

Terms and Conditions

Last Updated: 05/07/2023

Welcome to our website. These Terms and Conditions (“Terms” or “Agreement”) are an agreement between you and New Day Financial, LLC (“New Day” or “we” or “us”). Other than as expressly provided herein, there are no third-party beneficiaries of this Agreement.

PLEASE READ THESE TERMS CAREFULLY; THE TERMS ARE A BINDING CONTRACT BETWEEN YOU AND US AND, THUS, AFFECT YOUR RIGHTS. By using this website and other websites owned by New Day (collectively, the “Sites”) or using any services provided by New Day through or associated with the Sites (the “Services”), you agree to read, comply with, and be legally bound by: (A) these Terms and (B) New Day’s Privacy Policy (available at <https://newdayusa.com/privacy>). If you do not agree to these Terms, you may not access the Sites or use our Services.

ATTENTION!—CLASS ACTION WAIVER AND ARBITRATION AGREEMENT: These Terms contain provisions that govern how claims you and we may have against each other are resolved—including a class action waiver and an agreement and obligation to arbitrate disputes. YOU WILL NOT BE ABLE TO BRING OR PARTICIPATE IN A CLASS OR COLLECTIVE ACTION AGAINST US. And the arbitration agreement, subject to limited exceptions, requires you to submit claims you have against us to binding individual arbitration, unless you opt-out in accordance with Section XV. **CAREFULLY REVIEW SECTION XV BELOW ENTITLED “DISPUTE RESOLUTION – ARBITRATION AGREEMENT AND CLASS ACTION WAIVER” BEFORE YOU AGREE TO THESE TERMS OR USE OUR SERVICES.**

New Day reserves the right, at its sole discretion, to change or modify these Terms at any time. Changes or modifications shall become effective immediately upon posting. If we make any changes to these Terms, we will change the “Last Updated” date above. Please review these Terms periodically. Your use of the Sites will be governed by the Terms in place on the date you access the Sites. If at any time you find the Terms unacceptable, you must immediately cease accessing or using the Sites and Services. Our customer service representatives are not authorized to modify any provision of this Agreement, either verbally or in writing.

I. ACCURATE INFORMATION

You certify that the name, address, and all other personal and non-personal information that you give us while and after using the Sites or Services is true, accurate, current, and complete. If you provide false, inaccurate, stale, or incomplete information, or if New Day suspects that you did so, New Day may refuse or limit access to, or use of, the Sites or Services without prior notice to you.

II. ACCESS RESTRICTIONS

To use the Sites you must be, and represent and warrant that you are, of legal age (18 years of age or older, or otherwise of legal age in your jurisdiction) and legally able to enter into agreements. If you are agreeing to these Terms on behalf of an organization, entity, or co-applicant, you represent and warrant that you are authorized to agree to these Terms on behalf of that organization, entity, or co-applicant and bind them to these Terms (in which case, the references to “you” and “your” in

these Terms, except for in this sentence, refer to that organization, entity, or co-applicant). If New Day has previously prohibited you from accessing the Sites, you do not have permission to access the Sites.

The Sites are controlled and offered by New Day from the United States of America. The Sites are intended for use in the United States; New Day makes no representations that the Sites are appropriate for use in other locations. Those who access or use the Sites from other locations do so at their own risk and are responsible for compliance with local law.

We reserve the right to modify, update, or discontinue our Sites, or any features or portions thereof, without prior notice to you. You agree that we can suspend or terminate your right to access our Sites at any times for any reason without notice, obligation, or liability to you.

III. SERVICES

The Sites present information about our products and Services. However, such information is for informational purposes only and does not mean that you will be eligible to receive our Services. Our decisions to provide Services are subject to, among other things, demonstration to our satisfaction that you meet legal requirements, consent of relevant third parties, execution of definitive documentation, and our discretion.

If you are offered the opportunity to receive Services, you may be required to sign additional documentation. You agree to use your best efforts to cooperate and furnish timely, complete, and accurate information to New Day as requested from time to time to facilitate your receipt of Services, and New Day reserves the right, in its discretion, to bar, terminate, exclude, or withdraw your ability to receive any Services at any time for any reason. New Day management decisions are final in all matters relating to the Sites, Services, and other activities related to the Sites.

IV. ELECTRONIC CONTENT

New Day may offer content from third-party providers on the Sites. This content may include, but is not limited to, quotes, news, and research reports (the "Materials"). New Day does not endorse or approve the Materials, and we make it available to you only as a service and convenience. New Day and our third-party providers do not guarantee the accuracy, timeliness, completeness, or correct sequencing of the Materials or warrant any results from your use or reliance on the Materials. Neither New Day nor the third-party providers are obligated to update any information or opinions contained in any of the Materials. New Day may discontinue offering any Materials on the Sites at any time without notice. You agree that neither New Day nor the third-party providers will be liable to you in any way for the termination, interruption, delay, or inaccuracy of any of the Materials on the Sites. You will not redistribute or facilitate the redistribution of any Materials, nor will you provide access to the Materials to anyone who is not authorized by New Day to receive the Materials.

V. CONFIDENTIALITY

Any and all information provided by New Day, excluding any information generally made available on the Sites, is strictly confidential, solely for the purpose of evaluating a potential transaction with New Day, and for no other purposes. With the sole exceptions of your officers, directors, financial advisors, accountants, or legal counsel as absolutely necessary to evaluate the possible transaction contemplated herein, the confidential information shall not be disclosed to any third party without New Day's written consent. By accepting receipt of this information, you acknowledge that the information provided to you shall be held in the strictest confidence, shall not be copied or disseminated in any manner except to the individuals mentioned above and shall be only used for the purpose for which it is intended.

VI. ACCEPTABLE USE

You warrant to us and agree that you will not use the Sites or Services for any purpose that is unlawful or prohibited by these Terms. Specifically, your use of the Sites and Services is conditioned upon your compliance with the following rules ("Acceptable Use Restrictions"):

You shall not upload to, transmit through, or display via the Sites or Services any content that:

- is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene, or otherwise objectionable, or infringes our or any third party's intellectual property or other rights;
- contains confidential, proprietary, or trade secret information of any third party;
- violates the rights of others, including without limitation any privacy rights or rights of publicity;
- impersonates any person or entity, falsely states or otherwise misrepresents your affiliation with any person or entity, or uses any fraudulent, misleading, or inaccurate email address or other contact information;
- violates any applicable laws or regulations;
- makes any statement, express or implied, that you are endorsed by New Day;
- harms minors in any way, including, but not limited to, by depicting content that violates child pornography laws, child sexual exploitation laws, or laws prohibiting the depiction of minors engaged in sexual conduct;
- contains any unsolicited promotions, political campaigning, advertising, or solicitations;
- or in our sole judgment is inappropriate or objectionable or which restricts or inhibits any other person from using or enjoying the Sites or Services or which may expose New Day, any of its officers, directors, or employees, or other users to any harm or liability of any type.

You shall not use the Sites or any Services to transmit, upload, or download, any software or other materials that contain any viruses, worms, trojan horses, defects, date bombs, time bombs, cancelbots, corrupted files, or other items of a destructive nature.

Additionally, you shall not:

- use the Sites or any Service in a manner inconsistent with these Terms or applicable law;
- modify or interfere with the Sites, any Service, or other software or New Day content—including location, access, and other security features—for any reason, or permit or help anyone else to do so;
- interfere with or alter the Sites, any Service, or other software or New Day content;
- frame the Sites or link to a page other than the home page without our express permission in writing;
- create a false identity for the purpose of misleading us or others; or
- harvest or otherwise collect information about other users, including e-mail addresses.

VII. OWNERSHIP OF SITES AND CONTENT

All right, title, and interest in the Sites and Services including, but not limited to, all of the software and code that comprise and operate the Sites and Services and all of the text, photographs, images, illustrations, graphics, audio, video and audio-video clips, URLs, advertising copy, and other materials provided through the Sites and Services (collectively, "Content") are owned by us or by third parties who have licensed their Content to us. The Sites and Services are protected under trademark, service mark, trade dress, copyright, patent, trade secret, and other intellectual property laws. In addition, the entire Content of the Sites and Services is a collective work under U.S. and international copyright laws and treaties, and we own the copyright in the selection, coordination, arrangement, and enhancement of the Content of these Sites.

We hereby grant you a limited, revocable license to download and print copies of any portion of the Content of the Sites and Services to which you have properly gained access, but only for your own personal, use, and only if you do not remove, modify, or obscure any copyright, trademark, or other proprietary notices from the Content you download. The foregoing license is subject to these Terms and does not include the right to use any data mining, robots or other automatic or manual device, software, program, code, algorithm, or methodology, to access, copy, or monitor any portion of any Sites and Services or Content, or in any way reproduce or circumvent the navigational structure or presentation of any Sites and Services or Content, or obtain or attempt to obtain any materials or information through any means not purposely made available by us through the Sites and Services. We reserve the right to take measures to prevent any such activity. This license is revocable at any time without notice and with or without cause. You may not permit others to copy, distribute, perform, or display publicly, prepare derivative works based on, broadcast, exploit or use any part of the Content on the Sites and Services except as expressly provided in these Terms. Nothing in these Terms shall be construed as transferring any right, title, or interest in the Sites and Services or their Content to you or anyone else, except the limited license to use the Sites and Services and their Content on the terms expressly set forth herein.

Notwithstanding the foregoing, and specifically with regard to trademarks, New Day names and logos (including, without limitation, those of its affiliates), all product and service names, all graphics, all button icons, and all trademarks, service marks and logos appearing within the Sites and Services unless otherwise noted, are trademarks (whether registered or not), service marks and/or trade dress of New Day and/or its affiliates (the "New Day Marks"). All other trademarks, product names, company names, logos, service marks, and/or trade dress mentioned, displayed, cited or otherwise indicated within the Sites and Services are the property of their respective owners. You are not authorized to display or use New Day Marks in any manner without our prior written permission. You are not authorized to display or use trademarks, product names, company names, logos, service marks, and/or trade dress of other owners featured within the Sites and Services without the prior written permission of such owners. The use or misuse of New Day Marks or other trademarks, product names, company names, logos, service marks, and/or trade dress or any other materials contained herein, except as permitted herein, is expressly prohibited.

VIII. Notice and Procedure for Making Claims of Copyright Infringement

We will respond to claims of copyright infringement that are reported to our designated copyright agent, in accordance with the U.S. Digital Millennium Copyright Act of 1998 ("DMCA") or, as applicable, other laws.

Notifications of claimed copyright infringement and counter notices must be sent to our designated agent:

Attn: New Day Financial, LLC Designated Agent
8160 Maple Lawn Blvd, Suite 300, Fulton, MD 20759
Phone: 877-423-1400
Fax: 301-615-0552
Email: CHelp@NewDayUSA.com

We are only able to accept notices in the languages in which this Agreement is made available by us.

To be effective, the notification must be a written communication that includes the following:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
- A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

We may give you notice that we have removed or disabled access to certain material by means of a general notice on any New Day Sites, electronic mail to a user's e-mail address in our records, or by written communication sent by first-class mail to your physical address in our records. If you receive such a notice, you may provide counter-notification in writing to the designated agent that includes the information below. To be effective, the counter-notification must be a written communication that includes the following:

- Your physical or electronic signature;
- Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
- A statement from you under the penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
- Your name, physical address and telephone number, and a statement that you consent to the jurisdiction of a U.S. Federal District Court for the judicial district in which your physical address is located, or if your physical address is outside of the United States, for any judicial district in which New Day may be found, and that you will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

IX. SITE MONITORING

You acknowledge and agree that New Day has the right to monitor the Sites electronically from time to time and to disclose any information as necessary or appropriate to satisfy any law, to operate the Sites, or to protect itself or its clients.

X. ACCOUNTS

You will be required to open an account with New Day before using certain Services.

By opening any account associated with the Sites or Services, you are certifying to us that: (A) you are at least 18 years of age, (B) you are legally able to enter into contracts, (C) you are not a person barred from receiving or using Services under federal, state, local, or other laws; (D) you are a resident of the United States; and (E) you agree to the Terms.

You acknowledge and agree that New Day may close, suspend, investigate, monitor, or limit your access to your account or any other account associated with the Sites or Services, without prior notice to you. You acknowledge, understand, and agree that you do not have an expectation of

privacy in activities related to the Sites or any Services (including, without limitation, your use of or interactions with the Sites).

XI. PASSWORD PROTECTED AREAS OF OUR SITES

For your protection, certain areas of the Sites and access to certain Services may be password protected. You are responsible for maintaining the confidentiality of your passwords. We have the right to assume that anyone accessing the Sites and Services using a password assigned to you has the right to do so. You will be solely responsible for the activities of anyone accessing the Sites and Services using a password assigned to you, even if the individual is not, in fact authorized by you. If you have reason to believe that your password has been compromised or used without authorization, you must promptly change it using the functionality provided on the Sites or Services.

In order to access or use some of the features on the Sites and Services you may have to become a registered user. If you become a registered user, you will provide true, accurate, current, and complete information about you as may be prompted by any registration forms; if such information changes, you will promptly update the relevant registration information. We reserve the right to terminate your account or otherwise deny you access to the Sites and Services in our sole discretion for any or no reason without notice and without liability.

XII. THIRD PARTY WEBSITES

The Sites and Services may contain links to third party websites that are not owned or controlled by New Day. New Day has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, New Day will not and cannot censor or edit the content of any third-party site. By using the Sites or Services, you expressly relieve New Day from any and all liability arising from your use of any third-party website. We encourage you to be aware when you leave the Sites and to read the terms and conditions of each other website that you visit.

XIII. AGREEMENT TO FOLLOW APPLICABLE LAWS

You certify that you will comply with all applicable laws (e.g., local, state, federal and other laws) when using the Sites or any Services or New Day Content as permitted and in accordance with these Terms. You acknowledge and agree that you will be responsible for any cost, expense, fee, liability of any kind, and attorney's fees that New Day incurs if you break the law, misuse the Services or information New Day provides, or breach these Terms. And if you break the law, misuse the Services or information New Day provides, or breach these Terms, you also acknowledge and agree that you will reimburse, indemnify, and hold harmless New Day, its subsidiaries, its affiliated companies, and the employees, directors, officers, and agents of all aforementioned companies, from any money damages, costs, expenses, losses, liabilities, and attorney's fees resulting from any claim, threat, demand, suit, or investigation brought by another person, entity, or government. Without waiving any of these rights, New Day may at its sole discretion defend itself against any such claim, threat, demand, suit, or investigation without your consent. All of your obligations in this paragraph survive and continue after any termination of these Terms.

XIV. ADDITIONAL PRIVACY TERMS AND RECORDING OF USER INTERACTIONS

New Day may collect, use, and disclose your location, personal, and non-personal information. When you visit our Sites, we may also use technological means to track your online interactions with the Sites—including collecting and retaining information about the type of device and browser you are using, your IP address, and, if you are on a mobile device, which carrier you use. We may also record and retain your keystrokes, mouse clicks, inputs to online forms, and online chat exchanges with us. This Information may be collected, recorded, supplemented, or verified by third-party services. By using the Sites, you acknowledge and consent to the collection, recording, and retention of such information by us and third-party services.

Please visit <https://www.newdayusa.com/privacy> to see New Day's complete Privacy Policy. The Privacy Policy may be updated from time to time, so please review it regularly. By using the Sites or Services, you are consenting to the collection, use, disclosure, transfer, and sharing of your location, nonpublic personal, and non-personal information by New Day, its subsidiaries, and its affiliated companies may share such information with companies other than New Day, its subsidiaries, and its affiliates. If you do not accept the terms of New Day's Privacy Policy or the specific privacy policy associated with a Service, please discontinue all use of the Sites or Service.

Additionally, if you choose to become a client of New Day, you will be provided with additional disclosures and options about how we share your information. You are responsible for reviewing this documents and consent to our collecting, use, and disclosure of your information pursuant to their terms.

XV. DISPUTE RESOLUTION – ARBITRATION AGREEMENT AND CLASS ACTION WAIVER

PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS. YOU AGREE THAT BY USING THE SITES OR SERVICES, OR BY OTHERWISE AGREEING TO THESE TERMS, YOU AND NEW DAY ARE EACH WAIVING THE RIGHT TO A COURT OR JURY TRIAL OR TO PARTICIPATE IN A CLASS ACTION. YOU AND NEW DAY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR COLLECTIVE ACTION OR PROCEEDING. ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; YOU AND WE AGREE THAT CLASS ARBITRATIONS, CLASS ACTIONS, OR OTHER COMBINED PROCEEDINGS ARE NOT PERMITTED.

You and New Day agree that any and all claims and disputes arising from or relating in any way to the subject matter of these Terms, your use of the Sites or Services, or your and New Day's dealings with one another (including, but not limited to, your receipt of marketing telephone calls, text messages, emails, or other communications from or on behalf of New Day) shall be finally settled and resolved through BINDING INDIVIDUAL ARBITRATION as described in this section. You and we also agree that the arbitration provision and class action waiver apply to claims made regarding past, present, or future conduct, and also apply to claims made independently or with other claims.

This agreement to arbitrate is intended to be interpreted broadly. YOU AND WE AGREE THAT "CLAIMS" AND "DISPUTES" SUBJECT TO THIS ARBITRATION PROVISION THEREFORE ARE TO BE GIVEN THE BROADEST POSSIBLE MEANING AND INCLUDE CLAIMS OF EVERY KIND AND NATURE, INCLUDING, BUT NOT LIMITED TO, INITIAL CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD-PARTY CLAIMS, AND CLAIMS BASED ON ANY FEDERAL, STATE, OR LOCAL CONSTITUTION, STATUTE, REGULATION, ORDINANCE, WARRANTY, COMMON LAW RULE (INCLUDING RULES RELATING TO CONTRACTS, TORTS, NEGLIGENCE, FRAUD, OR ANY OTHER INTENTIONAL WRONGS), AND EQUITY. THEY INCLUDE CLAIMS AND DISPUTES THAT SEEK RELIEF OF ANY TYPE—INCLUDING ACTUAL, STATUTORY, OR PUNITIVE DAMAGES AND/OR INJUNCTIVE, DECLARATORY, OR OTHER EQUITABLE RELIEF.

There is no judge or jury in arbitration. Generally, arbitration procedures are simpler and more limited than rules applicable in court, and review by a court is limited. Neither you nor New Day will be able to have a court or jury trial or participate in a class action or class arbitration. You and New Day each understand and agree that by agreeing to resolve any dispute through individual arbitration, YOU AND NEW DAY ARE EACH WAIVING THE RIGHT TO A COURT OR JURY TRIAL. ANY DISPUTE SHALL BE ARBITRATED ON AN INDIVIDUAL BASIS, AND NOT AS A CLASS ACTION, REPRESENTATIVE ACTION, CLASS ARBITRATION, OR ANY SIMILAR PROCEEDING. The arbitrator may not consolidate or combine the claims or arbitrations of multiple parties.

In the event of a dispute, and before initiating an arbitration proceeding under this section, you and New Day agree that the party alleging a dispute must send to the other party a notice of dispute,

which is a written statement that sets forth the name, address, and contact information of the party giving the notice, a brief summary the facts giving rise to the dispute, and the relief requested. You must send any notice of dispute to New Day Financial, LLC, 8160 Maple Lawn Blvd, Suite 300, Fulton, MD 20759, Attention: Legal. Or you can email us the notice of dispute at Chelp@newdayusa.com. We will send any notice of dispute to you at the contact information we have for you. You and New Day agree to attempt to resolve a dispute through informal negotiation within sixty (60) days from the date the notice of dispute is sent. After that sixty (60) day period and not before, you or we may commence an arbitration proceeding in accordance with this section.

If you and New Day do not resolve a dispute by informal negotiation, the dispute shall be resolved by binding individual arbitration before a neutral arbitrator whose decision will be final except for a limited right of appeal under the U.S. Federal Arbitration Act. The arbitration will be governed by the JAMS Streamlined Arbitration Rules and Procedures ("JAMS Rules"), as modified by this section. The arbitration will be conducted by JAMS using one arbitrator with substantial experience in resolving commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the JAMS Rules. If JAMS is unable or unwilling to arbitrate a dispute, then the dispute may be referred to any other arbitration organization or arbitrator that you and New Day both agree upon in writing or that is appointed pursuant to section 5 of the Federal Arbitration Act.

For any claim where the total amount of the award sought is \$10,000 or less, the arbitrator, you, and New Day must abide by the following rules: (a) the arbitration shall be conducted solely based on telephone or online remote appearances and/or written submissions (or some combination thereof); and (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties. If the claim exceeds \$10,000, the right to a hearing will be determined by the JAMS Rules and the hearing (if any) will be conducted under the JAMS Rules in person (at a mutually-agreeable location) or virtually by conference call, videoconference, or using other communications technology with participants in one or more geographical places, or in a combined form. The arbitrator's ruling is binding and may be entered as a judgment in any court of competent jurisdiction, or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be.

The JAMS Rules and instructions about how to initiate an arbitration are available at www.jamsadr.com or 1-800-352-5267.

This arbitration agreement involves interstate commerce and, therefore, shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), and not by state law. THE ARBITRATOR WILL FOLLOW APPLICABLE SUBSTANTIVE LAW TO THE EXTENT CONSISTENT WITH THE FAA, APPLICABLE STATUTES OF LIMITATION, AND APPLICABLE PRIVILEGE RULES, AND SHALL BE AUTHORIZED TO AWARD ALL REMEDIES AVAILABLE IN AN INDIVIDUAL LAWSUIT UNDER APPLICABLE SUBSTANTIVE LAW, INCLUDING, WITHOUT LIMITATION, COMPENSATORY, STATUTORY, AND PUNITIVE DAMAGES, AS WELL AS, DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE RELIEF—INCLUDING PUBLIC INJUNCTIVE RELIEF AND ATTORNEYS' FEES AND COSTS.

In accordance with the JAMS Rules, the party initiating the arbitration (either you or New Day) is responsible for paying the filing fee. However, if the arbitrator issues you an award of damages and: (a) that award is greater than the amount of our last written settlement offer; or (b) if we did not make a settlement offer, then in addition to paying for any JAMS Case Management Fees and all professional fees for the arbitrator's services, we will reimburse you for the filing fees you incurred. Further, if you demonstrate that paying the arbitrator's costs and fees would be prohibitively expensive for you, New Day shall pay those costs and fees regardless of whether you prevail in the arbitration—unless the arbitrator determines that your claim was frivolous.

You and New Day empower the arbitrator with the exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of these Terms or the arbitration provision—including the formation of the Agreement, the arbitrability of any dispute, and any claim that all or any part of these Terms are void or voidable (such as, but not limited to, whether the arbitration provision is unconscionable).

Notwithstanding any provision in these terms to the contrary, you and we agree that if the class action waiver above is deemed invalid or unenforceable, neither you nor we are entitled to arbitration and any proceeding shall be brought and proceed exclusively in the state courts of competent jurisdiction located in Baltimore, Maryland, or the United States District Court for the District of Maryland, Baltimore Division.

If the arbitration provision in this section is found unenforceable or to not apply for a given dispute, then the proceeding must be brought exclusively in the state courts of competent jurisdiction located in Baltimore, Maryland, or the United States District Court for the District of Maryland, Baltimore Division, as appropriate, and you agree to submit to the personal jurisdiction of each of these courts for the purpose of litigating such claims or disputes, and you still waive your right to a jury trial and waive any right to initiate or proceed in a class or collective action. You also remain bound by any and all limitations on liability and damages included in these Terms. This arbitration agreement and class action waiver shall survive termination of your use of the Sites or Services or termination of our dealings.

AN INTENDED BENEFICIARY OF THIS ARBITRATION PROVISION MAY ENFORCE IT IN FULL WITH RESPECT TO ANY CLAIMS BETWEEN THEM ON THE ONE HAND AND YOU ON THE OTHER ARISING FROM OR IN ANY WAY RELATING TO THESE TERMS, OUR DEALINGS WITH YOU, OR THIS ARBITRATION PROVISION. INTENDED BENEFICIARIES ARE OUR AGENTS, PRINCIPALS, REPRESENTATIVES, DIRECTORS, OFFICERS, SHAREHOLDERS, GOVERNORS, MANAGERS, AND MEMBERS. INTENDED BENEFICIARIES ALSO ARE OUR PARENTS, SUBSIDIARIES, AFFILIATES, PARTNERS, LICENSEES, ATTORNEYS, PREDECESSORS, SUCCESSORS, JOINT VENTURERS, CONTRACTORS, ASSIGNS, DESIGNEES, SERVICERS, AND SERVICE PROVIDERS. A SERVICE PROVIDER IS ANY THIRD-PARTY PROVIDING US OR ANY INTENDED BENEFICIARY ANY GOODS OR SERVICES ARISING OUT OF OR IN ANY WAY RELATING TO OUR DEALINGS WITH YOU OR THIS ARBITRATION PROVISION. INTENDED BENEFICIARIES INCLUDE PAST, PRESENT, AND FUTURE PERSONS LISTED IN THIS PARAGRAPH. THIS ARBITRATION PROVISION MAY BE ENFORCED BY OR AGAINST ANY PERSON OR ENTITY PURPORTING TO BRING CLAIMS ON YOUR BEHALF, INCLUDING ANY AGENT, REPRESENTATIVE, GUARDIAN, OR TRUSTEE. THIS ARBITRATION PROVISION MAY ALSO BE ENFORCED BY OR AGAINST ANY PERSON OR ENTITY WHO ACQUIRES ANY RIGHT OR INTEREST THAT, BUT FOR THE TRANSFER OF THE RIGHT OR INTEREST, WOULD HAVE BELONGED TO US OR AN INTENDED BENEFICIARY OF THIS ARBITRATION PROVISION. YOU ALSO ACKNOWLEDGE THAT YOU SHALL BE ESTOPPED FROM DENYING AN OBLIGATION TO ARBITRATE COVERED DISPUTES WITH AN INTENDED BENEFICIARY.

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING IN ANY WAY TO THESE TERMS, YOUR USE OF THE SITES, OR YOUR AND NEW DAY'S DEALINGS WITH ONE ANOTHER IN CONNECTION WITH THE SITES OR SERVICES MUST BE COMMENCED IN ARBITRATION WITHIN TWO (2) YEARS AFTER THE CAUSE OF ACTION ACCRUES. AFTER THAT TWO (2)-YEAR PERIOD, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED. SOME JURISDICTIONS DO NOT ALLOW TIME LIMITATIONS OTHER THAN THOSE SET FORTH IN SUCH STATE'S STATUTE OF LIMITATIONS LAWS. IN SUCH CASES, THE APPLICABLE STATUTE OF LIMITATIONS PROVIDED FOR UNDER THE LAWS OF SUCH STATE SHALL APPLY.

If you wish to opt-out of this agreement to arbitrate, within 45 (forty-five) days of when you first use any of the Sites or submit through any of the Sites a request for information, you must send

New Day a letter or email stating “Request to Opt-Out of Agreement to Arbitrate” at the following physical address or email address AND MUST INCLUDE YOUR FULL NAME, MAILING ADDRESS, AND TELEPHONE NUMBER:

8160 Maple Lawn Blvd, Suite 300, Fulton, MD 20759 Attn: Legal Department

CHelp@NewDayUSA.com

If you do not opt-out within 45 days of when you first use any of the Sites or submit through any of the Sites a request for information, then you are not eligible to opt-out of this arbitration agreement. In the event you opt out of the arbitration provision, you agree to litigate exclusively in the state courts of competent jurisdiction located in Baltimore, Maryland, or the United States District Court for the District of Maryland, Baltimore Division, as appropriate, and you agree to submit to the personal jurisdiction of each of these courts for the purpose of litigating such claims or disputes, and you still waive your right to a jury trial, waive your right to initiate or proceed in a class or collective action, and remain bound by any and all limitations on liability and damages included in these Terms.

XVI. GOVERNING LAW

Except as otherwise provided in Section XV. DISPUTE RESOLUTION – ARBITRATION AGREEMENT AND CLASS ACTION WAIVER, these Terms shall be governed by the laws of the State of Maryland without regard or effect to any state’s conflicts of laws rules.

XVII. DISCLAIMER OF WARRANTIES

WE MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THESE SITES OR THEIR CONTENT, OR ANY PRODUCT OR SERVICE AVAILABLE ON OR PROMOTED THROUGH THESE SITES. THESE SITES AND ALL OF THE INFORMATION, PRODUCTS, AND SERVICES MADE AVAILABLE THROUGH THESE SITES ARE PROVIDED ON AN “AS IS,” “AS AVAILABLE” BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY LAW, WE AND OUR AFFILIATES DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THESE SITES AND THE INFORMATION, PRODUCTS, AND SERVICES MADE AVAILABLE THROUGH THESE SITES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE AND OUR AFFILIATES DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, (A) OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE; (C) RELATING TO THE SECURITY OF OUR SITES; (D) THAT THE CONTENT OF OUR SITES IS ACCURATE, COMPLETE, CURRENT, OR RELIABLE; AND (E) THAT OUR SITES WILL OPERATE WITHOUT INTERRUPTION OR ERROR.

NEW DAY DOES NOT ENDORSE AND IS NOT RESPONSIBLE FOR STATEMENTS, ADVICE, OR OPINIONS MADE BY ANYONE OTHER THAN AUTHORIZED NEW DAY SPOKESPERSONS. WE DO NOT ENDORSE AND ARE NOT RESPONSIBLE FOR ANY STATEMENTS, ADVICE, OR OPINIONS CONTAINED IN USER CONTRIBUTIONS, AND SUCH STATEMENTS, ADVICE, AND OPINIONS DO NOT IN ANY WAY REFLECT THE STATEMENTS, ADVICE, AND OPINIONS OF NEW DAY. WE DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES AGAINST THE POSSIBILITY OF DELETION, MISDELIVERY, OR FAILURE TO STORE COMMUNICATIONS, PERSONALIZED SETTINGS, OR OTHER DATA.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. ACCORDINGLY, SOME OF THE ABOVE DISCLAIMERS OF WARRANTIES MAY NOT APPLY TO YOU.

XVIII. LIMITATION ON LIABILITY

YOU AGREE THAT UNDER NO CIRCUMSTANCES WILL NEW DAY BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES OR INJURY, INCLUDING ANY DIRECT, SPECIAL,

INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR ANY DAMAGES OR INJURY CAUSED BY ERROR, INACCURACY, OMISSION, INTERRUPTION, DEFECT, FAILURE OF PERFORMANCE, DELAY IN OPERATION OR TRANSMISSION, TELECOMMUNICATIONS FAILURE OR COMPUTER VIRUS OR OTHER PROBLEM, THAT MAY RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE SITES OR THE WEB PAGE CONTENT ON OR AVAILABLE THROUGH THE SITES, WHETHER IN AN ACTION ALLEGING BREACH OF CONTRACT, NEGLIGENCE, OR ANY OTHER CAUSE OF ACTION, OR ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF ANY WEB PAGE CONTENT ON OR AVAILABLE THROUGH THE SITES. YOU AGREE THAT NEW DAY SHALL NOT BE LIABLE EVEN IF WE OR OUR AUTHORIZED REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. HOWEVER, IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED ONE THOUSAND U.S. DOLLARS (US \$1,000).

IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

IF YOU ARE ACCESSING THE SITES OR SERVICES FROM NEW JERSEY, YOU (A) ASSUME ALL RISKS OF LOSSES OR DAMAGES RESULTING FROM YOUR USE OF OR INABILITY TO USE THE SITES OR SERVICES; (B) IRREVOCABLY WAIVE ALL LOSSES OR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOST PROFITS, LOST DATA OR BUSINESS INTERRUPTION) THAT MAY OCCUR AS A RESULT OF YOUR USE OF THE SITES OR SERVICES; AND (C) EXPRESSLY AGREE TO RELEASE AND DISCHARGE NEW DAY AND ITS AFFILIATES, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, OR ASSIGNS FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION RESULTING, DIRECTLY OR INDIRECTLY, FROM YOUR USE OF THE SITES OR SERVICES; AND (D) YOU VOLUNTARILY GIVE UP OR WAIVE ANY RIGHT THAT YOU MAY OTHERWISE HAVE TO BRING A LEGAL ACTION AGAINST NEW DAY FOR LOSSES OR DAMAGES, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHER LEGAL THEORY, INCLUDING ANY CLAIM BASED ON ALLEGED NEGLIGENCE ON THE PART OF NEW DAY AND THEIR AGENTS AND EMPLOYEES. YOU ACKNOWLEDGE THAT YOU HAVE CAREFULLY READ THIS "WAIVER AND RELEASE" AND FULLY UNDERSTAND THAT IT IS A RELEASE OF LIABILITY.

Any limitations on liability will survive the expiration or termination of these Terms for any reason.

XIX. INDEMNIFICATION

You agree to defend, indemnify, and hold harmless New Day, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating in any way to your violation of these Terms (including, but not limited to, your violation of Section XV's pre-arbitration informal negotiation procedures), your use of the Sites or Services other than as expressly authorized in these Terms, or your use of any information obtained from the Sites and Services.

XX. TERMINATION

New Day may cancel, suspend, or block your use of the Sites and Services without notice if there has been a violation or suspected violation of these Terms or our Privacy Policy. Your right to use the Sites and Services will end upon New Day's cancellation, suspension, or blocking, and any data you have stored on the Sites and Services may be unavailable later, unless New Day is required to retain it by law. YOU AGREE THAT New Day WILL NOT BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY TERMINATION OF YOUR ACCESS TO THE SITES AND SERVICES.

XXI. COMMUNICATIONS WITH NEW DAY

Time-sensitive Instructions: Do not use the Sites to communicate any time-sensitive instructions that are in any way related to or affect your loan, loan application, or closing (such as interest rates locks, cancellation of a closing, rescissions, or the like). Such instructions may not be honored. All loan transactions conducted on the Sites must be confirmed in writing by us to be accepted by and binding upon us.

Loan Approvals: All loan approvals, qualifications, rate locks, deposit and refund agreements, and the like, are only made by New Day in writing. Approvals and qualifications are conditional in accordance with the applicable terms except as be specifically provided for in writing signed by New Day.

Credit Reports: By applying for credit, you are authorizing New Day to obtain a copy of your credit report. As a result, a "hard" inquiry may appear on your credit report. A hard inquiry may negatively affect your credit score.

E-Signature: General communications through the Sites are not intended by us to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means, unless a specific statement to the contrary is included in the message and specific e-signature procedures are employed. However, your assent is binding upon you.

Consent to Recording of Telephone Calls: New Day may record its telephone calls with consumers for quality assurance, training, recordkeeping, or other legal purposes. By agreeing to these Terms or by otherwise knowing that New Day may record its telephone calls with consumers, you acknowledge and consent that New Day may record any telephone call with you. If you do not consent to your calls with New Day being recorded, do not have a call with us.

Consent to Marketing Calls, Text Messages, and Emails: When you use our Sites or Services, you may be given the opportunity to consent to receive marketing communications from us via phone call, text message, or email.

By providing your phone number and expressly agreeing to marketing communications from us, you provided your express written consent to receive marketing calls and text messages from or on behalf of us to the phone number you provided even if your number is registered on the national or a state do not call registry. This includes marketing calls and texts made using an autodialer, an automated system for the selection or dialing of telephone numbers, or an artificial or prerecorded voice. You also warrant and represent that you are either the account holder/subscriber of any mobile or residential phone numbers you provide to New Day, or you have the express permission of the account holder/subscriber to provide such phone numbers to New Day for such calls and texts from or on behalf of New Day to the numbers.

You understand and acknowledge that your consent to marketing calls and texts is not required to use our Sites or Services or to do business with us. You may revoke your consent to marketing calls and texts at any time. Reply "STOP" to any New Day text message to unsubscribe from future

marketing texts and calls. You agree to and may then receive a single final text message confirming your opt-out from future marketing texts and calls.

If you provided your email address, you also agreed to receive promotional emails from us. To opt-out of promotional emails, click the UNSUBSCRIBE link in the email from us.

Standard text and calling rates will apply to our phone communications with you. By providing your phone number to us and agreeing to calls and texts, you acknowledge and agree that the receipt of such communications may cause you to incur usage charges or other fees or costs in accordance with your wireless or data service plan. Any and all such charges, fees, or costs are your sole responsibility. You should consult with your wireless carrier to determine what rates, charges, fees, or costs may apply to your use of Sites' content or receipt of communications.

We reserve the right, at any time and without notice, to modify, suspend, restrict, or terminate our marketing communications. We shall not be liable to any party for such modification, suspension, restriction, or termination.

XXII. REASONABLE EFFORTS

While New Day will use all of its reasonable efforts to have your loan application fully processed and closed on or before any applicable rate lock expiration date (if any) and/or anticipated closing date, some processes are not under our control. For instance, New Day cannot be responsible for delays in the loan approval or closing due to the untimely receipt of an acceptable appraisal; the untimely receipt of required documentation; your existing home not selling; matters disclosed by a title commitment or survey; or any other matters beyond New Day's reasonable control.

XXIII. COOPERATION REQUIRED

New Day generally begins processing your loan application (which may include ordering an appraisal, credit report, title commitment, and other necessary items) upon the submission of a full and complete application. If you submit an application, you agree to cooperate in the application process (including submitting all required documentation in a timely manner) and if needed, to obtain information New Day may need from third parties such as your bank, employer, current mortgage company, etc. In addition, you agree to notify New Day of any changes in any information submitted in connection with your application.

XXIV. OTHER TERMS

New Day's failure to enforce any provision of these Terms shall not be deemed a waiver of such provision nor of the right to enforce such provision. If any part of these Terms is determined to be invalid or unenforceable pursuant to applicable law, including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of these Terms shall continue in effect. A printed version of these Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. All sections of these Terms that expressly or by their nature survive any termination of your access to or use of the Sites or Services, whether we terminate your access or you voluntarily discontinue your use, or that expressly or by their nature survive any termination of our dealings with each other, shall survive such termination and continue in full force and effect.

XXV. CONTACT INFORMATION

You may contact us for any reason, including to report potential violations of the Terms by others, by email at Privacy@Newdayusa.com or by calling 877-423-1400.