

# Merrill Lynch Web Bill Pay Service Agreement

## TERMS AND CONDITIONS

This Merrill Lynch Web Bill Pay Service Agreement contains the terms and conditions governing the Merrill Lynch Web Bill Pay Service, including disclosures required by federal law. Please read this Agreement carefully and keep a copy for your records.

## SERVICE DEFINITIONS

As used in the Agreement, the following terms will have the following meanings:

- "Service" means the Web Bill Pay Service offered by Merrill Lynch, through CheckFree Services Corporation
- "Agreement" means these Terms and Conditions of the Service.
- "Merrill Lynch" means Merrill Lynch, Pierce, Fenner & Smith Incorporated, its successors and assigns.
- "You" and "your" mean the Merrill Lynch client who is enrolled in the Service.
- "We", "our" and "us" mean Merrill Lynch.
- "CheckFree" means CheckFree Services Corporation.
- "Payee" is the person or entity to which you wish a bill payment to be directed or is the person or entity from which you receive electronic bills, as the case may be.
- "Payment Instruction" is the information provided by you to the Service for a bill payment to be made to the Payee (such as, but not limited to, Payee name, Payee account number, and Scheduled Payment Date).
- "Payment Account" is the central asset account at Merrill Lynch from which bill payments will be debited.
- "Billing Account" is the central asset account at Merrill Lynch from which all Service fees will be automatically debited.
- "Business Day" is every Monday through Friday, excluding Federal Reserve holidays.
- "Scheduled Payment Date" is the day you want your Payee to receive your bill payment and is also the day your Payment Account will be debited, unless the Scheduled Payment Date falls on a non-Business Day in which case it will be considered to be the previous Business Day.
- "Due Date" is the date reflected on your Payee statement for which the payment is due; it is not the late date or grace period.
- "Scheduled Payment" is a payment that has been scheduled through the Service but has not begun processing.

## THE SERVICE

Merrill Lynch offers the Service to its central asset account clients. The Service is provided through CheckFree. CheckFree operates and maintains an Internet server application, which offers bill presentment and bill payment features, capabilities and functionality. CheckFree hosts and provides data security for the Merrill Lynch web site through which Merrill Lynch clients are able to enroll in and utilize the Service.

## REPRESENTATION AND ADDITIONAL TERMS

By enrolling in the Service, you acknowledge that you have received and read this Agreement and agree to its terms and conditions. You further acknowledge that you have received and read the agreements governing your Payment Account, and agree that any additional terms and conditions in those documents applicable to participation in the Service are incorporated herein as though they were fully set forth herein.

## **PAYMENT SCHEDULING**

Transactions begin processing four (4) Business Days prior to your Scheduled Payment Date. Therefore, the application will not permit you to select a Scheduled Payment Date less than four (4) Business Days from the current date. When scheduling payments you must select a Scheduled Payment Date that is no later than the Due Date reflected on your Payee statement unless the Due Date falls on a non-Business Day. If the Due Date falls on a non-Business Day, you must select a Scheduled Payment Date that is at least one (1) Business Day before the Due Date. Scheduled Payment Dates should be prior to any late date or grace period.

## **THE SERVICE GUARANTEE**

Due to circumstances beyond the control of the Service, particularly delays in handling and posting payments by Payees or financial institutions, some transactions may take longer to be credited to your account. The Service will bear responsibility for any late payment related charges up to \$50.00 should a payment post after its Due Date as long as the payment was scheduled in accordance with the guidelines described under "Payment Scheduling" in this Agreement.

## **PAYMENT AUTHORIZATION AND PAYMENT REMITTANCE**

By providing the Service with names and account information of Payees to whom you wish to direct payments, you authorize the Service to follow the Payment Instructions that it receives through the payment system. In order to process payments more efficiently and effectively, the Service may edit or alter payment data or data formats in accordance with Payee directives.

When the Service receives a Payment Instruction, you authorize the Service to debit your Payment Account and remit funds on your behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by you. You also authorize the Service to credit your Payment Account for payments returned to the Service by the Post Office or Payee, or payments remitted to you on behalf of another authorized user of the Service.

The Service will use its best efforts to make all your payments properly. However, the Service shall incur no liability and any Service Guarantee shall be void if the Service is unable to complete any payments initiated by you because of the existence of any one of the following circumstances:

1. If, through no fault of the Service, your Payment Account does not contain sufficient funds to complete the transaction or your Payment Account has been re-titled, closed or blocked for any reason;
2. The payment processing center is not working properly and you know or have been advised by the Service about the malfunction before you execute the transaction;
3. You have not provided the Service with the correct Payment Account information, or the correct name, address, phone number, or account information for the Payee;
4. The Payee mishandles or delays a payment sent by us; and/or,
5. Circumstances beyond control of the Service (such as, but not limited to, fire, flood, or interference from an outside force) prevent the proper execution of the transaction and the Service has taken reasonable precautions to avoid those circumstances.

Provided none of the foregoing exceptions are applicable, if the Service causes an incorrect amount of funds to be removed from your Payment Account or causes funds from your Payment Account to be directed to a Payee which does not comply with your Payment Instructions, the Service shall be responsible for returning the improperly transferred funds to your Payment Account, and for directing to the proper Payee any previously misdirected transactions, and, if applicable, for any late payment related charges.

## **PAYMENT METHODS**

The Service reserves the right to select the method in which to remit funds on your behalf to your Payee. These payment methods may include, but may not be limited to, an electronic payment, an electronic to check payment, or a laser draft payment.

## **PAYMENT CANCELLATION REQUESTS**

You may cancel or edit any Scheduled Payment (including recurring payments) by following the directions within the application. There is no charge for canceling or editing a Scheduled Payment. Once the Service has begun processing a payment it cannot be cancelled or edited, therefore a stop payment request must be submitted.

## **STOP PAYMENT REQUESTS**

The Service's ability to process a stop payment request will depend on the payment method and whether or not a check has cleared. The Service may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If you desire to stop any payment that has already been processed, you must contact Customer Service. Although the Service will make every effort to accommodate your request, the Service will have no liability for failing to do so. The Service may also require you to present your request in writing within fourteen (14) days. The charge for each stop payment request will be the current charge for such service as set out in the applicable fee schedule.

## **PROHIBITED PAYMENTS**

Payments to Payees outside of the United States or its territories are prohibited through the Service. The maximum permitted bill payment amount is \$50,000 per transaction. There is a limit of 999 Payees.

## **EXCEPTION PAYMENTS**

Tax payments and court ordered payments may be scheduled through the Service, however such payments are discouraged and must be scheduled at your own risk. In no event will the Service be liable for any claims or damages resulting from your scheduling of these types of payments. The Service Guarantee as it applies to any late payment related changes is void when these types of payments are scheduled and/or processed by the Service. The Service has no obligation to research or resolve any claim resulting from an exception payment. All research and resolution for any misapplied, mis-posted or misdirected payments will be the sole responsibility of you and not of the Service.

## **BILL DELIVERY AND PRESENTMENT**

This feature is for the presentment of electronic bills only and it is your sole responsibility to contact your Payees directly if you do not receive your statements. In addition, if you elect to activate one of the Service's electronic bill options, you also agree to the following:

Information provided to the Payee - The Service is unable to update or change your personal information such as, but not limited to, name, address, phone numbers and e-mail addresses, with the electronic Payee. Any changes will need to be made by contacting the Payee directly. Additionally it is your responsibility to maintain all usernames and passwords for all electronic Payee sites. You also agree not to use someone else's information to gain unauthorized access to another person's bill.

Activation - Upon activation of the electronic bill feature the Service may notify the Payee of your request to receive electronic billing information. The presentment of your first electronic bill may vary from Payee to Payee and may take up to sixty (60) days, depending on the billing cycle of each Payee. Additionally, the ability to receive a paper copy of your statement(s) is at the sole discretion of the Payee. While your electronic bill feature is being activated it is your responsibility to keep your accounts current. Each electronic Payee reserves the right to accept or deny your request to receive electronic bills.

Notification - The Service will use its best efforts to present all of your electronic bills promptly. In addition to notification within the Service, the Service may send an e-mail notification to the e-mail address listed for your account. It is your sole responsibility to ensure that this information is accurate. In the event you do not receive notification, it is your responsibility to periodically logon to the Service and check on the delivery of new electronic bills. The time for notification may vary from Payee to Payee. You are responsible for ensuring timely payment of all bills.

Cancellation of electronic bill notification - The electronic Payee reserves the right to cancel the presentment of electronic bills at any time. You may cancel electronic bill presentment at any time. The

timeframe for cancellation of your electronic bill presentment may vary from Payee to Payee. It may take up to sixty (60) days, depending on the billing cycle of each Payee. The Service will notify your electronic Payee(s) as to the change in status of your account and it is your sole responsibility to make arrangements for an alternative form of bill delivery. The Service will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.

Non-Delivery of electronic bill(s) - You agree to hold the Service harmless should the Payee fail to deliver your statement(s). You are responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Payee directly.

Accuracy and dispute of electronic bill - The Service is not responsible for the accuracy of your electronic bill(s). The Service is only responsible for presenting the information we receive from the Payee. Any discrepancies or disputes regarding the accuracy of your electronic bill summary or detail must be addressed with the Payee directly.

This Agreement does not alter your liability or obligations that currently exist between you and your Payees.

## **EXCLUSIONS OF WARRANTIES**

THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **PASSWORD AND SECURITY**

You agree not to give or make available your password or other means to access your Payment Account to any unauthorized individuals. You are responsible for all payments you authorize using the Service. If you permit other persons to use the Service or your password or other means to access your Payment Account, you are responsible for any transactions they authorize. If you believe that your password or other means to access your Payment Account has been lost or stolen or that someone may attempt to use the Service without your consent or has transferred money without your permission, you must notify the Service at once by calling 1-800-MERRILL® (637-7455) during Customer Service hours.

## **YOUR LIABILITY FOR UNAUTHORIZED TRANSFERS**

If you tell us within two (2) Business Days after you discover your password or other means to access your Payment Account has been lost or stolen, your liability is no more than \$50.00 should someone access your Payment Account without your permission. If you do not tell us within two (2) Business Days after you learn of such loss or theft, and we can prove that we could have prevented the unauthorized use of your password or other means to access your Payment Account if you had told us, you could be liable for as much as \$500.00. If your monthly statement for your Payment Account contains transfers that you did not authorize, you must tell us at once. If you do not tell us within sixty (60) days after the statement was sent to you, you may lose any amount transferred without your authorization after the sixty (60) days if we can prove that we could have stopped someone from taking the money had you told us in time. If a good reason (such as a long trip or a hospital stay) prevented you from telling us, we may extend the period.

## **ERRORS AND QUESTIONS**

In case of errors or questions about your transactions, you should notify us as soon as possible via one of the following:

1. Telephone us at 1-800-MERRILL (637-7455) during Customer Service hours.
2. Write us at:

Merrill Lynch  
Attn: Web Bill Pay  
P.O. Box 1521

Pennington, NJ 08534-1524

If you think your statement is incorrect or you need more information about a Service transaction listed on the statement, we must hear from you no later than sixty (60) days after the FIRST statement was sent to you on which the problem or error appears. You must:

1. Tell us your name and Payment Account number;
2. Describe the error or the transaction in question, and explain as clearly as possible why you believe it is an error or why you need more information; and,
3. Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send your complaint in writing within ten (10) Business Days after your oral notification. We will tell you the results of our investigation within ten (10) Business Days after we hear from you, and will correct any error promptly. However, if we require more time to confirm the nature of your complaint or question, we reserve the right to take up to forty-five (45) days to complete our investigation. If we decide to do this, we will provisionally credit your Payment Account within ten (10) Business Days for the amount you think is in error. If we ask you to submit your complaint or question in writing and we do not receive it within ten (10) Business Days, we may not provisionally credit your Payment Account. If it is determined there was no error we will mail you a written explanation within three (3) Business Days after completion of our investigation. You may ask for copies of documents used in our investigation. The Service may revoke any provisional credit provided to you if we find an error did not occur.

## **DISCLOSURE OF ACCOUNT INFORMATION TO THIRD PARTIES**

It is our general policy to treat your account information as confidential. However, we will disclose account information to third parties about your account or the transactions you make through the Service ONLY in the following situations:

1. Where it is necessary for completing your bill payment transactions;
2. Where it is necessary for activating additional services;
3. To third parties who have a business purpose for requesting information regarding your Payment Account or the Service;
4. To credit bureaus and other consumer reporting agencies;
5. In order to comply with a governmental agency or court orders or other legal process; or,
6. If you give us your written permission.

## **SERVICE FEES AND ADDITIONAL CHARGES**

Any applicable fees will be charged regardless of whether the Service was used during the billing cycle. There may be a charge for additional transactions and other optional services. You agree to pay such charges and authorize the Service to deduct the calculated amount from your Billing Account for these amounts and any additional charges that may be incurred by you. Any other fees associated with your Billing Account will continue to apply. You are responsible for any and all telephone access fees and/or Internet service fees that may be assessed by your telephone and/or Internet service provider.

## **FAILED OR RETURNED TRANSACTIONS**

In using the Service, you are requesting the Service to make payments for you from your Payment Account. If we are unable to complete the transaction for any reason associated with your Payment Account (for example, there are insufficient funds in your Payment Account to cover the transaction), the transaction will not be completed. In some instances, you will receive a return notice from the Service. In such cases, you agree that:

1. You will reimburse the Service immediately upon demand the transaction amount that has been returned to the Service;
2. For any amount not reimbursed to the Service within fifteen (15) days of the initial notification, a late charge equal to 1.5% monthly interest or the legal maximum, whichever rate is lower, for any unpaid amounts may be imposed;
3. You will reimburse the Service for any fees imposed by your financial institution as a result of the return;
4. You will reimburse the Service for any fees it incurs in attempting to collect the amount of the

- return from you; and,
5. The Service is authorized to report the facts concerning the return to any credit reporting agency.

## **ALTERATIONS AND AMENDMENTS**

You agree that Merrill Lynch has the right to amend the terms and conditions (including, without limitation, applicable fees and charges) of this Agreement from time to time, by modifying or rescinding any existing provisions or by adding any new provisions. Any such amendments shall be effective as of a date to be established by Merrill Lynch, subject to applicable law. We will send you notice (which may be electronically delivered) of a change or changes in the terms and conditions if such changes result in increased fees to you, increased liability to you, or stricter limitations on the frequency or dollar amounts of bill payment transactions. Any use of the Service after we send you a notice of such change will constitute your agreement to such changes(s). Further, we may amend the Service, from time to time, revise or update the applications, services, and/or related material, which may render all such prior versions obsolete. Consequently, we reserve the right to terminate this Agreement as to all such prior versions of the applications, services, and/or related material and limit access to only the Service's more recent revisions and updates.

**We reserve the right to terminate the Service and this Agreement at any time.**

## **ADDRESS OR PAYMENT ACCOUNT CHANGES**

It is your sole responsibility to ensure that the contact information in your user profile is current and accurate. This includes, but is not limited to, name, address, phone numbers and email addresses. Changes can be made either within the application or by contacting Customer Service. Any changes in your Payment Account should also be made in accordance with the procedures outlined within the application's Help files. All changes made are effective immediately for scheduled and future payments paid from the updated Payment Account information. The Service is not responsible for any payment processing errors or fees incurred if you do not provide accurate Payment Account or contact information.

## **SERVICE TERMINATION, CANCELLATION, OR SUSPENSION**

In the event you wish to cancel the Service, you may have the ability to do so through the product, or you may contact Customer Service via one of the following:

1. Telephone us at 1-800-MERRILL (637-7455) during Customer Service hours.
2. Write us at:  
Merrill Lynch Web Bill Pay Service  
P.O. Box 1521  
Pennington, NJ 08534-1524

Any payment(s) the Service has already processed before the requested cancellation date will be completed by the Service. All Scheduled Payments including recurring payments will not be processed once the Service is cancelled. The Service may terminate or suspend Service to you at any time. Neither termination nor suspension shall affect your liability or obligations under this Agreement.

## **PAYEE LIMITATION**

The Service reserves the right to refuse to pay any Payee to whom you may direct a payment. The Service will notify you promptly if it decides to refuse to pay a Payee designated by you. This notification is not required if you attempt to make a prohibited payment or an exception payment under this Agreement.

## **RETURNED PAYMENTS**

In using the Service, you understand that Payees and/or the United States Post Office may return payments to the Service for various reasons such as, but not limited to, Payee's forwarding address expired; Payee account number is not valid; Payee is unable to locate account; or, Payee account is paid in full. The Service will use its best efforts to research and correct the returned payment and return it to your Payee, or void the payment and credit your Payment Account. You may receive notification from the Service.

## **INFORMATION AUTHORIZATION**

Your enrollment in the Service may not be fulfilled if the Service cannot verify your identity or other necessary information. Through your enrollment in the Service, you agree that the Service reserves the right to request a review of your credit rating at its own expense through an authorized bureau. In addition, you agree that the Service reserves the right to obtain financial information regarding your account from a Payee or your financial institution (for example, to resolve payment posting problems or for verification).

## **DISPUTES**

In the event of a dispute regarding the Service, you, Merrill Lynch and CheckFree agree to resolve the dispute by looking to this Agreement. You agree that this Agreement is the complete and exclusive statement of the agreement between you, Merrill Lynch, and CheckFree, which supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this Agreement. If there is a conflict between what an employee of Merrill Lynch and/or CheckFree says and the terms of this Agreement, the terms of this Agreement will prevail.

## **ASSIGNMENT**

You may not assign this Agreement to any other party. Merrill Lynch and/or CheckFree may assign this Agreement to any future, directly or indirectly, affiliated company and may also assign or delegate certain of its rights and responsibilities under this Agreement to independent contractors or other third parties.

## **NO WAIVER**

Merrill Lynch and/or CheckFree shall not be deemed to have waived any of their respective rights or remedies hereunder unless such waiver is in writing and signed by an authorized officer. No delay or omission on the part of Merrill Lynch and/or CheckFree in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

## **CAPTIONS**

The captions of sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

## **GOVERNING LAW**

As to disputes between you and Merrill Lynch, this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws provisions. As to disputes between you and CheckFree, this Agreement shall be governed and construed in accordance with the laws of the State of Georgia, without regard to its conflicts of laws provisions.

THE FOREGOING SHALL CONSTITUTE MERRILL LYNCH'S AND CHECKFREE'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY. IN NO EVENT SHALL MERRILL LYNCH AND/OR CHECKFREE BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE EQUIPMENT, SOFTWARE, AND/OR THE SERVICE.