

## **BILLPAY SERVICE AGREEMENT**

**Last Updated 6.28.18**

**THIS BILLPAY SERVICE AGREEMENT** (this “Agreement”) governs your use of the Service (as defined below) offered by the Industrial and Commercial Bank of China (USA) NA, as well as any subsidiary, affiliate, or authorized service provider of Industrial and Commercial Bank of China (USA) NA, including any successor and assign (hereinafter, referred to as “we”, “us”, “our” or the “Bank”). “You”, “your”, and “Customer” refers to the person or persons subscribing to or using the Service. By subscribing to the Service, using the Service, or permitting someone else to use the Service on your behalf, you agree to the terms of this Agreement, as well as the terms of the Bank’s online Terms of Service and Privacy Policy. In the event that a revised Agreement is provided by the Bank, that agreement will supersede the terms of this Agreement. The Agreement is written in the English language, and to the extent any translated versions of the Agreement conflict with the English language version of the Agreement, the English language version shall control.

**PLEASE NOTE THAT THE BANK MAY CHARGE CERTAIN TRANSACTION FEES ASSOCIATED WITH THE SERVICE, AND WITH THE COMPLETION OF YOUR INSTRUCTIONS. ACCURATE INFORMATION RELATED TO THE CURRENT FEES ASSOCIATED WITH THE SERVICE AND THE COMPLETION OF INSTRUCTION CAN BE FOUND AT ANY OF THE BANK’S BRANCHES. BY USING THE SERVICE YOU AGREE TO PAY ANY SUCH TRANSACTION FEES, AND TO THE BANK AUTOMATICALLY DEBITING ANY SUCH TRANSACTION FEES FROM YOUR ACCOUNT ACCORDING TO THE FEE SCHEDULE CURRENTLY IN EFFECT AND AVAILABLE FOR VIEWING AT YOUR LOCAL BANK BRANCH.**

1. Definitions:

- a) “Account” means any account(s) from which payments are made utilizing the Service.
- b) “Service” means electronic banking services, including account inquiries, funds transfers between specified accounts, rates inquiries, and other banking services, offered by the Bank, by means of your access to and the use of such services, when available and permitted by the Bank, through a personal computer or other device, using either public or private communications networks, including wireless networks or such other networks or devices.
- c) “Identification Codes” means any personal identification number, username, or password used to authenticate your identity for the purpose of accessing your Account or utilizing the Service.
- d) “Instructions” means, with respect to an Account, any deposit, withdrawal, transfer, payment, access to Account status, balances or other account information, application for investments, mortgages, loans or any other type of

credit, or such other products, services or information as the Bank makes available, or any action taken by a person or persons utilizing an Account.

2. Use of the Service:

- a) By using the Service, you agree that you have read this Agreement in its entirety, that you understand all of its terms and conditions, and that you agree to all of the terms and conditions contained within the Agreement and any and all incorporated agreements between you and the Bank. If you do not agree to the terms and conditions in this Agreement and the additional incorporated agreements, you are not permitted to use the Service.
- b) You agree that you will use the Service only in accordance with the terms and conditions of this Agreement.
- c) You acknowledge that the provision of the Service is at the sole discretion of the Bank, and the Bank reserves the right to suspend or terminate any aspect of the Service at any time and for any reason.
- d) **ANY INTEREST RATE, EXCHANGE RATE, LOAN RATE QUOTED BY THE BANK IN THE COURSE OF YOUR USE OF THE SERVICE IS AN ESTIMATE ONLY AND IS NOT BINDING ON THE BANK UNTIL ANY SUCH RATE IS SPECIFICALLY CONFIRMED BY AN AUTHORIZED BANK REPRESENTATIVE IN WRITING.**
- e) The closure of an Account will result in the termination of the Service with respect to that Account.
- f) You acknowledge and understand that the Bank makes no representations or guarantees with regards to the availability of the Service, and that the Service may be unavailable for any period of time, and may be unavailable or non-functional during business hours on weekdays or at other times when you may wish to use the Service, and that you have no right to rely on the availability of the Service at any given time or geographical location.
- g) In its sole discretion, the Bank may impose such restrictions, including restrictions on amounts that may be transferred between Accounts or other restrictions appropriate for the efficient operation of the Service, for the security or convenience of the Bank or the users of the Service, to comply with any laws or regulations, or for any other reason.
- h) **The Service is not intended for use to make payments for stock purchases, payments associated with the purchase of real property, annuities or lottery contracts, lay-away systems, transactions to finance or refinance debts, alimony, child support, any type of insurance, taxes or other government fees, or court-directed payments. You acknowledge that if you do submit a**

**payment to one of these restricted vendors through the Service, the Bank will not assume any liability for penalties, cancellation of coverage or any other expense, claim, or damage related to nonpayment upon the processing or completion of such a payment. Any such payments are done at your own risk.**

3. Instructions.

- a) You authorize the Bank to accept, and you will be solely responsible for, all Instructions sent to the Bank through the Service. The Bank may rely on such Instructions as if you had given such Instructions in a signed and written document, whether such Instructions are made by you, or any other person acting with or without your knowledge or consent and whether made by any means of communication.
- b) You agree that, aside from any mandatory obligations imposed on the Bank by existing law, the Bank is not under any obligation or duty to verify the identity or authority of the person giving any Instructions or the authenticity of any such Instructions.
- c) In its sole discretion, for any reason, the Bank may decline to act, or delay acting upon, any Instructions provided through the Service. The Bank will not incur any liability by reason of acting or failing to act in respect of an Instruction provided through the Service, whether or not the Bank delayed in acting or failed to act for any legitimate business reason, or as a result of technical or logistical issues associated with the Service.
- d) **FOR ANY INSTRUCTIONS INVOLVING A CURRENCY OTHER THAN UNITED STATES DOLLARS, THE BANK MAY, AT ITS SOLE DISCRETION, CONVERT SUCH FOREIGN CURRENCY AT THE BANK'S CURRENT RATE OF EXCHANGE AT THE TIME THE INSTRUCTION IS PROCESSED, AS WELL AS APPLYING ANY TRANSACTION FEES ASSOCIATED WITH THE CURRENCY CONVERSION. THE BANK SHALL NOT BE REQUIRED TO COMMUNICATE WITH YOU OR OBTAIN YOUR CONSENT TO DO THIS PRIOR TO PROCESSING THE INSTRUCTION. BEFORE ENTERING INTO ANY TRANSACTION INVOLVING A FOREIGN CURRENCY, YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR CHECKING THE BANK'S CURRENT RATE OF EXCHANGE, AND ENSURING THAT YOU AGREE TO SUCH RATE OF EXCHANGE, AND ANY TRANSACTION FEES ASSOCIATED WITH THE CURRENCY CONVERSION.**
- e) Consistent with the Bank's Privacy Policy and existing law, The Bank maintains a database containing a record of your Instructions, and such records will be conclusive and binding on you with respect to any dispute, including any legal

proceeding, as conclusive evidence of your Instructions, in the absence of clear and convincing evidence that the Bank's records are inaccurate. You agree that computer generated or electronic records received or created by the Bank in connection with your use of the Service shall be admissible in a court of law as the Bank's business records and automatically generated records of a computerized database, and you waive any argument or defense that you may otherwise have as to the admissibility of such records.

- f) Instructions made by you are not to be considered as having been received and executed by the Bank until the Bank has actually processed such Instructions.
- g) The Bank may require and take up to five (5) or more business days to process a transfer of funds or bill payment instructions. The processing of Instructions made after 3:00 p.m., United States Eastern Standard Time, on a weekend or holiday, will normally begin or occur the next banking day subsequent to the weekend or holiday.
- h) You can cancel or stop a single bill payment any time before the payment made on any business day prior to the cut-off time to cancel or stop payment, which is 3:00 p.m., United States Eastern Standard Time, for the payment made the same business day through the use of Services. In order to cancel a recurring bill payment you must cancel the recurring series before the next scheduled Payment date prior to the cut-off time, which is 3:00 p.m., United States Eastern Standard Time.
- i) If you have any questions or concerns about the Service, your Account, or any particular transaction, contact us as soon as you can at 212-238-8208 for accounts opened in the New York Region, 626-300-8888 for accounts opened in the Southern California Region, or 415-668-7788 for accounts opened in the Northern California Region, to inform the Bank via telephone, or send an email describing the facts and circumstances at issue to [info@us.icbc.com.cn](mailto:info@us.icbc.com.cn). You may also write to us at The Industrial and Commercial Bank of China (USA) NA, 1633 Broadway, 28th Floor, New York, NY 10019. If you do not contact the Bank within sixty (60) days from the date of the transaction or query at issue, the Bank may be unable to assist you with your issue and you may be responsible for the payment of any unauthorized charges.

#### 4. Security.

- a) You acknowledge that it is your responsibility to keep your Identification Codes confidential.
- b) Do not disclose any Identification Codes over the phone unless you initiate the call to a verified Bank telephone number.

- c) Guard your Identification Codes. Never leave them out in the open or write them on an envelope.
- d) Keep a record of your Identification Codes in encrypted form or on a password-protected medium, so you can report a loss quickly.
- e) **YOU ARE RESPONSIBLE FOR ENSURING THAT YOU IMMEDIATELY NOTIFY THE BANK IF AND WHEN YOUR IDENTIFICATION CODES HAVE BEEN COMPROMISED, AND THAT YOUR FAILURE TO IMMEDIATELY NOTIFY THE BANK IN SUCH CIRCUMSTANCES MAY LEAD TO THE DISCLOSURE OF YOUR ACCOUNT INFORMATION, PERSONALLY IDENTIFIABLE INFORMATION, OR OTHER INFORMATION TO UNAUTHORIZED PERSONS, AS WELL AS YOUR INCURRING FINANCIAL AND LEGAL RESPONSIBILITY FOR ANY LOSSES YOU OR THE BANK SUFFER AS A RESULT OF YOUR IDENTIFICATION CODES BEING COMPROMISED.**

**TO NOTIFY THE BANK OF ANY POTENTIAL UNAUTHORIZED ACCESS TO YOUR ACCOUNT OR OF ANY INFORMATION ASSOCIATED WITH THE SECURITY OF YOUR ACCOUNT, YOU MUST IMMEDIATELY:**

Dial 212-238-8208 for accounts opened in the New York Region, 626-300-8888 for accounts opened in the Southern California Region, or 415-668-7788 for accounts opened in the Northern California Region, to inform the Bank via telephone, as well as sending an email describing the facts and circumstances at issue to: [info@us.icbc.com.cn](mailto:info@us.icbc.com.cn). You may also write to us at The Industrial and Commercial Bank of China (USA) NA, 1633 Broadway, 28th Floor, New York, NY 10019.

- f) You agree that you will cooperate and assist in any investigation, including filing a report with law enforcement authorities, which the Bank may initiate in connection with any unauthorized use of the Service.
- g) Your liability for unauthorized transactions can depend on how quickly you report the unauthorized access to your account, as well as the unauthorized nature of any transactions. If you notify us within two (2) business days after you learn of the theft of any of your Identification Codes, you can lose no more than \$50.00 if someone made a transaction without your permission. If you do not notify us within two (2) Business Days after you learn of the theft of any of your Identification Codes, you could lose as much as \$500.00. If you do not notify us within sixty (60) days after the Bank sends a statement to you showing any unauthorized transactions, you may have full liability for all such unauthorized transactions.

- h) The Bank is not responsible for problems that may develop as a result of your failure to maintain sufficient funds in your account. You are also responsible for any incorrect information provided by you or errors that may have been made in setting up payments.

5. Limitation of Liability.

- a) You agree that you are independently responsible for complying with all applicable laws in all of your activities related to your use of the Service, regardless of the purpose of the use, and for all communications you send through the Service. The Bank and its service providers have the right but not the obligation to monitor and remove communications content that the Bank or its service providers find in the sole discretion of the Bank or its service providers to be objectionable in any way.
- b) You are responsible for obtaining, installing, maintaining, and operating all computer hardware, software, and internet access necessary for use of the Services, including without limitation virus protection software and spyware or malware protection. The Bank and its service providers are not responsible for any errors or failures from the malfunction or failure of your hardware, software, or internet access services.
- c) **THE SERVICE AND RELATED DOCUMENTATION ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE BANK DOES NOT WARRANT THE ACCURACY, ADEQUACY, OR COMPLETENESS OF ANY INFORMATION OR MATERIALS AND EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THIS INFORMATION AND MATERIALS. NO WARRANTY OF ANY KIND, IMPLIED, EXPRESSED, OR STATUTORY INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OPERATION, COMPLETENESS, ACCURACY, RELIABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM COMPUTER VIRUS, OR ARISING BY LAW, STATUTE, USAGE OF TRADE, OR COURSE OF DEALING IS GIVEN IN CONJUNCTION WITH YOUR USE OF THIS SERVICE.**
- d) The Bank, its respective directors, officers, employees, agents, subcontractors, or other representatives, will not be responsible or in any manner liable to you or any third party for any losses, damages, penalties and expenses, including direct, indirect, incidental, special, or consequential damages, however caused, in connection with or arising out of your use of this Service, whether authorized or not, even if the Bank has been advised of or should have been aware of the possibility of such loss or damage. Such losses, damages, penalties, and expenses

include, but are not limited to, any you may suffer if: (i) you transmit confidential or sensitive information to the Bank over the internet; (ii) the Bank communicates confidential or sensitive information to you at your request over the internet; (iii) a third party issues Instructions to the Bank using your Identification Codes, whether such Instructions are made with or without your knowledge or consent; (iv) the Bank does not receive your Instructions; (v) there is any delay in processing Instructions, or if we decline to act on your Instructions; (vi) access to this Service is not available or is delayed due to periods of increased volume or activity or to allow for maintenance, updates or for any other cause; or (vii) any harm or loss occurs to your personal computer or any records or data.

- e) The Bank is not responsible for your acts or omissions or those of any other person, including, without limitation, any transmission or communications facility, and no such party shall be deemed to be the Bank's agent.

## 6. Additional Provisions.

- a) In the event of any conflict or inconsistency between this Agreement and any other agreement between you and the Bank, the provisions of this Agreement take precedence to the extent of any conflict or inconsistency associated with the use of the Service.
- b) You expressly agree the Bank may collect, use, and disclose your personal information in accordance with the Bank's Privacy Policy.
- c) You authorize the Bank to communicate with you by fax, by online notice posted to our website, or electronic mail at such numbers or addresses as you from time to time provide to the Bank, and you explicitly authorize the Bank to send you SMS, MMS, or other text messages associated with your use of the Services, and without any prior notice or consent from you to send such text messages.
- d) Communications by fax, online notice, text message, or electronic mail will be deemed to have been delivered to you at the time and date of transmission.
- e) **YOU ARE RESPONSIBLE FOR ENSURING THAT YOU IMMEDIATELY NOTIFY THE BANK IF AND WHEN YOUR PHYSICAL ADDRESS, TELEPHONE NUMBER, FAX NUMBER, OR EMAIL ADDRESS ARE NO LONGER VALID, OR HAVE BEEN COMPROMISED, AND THAT YOUR FAILURE TO IMMEDIATELY NOTIFY THE BANK IN SUCH CIRCUMSTANCES MAY LEAD TO THE DISCLOSURE OF YOUR ACCOUNT INFORMATION, PERSONALLY IDENTIFIABLE INFORMATION, OR OTHER INFORMATION TO UNAUTHORIZED PERSONS AT YOUR FORMER OR COMPROMISED PHYSICAL ADDRESS, TELEPHONE NUMBER, FAX NUMBER, OR EMAIL ADDRESS.**

- f) No act or omission by the Bank pursuant to these terms shall affect its rights, powers, and remedies under this Agreement or any further or other exercise of such rights, powers, or remedies.
- g) Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be severed, to the extent of such prohibition or unenforceability, from the balance of the terms of this Agreement, without affecting the remaining provisions or affecting the validity or enforceability of such provisions in any other jurisdiction.
- h) This Agreement shall be governed by the laws of the state of New York and the United States of America, without regard to conflict of laws. The Bank will try to work in good faith to resolve any issue you have regarding this Agreement, if you bring your issue to the Bank's attention. However, we realize that there may be rare cases where we may not be able to resolve an issue to your satisfaction. You and the Bank agree that any dispute, claim, or controversy, arising out of or relating in any way to this Agreement, shall be determined by binding arbitration instead of in courts of general jurisdiction. Arbitration is more informal than bringing a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, and is subject to a very limited review by courts. Arbitration allows for more limited discovery than in court, however, we agree to cooperate with each other to agree to reasonable discovery in light of the issues involved and amount of the claim. Arbitrators can award the same damages and relief that a court can award, but in so doing, the arbitrator shall apply substantive law regarding damages as if the matter had been brought in court, including without limitation, the law on punitive damages as applied by the United States Supreme Court. You agree that, by agreeing to this Agreement, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and the Bank are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive any termination of this Agreement and any other contractual relationship between you and the Bank. If you desire to assert a claim against the Bank, and you therefore elect to seek arbitration, you must first send to the Bank, by certified mail, a written Notice of your claim ("Notice"). The Notice to the Bank should be addressed to The Industrial and Commercial Bank of China (USA) NA, 1633 Broadway, 28th Floor, New York, NY 10019 ("Notice Address"). If the Bank desires to assert a claim against you and therefore elects to seek arbitration, it will send, by certified mail, a written Notice to the most recent mailing address or email address we have on file or otherwise in our records for you. A Notice, whether sent by you or by the Bank, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If the Bank and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or the Bank may commence an arbitration proceeding or file a claim in small claims court. During the arbitration, the amount of any settlement offer made by the Bank or you shall not be disclosed to the arbitrator. You may download or copy a form Notice and a form to initiate arbitration from the American Arbitration Association at



www.adr.org. The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by this Agreement, and will be administered by the AAA. The AAA Rules and Forms are available online at www.adr.org or by requesting them from us by writing to us at the Notice Address. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, including issues relating to the scope and enforceability of this Agreement, including this arbitration agreement. Unless the Bank and you agree otherwise in writing, any arbitration hearings will take place in New York, New York. If your claim is for \$10,000 USD or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000 USD, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as expressly set forth herein, the payment of all filing, administration, and arbitrator fees will be governed by the AAA Rules. Each party shall pay for its own costs and attorneys’ fees, if any. However, if any party prevails on a statutory claim that affords the prevailing party attorneys’ fees, or if there is a written agreement providing for payment or recovery attorneys’ fees, the arbitrator may award reasonable fees to the prevailing party, under the standards for fee shifting provided by law. **YOU AND THE BANK 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 OR REPRESENTATIVE PROCEEDING.** Further, unless both you and the Bank agree otherwise in writing, the arbitrator may not consolidate more than one person’s claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. If this specific provision is found to be unenforceable, then (a) the entirety of this arbitration provision shall be null and void, but the remaining provisions of this Agreement shall remain in full force and effect; and (b) exclusive jurisdiction and venue for any claims will be in state or federal courts located in New York State.

- i) The Bank reserves the right to modify or terminate the terms of this Agreement at any time, without prior notice, and the Bank will have no liability for any loss or inconvenience, which may result from any modification or termination of the Agreement. Your use of the Service following any modification constitutes your agreement to follow and be bound by these terms as revised, and you are responsible for reviewing this Agreement prior to using the Service to determine whether you agree with the version of this Agreement, as modified, currently in effect whenever you use the Service.

- j) You agree to defend, indemnify, and hold harmless the Bank, its affiliates, and its service providers and the employees and contractors of each of these, from any loss, damage, claim, or demand (including attorneys' fees) made or incurred due to or arising out of your breach of this Agreement or your use of the Bank's website or the Service.