

## **Capital One Trade Credit Software Terms and Conditions**

### **Introduction / Acceptance of Terms**

The following Terms and Conditions govern your online access to and use of Capital One Trade Credit's software tools, including SmartView®, and related private web pages, software and transaction information and services, including general and personalized content, communication tools, invoice creation support tools and online and downloadable transaction information (the "Services").

By accessing and using the Service, or, (if you or your organization are an approved customer ("Customer") of Capital One Financial Corporation or one of its subsidiaries ("Capital One," "we," "us," or "our") or an enrolled Capital One Trade Credit supplier ("Supplier")), by clicking the "I agree" button indicates that you have read and agreed to these Terms and Conditions prior to setting up a new user account you, on behalf of yourself and the organization or on whose behalf you are accessing and using the Service, accept these Terms and Conditions. If you are accessing and using the Service on behalf of your organization, by clicking the "I agree" button you also represent and warrant that you have the authority to bind your organization to these Terms and Conditions, and that you have authority to provide all required or requested authorizations to us on behalf of both yourself and the organization. If you do not accept these Terms and Conditions, do not use the Service and please contact us at the phone number on the bottom of your account screen.

If applicable, these Terms and Conditions supplement the terms and conditions of you or your organization's existing Purchase Account Agreement, customer Account Agreement or other written agreement(s) with us (each referred to herein as "Your Other Credit Account Agreements"), which agreement otherwise remains in full force and effect.

### **Terms Governing Access to the Service**

**Access Credentials.** If you or your organization are a Customer or a Supplier, you may be provided with user accounts through which you may access the Service. To access the Service, you must type in your User ID and Password (collectively referred to herein as "Access Credentials"). You agree to safeguard your Access Credentials. You have and will retain sole responsibility for (a) the security and use of your Access Credentials, and (b) all access to and use of the Service directly or indirectly by or through your Access Credentials, with or without your knowledge or consent. We shall not be responsible for any breach of security caused by your failure to maintain the confidentiality of your Access Credentials. You agree to keep Access Credentials confidential, and to change account passwords periodically. By using the Service, you represent on a continuing basis that you are authorized to have access to such data.

**Authorization to Access Service.** If you or your organization are a Customer or a Supplier,

and subject to and conditioned upon your compliance with Your Other Credit Account Agreements, including, if applicable, your payment of any fees due, you are authorized to access and use the Service solely in connection with your fulfillment of your obligations and exercise of your rights under Your Other Credit Account Agreements and programs operated by us. We will not be liable if for any reason all or any part of the Service is unavailable at any time or for any period. You are responsible for making all arrangements necessary for you to have access to the Service.

Account and Transaction Information and Data Access. If you are a Customer or a supplier, we may, from time to time, permit you to view through the Service certain information relating to your account or specific transactions. By using the Service to access and use such information, you represent on a continuing basis that you are authorized to have access to such information. All such information is provided as a convenience, but it is not the official record of your account or transaction activity; your billed account statement remains the official record. The account and transaction information provided through the Service is generally updated as of the prior business day's close of business, but is subject to adjustment and correction.

#### General Terms and Conditions Governing Use of the Service

Responsibility. Our responsibility is to provide you with access to the Service in a commercially reasonable manner.

DISCLAIMER. WE MAKE NO REPRESENTATIONS AS TO THE ACCURACY, QUALITY, TIMELINESS, AVAILABILITY, OR COMPLETENESS OF THE SERVICE ITSELF OR ANY CONTENT OR OUTPUTS ARISING THEREFROM, AND YOU SHOULD NOT RELY UPON IT. WE PROVIDE THE SERVICE ON AN "AS IS, AS AVAILABLE" BASIS, AND WE WILL NOT BE LIABLE FOR ANY DAMAGES OR INJURY CAUSED BY THE SERVICE, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR INTERRUPTION OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OF TRANSMISSION, COMPUTER VIRUS, OR LINE FAILURE. YOU USE THE SERVICE AT YOUR OWN RISK.

LIMITATION OF LIABILITY. WE AND OUR EMPLOYEES, DISTRIBUTORS, OFFICERS, DIRECTORS, AFFILIATES, AND AGENTS ARE NOT LIABLE FOR ANY ERRORS OR OMISSIONS IN THE THE SERVICE, OR FOR ANY FORM OF LOSS OR DAMAGE (INCLUDING ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, EVEN IF KNOWN TO US) THAT MAY RESULT FROM ITS USE. WE EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON

INFRINGEMENT. NO WARRANTY NOT SET FORTH IN THIS AGREEMENT WILL BE VALID. IF ANY OF THE ABOVE PROVISIONS ARE VOID UNDER GOVERNING LAW, OUR LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

INDEMNITY. YOU SHALL DEFEND, INDEMNIFY, AND HOLD US, OUR LICENSORS, SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, AND EMPLOYEES HARMLESS, AGAINST ANY CLAIM OR DEMAND, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF

OR RELATED TO YOUR DISTRIBUTION OF CONTENT VIA THE SERVICE YOUR USE OF THE SERVICE, OR YOUR CONDUCT ON AND IN RELATION TO THE SERVICE, OR ANY VIOLATION OF THESE TERMS AND CONDITIONS.

Ownership; Data. Except as expressly provided herein, we and/or our licensors retain all right, title and interest in and to the Service and all of the other information, content, data, designs, and materials provided by us (collectively referred to herein as "Data") pursuant to these Terms and Conditions and (if applicable) Your Other Credit Account Agreements. Data includes any account, transaction or other data collected by us in the operation of our programs, including financial and transaction information made available to Suppliers regarding their commercial customers who are Customers ("Customer Information"), but does not include any information that (a) was rightfully known to you without restriction on use or disclosure prior to and not in connection with such information being disclosed, shared or collected in connection with the Service, or any other services provided under Your Other Credit Account Agreements; (b) was or becomes generally known by the public other than by your noncompliance with Your Other Credit Account Agreements; or (c) was or is independently developed by you without reference to or use of any Data and not in connection with our programs. All Data shall remain the sole property of us, or our licensors, and you acknowledge and agree that you do not acquire any rights, express or implied, therein. You covenant and agree that you will not, except with the prior written consent from us or as required by law, at any time directly by yourself or indirectly through any agent or employee: (i) reproduce, distribute, transmit, publicly display, modify, create derivative works based upon, or disclose, deliver, display, divulge, reveal, report, publish or transfer to any person or entity, for any purpose whatsoever, any Data or (ii) use Data for any purpose other than in connection with the performance of your obligations or the exercise of your rights under these Terms and Conditions and Your Other Credit Account Agreements. You further agree to handle Data in the same manner that you handle your own confidential information and, in any event, to take all steps reasonably necessary to preserve the confidentiality of Data, including maintaining Data in a manner designed to assure that it will not be used or disclosed improperly. You may not remove any copyright, trademark or other proprietary notices from any Data.

Disclosure of Service Information. You shall not make any media releases, public announcements and public disclosures about Your use of the Service or the subject matter of these Terms and Conditions, unless such announcements are intended solely for internal distribution or if such disclosures are required to meet legal or regulatory requirements beyond your reasonable control. If the public disclosure is required by law or regulation, you shall coordinate such disclosure with us prior to release, you shall only disclose the information that you are legally required to disclose, and you shall give due consideration to any comments we and our counsel may provide you regarding the nature of the disclosure.

Authorization Limitations. You shall not, and shall not permit any other person to: (a) access or use the Service except as expressly permitted by these Terms and Conditions

and (if applicable) Your Other Credit Account Agreements; (b) copy, modify, translate, or create derivative works of or based on the Service; (c) use the Service for time sharing or service bureau purposes or otherwise for the benefit of a third party or to advertise or an offer to sell or buy any goods or services; (d) use or view the Service for the purposes of developing, directly or indirectly, a product or service competitive with the Service; (e) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code or underlying structure or algorithms of the Service; (f) input, upload, or otherwise provide to or through the Service or our systems any information or materials that are unlawful, untrue, misleading, threatening, abusive, harassing, defamatory, libelous, obscene, vulgar, harmful to minors, pornographic, profane, infringing, or injurious, or contain or activate any malicious computer code; (g) access any other account, nor attempt to obtain or decrypt any passwords or other security protection for any other account; (h) impersonate any person or entity, misrepresent your affiliation with a person or entity; (i) misrepresent the origin of any content distributed through the Service (j) disrupt or tamper with our servers, or place any undue burden on our servers, or (k) remove access to or in any way obscure these Terms and Conditions, or links to these Terms and Conditions, from any of your users or any other third parties.

Trademark Information. All trademarks and service marks not owned by Capital One Trade Credit that appear on or within the Service are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Capital One Trade Credit. Third-party trademarks and service marks on our Site include Microsoft Excel ®, Microsoft Money ® and Microsoft Word ®, which are registered trademarks of Microsoft Corp. This is not intended to be an exhaustive list of third-party trademarks which may be found or displayed on or within the Service.

Amendments. We may amend these Terms and Conditions at any time in our sole discretion, effective immediately. By accessing and using the Service following such amendment, you agree to these Terms and Conditions as amended.

Privacy. Please review our Privacy Statement [link: <https://www.capitalone.com/privacy/online-privacy-policy>] for a description of how we may collect, use, and share information through the Service

Suspension of Access; Removal of Content. We may, at any time, without notice, for any reason, directly or indirectly, suspend, terminate or otherwise deny your access to and use of the Service, as well as any of your other current activities involving your credit account program if you breach these Terms and Conditions, without incurring any resulting obligation or liability. In addition to any remedies that we may have at law or in equity, if we in our sole discretion reasonably determine that you have violated or are likely to violate these Terms and Conditions, we may take any action we reasonably deem necessary to cure or prevent the violation, including without limitation, the immediate removal from the Service of objectionable content.

Electronic Writings and Notices. The parties agree that any legal requirement of a written agreement or memorandum between them may be satisfied (a) by electronic mail ("e-mail"), (b) by an electronic record of a document to be stored, retrieved and printed, (c) by any other method recognized as a writing under the Uniform Electronic Transactions Act as adopted in Delaware, or (d) as set forth in the "Amendments" section above, for changes addressed by that provision. Any notice under these Terms and Conditions may be given (i) if applicable, as stated in the "Amendments" section above; (ii) if you have a user account, to you at the e-mail address you provide when you enroll in our service, and (iii) to us at [help@tradecredit.capitalone.com](mailto:help@tradecredit.capitalone.com). For items (ii) and (iii), notice shall be deemed given 24 hours after e-mail is sent, unless the sending party is notified that the e-mail address is invalid, or, alternatively, either party may give notice by certified mail, postage prepaid and return receipt requested, to the address provided during the enrollment process. In such case, notice shall be deemed given three days after the date of mailing.

Governing Law; Jurisdiction. The internal laws of the State of Delaware will govern these Terms and Conditions, without giving effect to any principles of conflict of laws. We make no representation that the Service is appropriate or available for use in other locations, and if you use them from other locations, you are responsible for compliance with applicable local laws.

Miscellaneous.

*Waiver.* No waiver by us of any term or condition set forth in these Terms and Conditions shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of us to assert a right or provision under these Terms and Conditions shall not constitute a waiver of such right or provision.

*Severability.* If any part of these Terms and Conditions is unlawful, void, or unenforceable, that part will be deemed severable and will not affect the validity and enforceability of any remaining provisions.

*Conflict.* If there is a conflict or ambiguity between any term of these Terms and Conditions, on the one hand, and Your Other Credit Account Agreement, if any, on the other hand, then the terms of Your Other Credit Account Agreement will prevail.

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