



## **PLAINSCAPITAL BANK**

### **APPLE PAY TERMS AND CONDITIONS - PERSONAL**

Last Modified: 6/19/2015

These terms and conditions ("Terms and Conditions") are a legal agreement between you and PlainsCapital Bank that governs your access to and use of your eligible PlainsCapital Bank consumer debit cards linked to your PlainsCapital Bank accounts ("Card" or "Cards") through Apple Pay™. The terms "you" and "your" throughout these Terms and Conditions refer to primary cardholders and authorized users of debit cards and to joint account holders and other authorized persons with a debit card linked to bank accounts, and the terms "we" or "us" refer to PlainsCapital Bank. The term "Apple Pay" shall include the Apple Pay branded payment functionality and the Card provisioning functionality performed, and transaction history displayed, by the Passbook® application. We will determine, in our sole discretion, which Cards will be eligible for use through Apple Pay. Please review these Terms and Conditions before you decide whether to accept them and continue with the addition of your Cards to Apple Pay. You consent to receiving these Terms and Conditions electronically. By using a Card in Apple Pay you agree to only use your Card through Apple Pay in accordance with these Terms and Conditions. If you do not agree to these Terms and Conditions, then you may not add your Card to, or use your Card in connection with, Apple Pay.

We may supplement, amend or change these Terms and Conditions at any time. We may add new terms and conditions and delete or amend existing terms and conditions. We generally send you advance notice of an adverse change. However, we may change these Terms and Conditions without prior notice unless otherwise required by law. We do not have to notify you of changes that we believe are beneficial to you or of changes that we make for security reasons. If we change these Terms and Conditions, the newly updated (most current) version of these Terms and Conditions supersedes all prior versions and contains the terms and conditions as of the effective date of the newly updated Terms and Conditions. If you continue to use your Card or Cards through Apple Pay after a supplement, amendment or change to these Terms and Conditions, you will be deemed to have accepted and agreed to the supplement, amendment or change and will be bound by all such supplements, amendments and changes.

Your use of Apple Pay to purchase goods and services with your Card is governed by the applicable Consumer Deposit Account Agreement and Services Disclosure ("Deposit Agreement") between you and us in connection with each Card. You also acknowledge that your use of Apple Pay is subject to the terms and conditions set forth by Apple, Inc. ("Apple®") with respect to the use of Apple Pay.

## **ELIGIBILITY / ENROLLMENT**

Apple Pay is available to cardholders for the purposes of purchasing goods and services with a compatible wireless Apple mobile device that contains a secure element ("Eligible Mobile Device"), at near field communication (NFC) enabled merchants and for in-app purchases at merchants that accept Apple Pay as a form of payment. Apple Pay allows you to use your Eligible Mobile Device to access and use your Cards to make such purchases in place of presenting or using your physical Card. To add your Card to Apple Pay, you must register your Card through Apple Pay. You may be required to take additional steps, which may include providing additional identifying information. By adding your Card to Apple Pay, a unique numerical identifier different from your Card number ("Token") will be added to the secure element of your Eligible Mobile Device, for the purpose of making purchases and receiving refunds through Apple Pay. If your physical plastic Card is lost or stolen, but your Eligible Mobile Device is not lost or stolen, upon provisioning your new physical plastic Card to Apple Pay, Apple Pay will automatically assign your new physical plastic Card to your existing Token. Due to the manner in which Apple Pay operates, you may need to present your Eligible Mobile Device at a merchant when you return an item purchased using Apple Pay on such Eligible Mobile Device. You consent to us contacting your wireless service provider and authorize your wireless service provider to disclose your account/subscriber information, including (if available) name, address, device and location data, to allow verification of your identity and for validation of the information you provide to us.

## **YOUR USE OF PLAINSCAPITAL BANK CARDS THROUGH APPLE PAY**

Purchases you make with Apple Pay using your Card are governed by the Deposit Agreement. Please review the Deposit Agreement for important information on your rights and responsibilities when making purchases. If your Eligible Mobile Device is lost or stolen, your fingerprint identity (Touch ID) or other passcode is compromised or Card has been used through Apple Pay without your permission, you must notify us immediately. If you fail to notify us without delay, you may be liable for part or all of the losses in connection with any unauthorized use of your Card in connection with Apple Pay. You acknowledge that your Eligible Mobile Device can be used to make purchases using Apple Pay without waking the Eligible Mobile Device.

You agree and acknowledge that the transaction history displayed in Apple Pay in connection with use of your Card in Apple Pay solely represents our authorization of your Apple Pay transaction and does not reflect any post-authorization activity, including but not limited to clearing, settlement, foreign currency exchange, reversals, returns or chargebacks. Accordingly, the purchase amount, currency, and other details for your Apple Pay transaction history in connection with use of your Card in Apple Pay may not match the transaction amount that ultimately clears, settles, and posts to your account statement.

We currently do not impose a fee for using your Card through Apple Pay but we reserve the right to impose a fee in the future. Your telecommunications carrier or provider may impose web-enablement, data usage or text messaging fees or other charges for your use of Apple Pay.

As a condition to using your Card in connection with Apple Pay, you consent to receiving from us notifications and automatically dialed calls or text messages on your Eligible Mobile Device, including at the Eligible Mobile Device phone number you provide. If at any time you revoke this consent, we may suspend or cancel your ability to use your Cards in connection with Apple Pay.

Devices modified contrary to the manufacturer's software or hardware guidelines, including by disabling hardware or software controls – sometimes referred to as "jailbreaking" – are not Eligible Mobile Devices. You acknowledge that the use of a modified device to use your Card in connection with Apple Pay is expressly prohibited, constitutes a violation of the Terms and Conditions, and is grounds for us to deny your access to your Cards through Apple Pay.

## **AUTHORIZATION TO COLLECT AND SHARE DATA**

You agree that we may collect, transmit, store and use technical, location, and login or other information about you and your use of the Cards through Apple Pay. You acknowledge that (i) Apple, the provider of Apple Pay technology that supports the Cards in Apple Pay, as well as Apple's sub-contractors, agents, and affiliates, and (ii) the applicable payment network branded on your Card (e.g., MasterCard International Incorporated and its affiliate Maestro, American Express, or Visa, U.S.A., Inc. and its affiliate Interlink) as well as such network's sub-contractors, agents, and affiliates, will have access to certain details of your transactions made with merchants via use of your Cards through Apple Pay. We will use, share and protect your personal information in accordance with our PlainsCapital Bank Privacy Policy applicable to your Card account. You acknowledge that the use and disclosure of any personal information provided by you directly to Apple, the applicable payment network branded on your Card, or other third parties supporting Apple Pay, will be governed by such party's privacy policy and not the PlainsCapital Bank Privacy Policy.

## **MERCHANT RELATIONSHIPS AND DISCLAIMERS**

Merchants may present to you certain discounts, rebates or other benefits (e.g., free shipping) ("Offers") in Apple Pay. Such Offers are subject to certain terms and conditions and may change at any time without notice to you. We will not be liable for any loss or damage as a result of any interaction between you and a merchant with respect to such Offers. Subject to applicable law and your Deposit Agreement, all matters, including delivery of good and services, returns, and warranties, are solely between you and the applicable merchants. You acknowledge that we do not endorse or warrant the merchants that are accessible through Apple Pay or the Offers that they provide.

## **CHANGE TO PARTICIPATION IN APPLE PAY AND TERMS AND CONDITIONS**

Subject to applicable law, at any time we may (i) terminate your use of Cards in connection with Apple Pay, (ii) modify or suspend the type or dollar amounts of transactions allowed using Cards in connection

with Apple Pay, (iii) change a Card's eligibility for use with Apple Pay, and (iv) change the Card authentication process.

We reserve the right to revise these Terms and Conditions at any time and from time to time and you are deemed to be aware of and bound by any changes to these Terms and Conditions by your continued access to or use of any Card. We will indicate that changes to these Terms and Conditions have been made by updating the date indicated after "Last Modified" at the beginning of these Terms and Conditions. You may also be able to view the revised Terms and Conditions on your Eligible Mobile Device by accessing any of your Cards. You will also be able to view the Terms and Conditions at [plainscapital.com/applepay-consumer](https://plainscapital.com/applepay-consumer). If you do not accept any revisions made to these Terms and Conditions, your sole and exclusive remedy is to discontinue your use of any Card in Apple Pay.

## **INTELLECTUAL PROPERTY**

All intellectual property rights including all patents, trade secrets, copyrights, trademarks and moral rights ("Intellectual Property Rights") in Apple Pay (including text, graphics, software, photographs and other images, videos, sound, trademarks and logos) are owned either by Apple, us, our licensors or third parties. Nothing in these Terms and Conditions gives you any rights in respect of any intellectual property owned by Apple, us, our licensors or third parties and you acknowledge that you do not acquire any ownership rights by adding your Card to, or using your Card in connection with, Apple Pay.

## **DISCLAIMERS OF WARRANTY**

Apple Pay is provided by Apple, and without warranty from us. You acknowledge and agree that from time to time, your use of your Card in connection with Apple Pay may be delayed, interrupted or disrupted for an unknown period of time for reasons we cannot control. Neither we nor our affiliates will be liable for any claim arising from or related to use of your Card through Apple Pay due to such delay, interruption, disruption or similar failure.

You acknowledge that we are not party to the terms and conditions for Apple Pay between you and Apple and we do not own and are not responsible for Apple Pay. We are not providing any warranty for Apple Pay. We are not responsible for maintenance or other support services for Apple Pay and shall not be responsible for any other claims, losses, liabilities, damages, costs or expenses with respect to Apple Pay, including, without limitation, any third party product liability claims, claims that Apple Pay fails to conform to any applicable legal or regulatory requirement, claims arising under consumer protection or similar legislation, and claims with respect to intellectual property infringement. Any inquiries or complaints relating to the use of Apple Pay, including those pertaining to Intellectual Property Rights, must be directed to Apple.

We do not recommend, endorse or make any representation or warranty of any kind regarding the performance or operation of your Eligible Mobile Device. You are responsible for the selection on an Eligible Mobile Device and for all issues relating to the operation, performance and costs associated with such Eligible Mobile Device.

## **LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE, OUR PROCESSORS, SUPPLIERS, OR LICENSORS (OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, INABILITY TO USE, OR UNAVAILABILITY OF APPLE PAY, INCLUDING YOUR USE OF YOUR CARD IN CONNECTION WITH APPLE PAY. UNDER NO CIRCUMSTANCES WILL WE BE RESPONSIBLE FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF YOUR CARD IN APPLE PAY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE, OUR PROCESSORS, SUPPLIERS, AND LICENSORS (AND THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF APPLE PAY, INCLUDING YOUR USE OF YOUR CARD IN CONNECTION WITH APPLE PAY; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM APPLE PAY; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH APPLE PAY BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH APPLE PAY; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL WE, OUR PROCESSORS, AGENTS, SUPPLIERS, OR LICENSORS (OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING \$500.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

## **INDEMNITY**

You will indemnify, defend, and hold us (and our officers, employees, directors, agents, affiliates and shareholders, in their individual capacities or otherwise) harmless from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to: (i) any actual or alleged breach of your representations, warranties, or obligations set forth in these Terms and Conditions, including any violation of our policies; (ii) your wrongful or improper use of an eligible Card or Apple Pay;

(iii) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (iv) your violation of any law, rule or regulation of the United States or any other country; (v) any other party's access or use of Apple Pay with your Touch ID or other appropriate security code.

## **REPRESENTATION AND WARRANTY**

You represent and warrant to us that: (i) to the extent you identified a name at registration, the name identified by you when you registered your Card to be added to Apple Pay is your name; (ii) the Card you added to Apple Pay is your Card; (iii) you have the authority to authorize the receipt of notices, calls and text messages from PlainsCapital Bank at the phone number you provide; (iv) you and all transactions initiated by you will comply with all federal, state, and local laws, rules, and regulations applicable to you, including any applicable tax laws and regulations; (v) you will not use your Card through Apple Pay for any fraudulent undertaking or in any manner so as to interfere with the operation of Apple Pay; and (vi) your use of your Card in connection with Apple Pay will comply with these Term and Conditions.

## **GOVERNING LAW**

*The same laws that govern your account relationships with PlainsCapital Bank as explained in your Deposit Agreement shall govern these Terms and Conditions.*

*Apple, Apple Pay and Passbook are trademarks of Apple Inc.*