may result in the cancellation of your ShareBuilder plan without prior notice to you. You also understand and acknowledge that we reserve the right to modify or terminate your ShareBuilder plan at any time and for any reason upon notification to you.

You understand and acknowledge that, in order to terminate your ShareBuilder plan, you must enter appropriate instructions through the Website. You will remain liable for all items that have not been settled at the time of termination of any plan.

We will undertake to make transfers or purchases as instructed by you in order to effect your ShareBuilder investment plan. You agree that we will not be liable for any loss incurred by you in connection with transfers from or to your Account or other implementation of your ShareBuilder plan unless we are grossly negligent in fulfilling our responsibilities in regards to your ShareBuilder plan. In no event will we be liable for consequential, special or indirect damages or losses. We may, at our discretion, require periodic oral or written reaffirmation of your instructions regarding transfers and we may terminate this service at any time. You will indemnify us and our officers, employees, agents, successors, and assigns against any and all claims or liabilities by virtue of us acting on your automatic investments instructions. This indemnity is unlimited and shall be binding upon your heirs, successors, and assigns. We shall have no liability for our costs or



damages resulting from inaccuracy of information which you provide to us, or from your failure to update any information which you have provided.

## 28) Communications between Capital One Investing and the Customer

By opening an Account with us, and by agreeing to this Agreement, you agree to receive all communications from us via the World Wide Web or e-mail. This includes, but is not necessarily limited to:

- confirmations of transactions;
- Account statements;
- tax documents;
- prospectuses and prospectus supplements;
- annual and semi-annual reports for registered investment companies;
- reorganization notices;
- proxy materials;
- notices of modifications to Capital One Investing's Privacy Policy or Agreement;
- annual and semiannual audited and unaudited reports for Capital One Investing and other basic communications.

Communications sent to your e-mail address or provided through the Website must be retrieved and read promptly. In fact, all the communications we have sent to you by any means will be deemed to have been received by you. You agree to advise us promptly of any changes to your e-mail and/or mailing address.

You also agree to advise us promptly of any errors or omissions in any transaction or in the handling of your Account. Failure to provide prompt notice of any errors is deemed to constitute acceptance of the accuracy of all information sent to you.

Further, you acknowledge that you have access to a printer in order to facilitate our document-delivery obligations and your record-keeping needs. You understand that we will not send trade confirmations, Account statements and certain other reports/materials in hardcopy form.

## 29) General Promotions Disclosure

We reserve the right to limit the number of promotions and promotional awards for your Account. Follow the rules (they're located on the source of each promotion). If you use promotions fraudulently, provide inaccurate or incomplete information in opening your Account, or violate any terms of this Agreement, we can revoke your promotional award and close your Account(s).

## 30) Contacting Customer Service and Complaints

Our Customer Service Team is here to help, so if you have an issue to discuss regarding your Account, these individuals will help work toward a solution with you. You may get in touch with us in a few ways:

- Phone: 1-800-747-2537 (here to help from 8AM - 9PM ET Monday through Friday)
- Chat with an Associate through secure messaging (same hours as the phone)
- E-mail: [customerservice@capitaloneinvesting.com](mailto:customerservice@capitaloneinvesting.com);
- Or, written complaints can be sent to Capital One Investing Attn: Customer Service, 83 South King Street, Suite 700, Seattle, WA 98104.

## 31) Recording

We want to make sure you're getting the best service possible. That's why we reserve the right to record telephone calls and monitor your e-mails to ensure the quality of service you receive; or, for other purposes we deem appropriate for our protection or for the protection of our customers.

## 32) Security and Confidentiality

We go to great lengths to keep your personal information and your brokerage Account secure. We kindly ask that you do the same on your end, so here are the details:

- You agree that you will be fully responsible for the confidentiality of your user name and password. This means not sharing your user name or password with others, properly protecting your computer from intrusion and being careful not to log into your Account from non-secure computers or networks at cafes, libraries and other public places.
- You agree that you will use robust passwords and change your password periodically.
- You further agree that you will be fully and solely responsible for all activities, including brokerage transactions that arise from the use of your user name and password.
- You agree to immediately notify us in writing or by e-mail of any loss, theft or unauthorized use of your user name, password and/or Account number(s).

## 33) Contributions to Qualified-Type Accounts

You are personally responsible for all tax consequences of any contribution to a qualified Account (i.e. Traditional IRAs, Roth IRAs and Education Savings Accounts as well as employer-sponsored Retirement Accounts), including a contribution in excess of any respective limit under governing law (an “over-contribution”). You understand our business rule for posting a contribution as of the date of receipt into an Account, regardless of the source of the funds for the deposit or the date/timing of any instruction or action which caused the deposit. You further understand that, in the absence of a specific instruction, the date of receipt at Capital One Investing designates the “tax year” for a particular contribution.

You recognize that the foregoing policy also applies to a cash deposit which is the result of a promotional award to you by us, or on your behalf by entitled third-parties such as your financial institution, to a qualified-type Account; and that it is your responsibility to monitor related amounts and their timing. (Note: it can take as long as 4 to 6 weeks for such deposits to post to your Account after being awarded.)

## 34) Unique Reorganization Distributions

In situations where the reorganization of a company results in the distribution of a security type or denomination which cannot be processed by Capital One Investing, we reserve the right to liquidate or to decline to hold the resulting security. Examples of such unique distributions could include bonds, units and securities with unusual tax consequences.

## 35) Severability

This Agreement covers the entire agreement with respect to your access to and use of our Website and our provision of the Services. If any provision of this Agreement is unlawful, void or unenforceable, then that provision shall be deemed severable from the remaining provisions and shall not affect their validity and enforceability.

## 36) Successors

This Agreement will pass to the benefit of our successors, assigns and agents. Subject to applicable rules of a self-regulatory organization, we may assign our rights and duties under this Agreement to any of our successors, subsidiaries or affiliates without giving notice or to any other entity on prior written notice to you.

In addition, you agree that this Agreement and all terms herein, will be binding on your heirs, executors, administrators and personal representatives and any assigns permitted by Capital One Investing.

## 37) Power of Attorney

You kindly agree and hereby irrevocably appoint Capital One Investing with full power as your true and lawful attorney-

in-fact, to the full extent permitted by law, for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that we deem necessary or advisable to accomplish the purposes of this Agreement.

### **38) Connecting Accounts**

If you have more than one eligible Capital One account, we may automatically “connect” it so that certain information about your Account is visible when you sign into your connected account. Additionally, after signing in to your connected account, you may be able to access and perform certain transactions on your Account without re-entering your username or password. Here’s an example to illustrate: let’s say you have an eligible Capital One Bank account that we “connect” to your Account—when you sign into your connected bank account, you’ll be able to see information about your Account, and you may also be able to access your Account without re-entering your username or password.

If you share your sign in credentials with a third party, even a third party with whom you share an account, they will have access to view and potentially access your connected accounts, even individual accounts that you do not share with them. As long as you maintain your unique sign in credentials, people with whom you share accounts will only be able to view accounts that are shared with you, not your individual accounts.

### **39) Limitations of Liability and Indemnification**

To the extent permitted by law, we shall not be liable for any Losses by or with respect to the Account, except to the extent that such Losses are actual Losses proven with reasonable certainty, are not speculative, are proven to have been fairly within the contemplation of the parties as of the date hereof, and are determined by a court of competent jurisdiction or an arbitration panel in a final non-appealable judgment or order to have resulted solely from our gross negligence or willful misconduct and without limiting the generality of the foregoing, we will not be liable for any indirect, special, incidental or consequential damages or other losses (regardless of whether such damages or other losses were reasonably foreseeable).

We shall have no liability for and you agree to reimburse, indemnify and hold us, our affiliates and our and their partners, directors, officers and employees and any person controlled by or controlling us harmless from all Losses that result from: (a) your or your agent’s misrepresentation, act or omission or alleged misrepresentation, act or omission, (b) Capital One Investing following your or your agent’s directions or failing to follow your or their unlawful or unreasonable directions, (c) any of your actions or the actions of your previous advisers or custodian, (d) the failure by any person not controlled by Capital One Investing to perform any obligations to you, and (e) your failure to provide accurate information on your Account Application or to update that information.

### **40) Waiver, Modifications and Amendments**

You agree that we may change the terms of this Agreement by giving you notice of the new terms. You agree that your use of any Service after notice of change to this Agreement, or if you do not close your Account within fifteen (15) calendar days of such notice, means that you accept the changes. Changes required by law, however, will be effective immediately.

Except as specifically permitted in this Agreement, no provision of this Agreement will be deemed waived, altered, modified or amended unless agreed to in writing (which shall be deemed to include electronic communications) by Capital One Investing.

Our failure to insist on strict compliance with any term of this Agreement or any other course of conduct on our part will not be deemed a waiver of our rights under this Agreement.

### **41) Counterparts**

This Agreement may be executed in any number of counterparts by you, each of which will constitute an original and all of which, when taken together, will constitute one and the same instrument.

## 42) Survivability

The provisions of Sections 6, 8, 9, 10, 12, 14, 15, 17, 23, 25, 27, 28, 35, 36, 39 and 40 shall survive any termination of this Agreement. The provisions of Section 37 shall survive the termination of this Agreement for a period of one year from the date of termination of this Agreement.

## 43) Thanks

Thanks for staying with us through the entire Terms and Conditions.

Sincerely,

Your friends at Capital One Investing, LLC