



## Additional Terms & Conditions for Use of Android Pay to Supplement Your Interactive Brokers Debit Mastercard Cardholder Agreement

These terms and conditions ("Terms and Conditions") are a legal agreement between you and Metropolitan Commercial Bank ("MCB," "the Bank," "our," "we" or "us") and govern your use of your Interactive Brokers Debit Mastercard through Android Pay on any payment-supported device developed or authorized by Google, Inc. ("Google") from time to time to support Android Pay ("Eligible Devices"). The term "Android Pay" means the Android Pay mobile payment functionality offered by Google and the Card provisioning functionality performed, and transaction history displayed, by the digital wallet application, on the Web, and on any other Eligible Device. In this Agreement, "Card" means the Interactive Brokers Debit Mastercard issued to you by MCB. The "Program Manager" for the Interactive Brokers Debit Mastercard is Interactive Brokers LLC ("IB"). "Card Account" means your beneficial interest in the pooled deposit account at MCB held by IB on behalf of its customers in connection with their respective Cards. Under the terms of your brokerage account with IB ("Brokerage Account") and the Interactive Brokers Debit Mastercard Cardholder Agreement ("Cardholder Agreement") with MCB, your Brokerage Account is linked to your Card Account and will automatically fund your Card Account as needed to settle transactions made with your Card; see Cardholder Agreement for full details. "You" and "your" means the person who has received the Card and who is authorized to use the Card as provided for in this Agreement. The Program Manager will determine, in its sole discretion on the Bank's behalf, which Cards will be eligible for use through Android Pay.

Please review these Terms and Conditions before you decide whether to accept them and continue with the addition of your Card to Android Pay. You consent to the receiving of these Terms and Conditions electronically. By using a Card in Android Pay you agree to only use your Card through Android 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 Android Pay. These Terms and Conditions supersede any prior terms and conditions you may have agreed to with respect to access to and the use of Cards through Android Pay. You agree that these Terms and Conditions govern your access to and use of Cards through Android Pay on all Eligible Devices. Your use of Android Pay to purchase goods and services with your Card is still governed by the Cardholder Agreement between you and us, in connection with your Card, and all such terms and conditions, **including the pre-dispute arbitration clause**, contained in the Cardholder Agreement. The Cardholder Agreement is incorporated by reference as part of these Terms and Conditions. The arbitration provision applies to any disputes between you and us arising from your access to or use of Cards in connection with Android Pay. If any inconsistency between the two documents, this Supplement will control for the use of Android Pay.

You also acknowledge that your use of Android Pay is subject to the terms and conditions set forth by Google with respect to the use of Android Pay.

### ELIGIBILITY / ENROLLMENT

Android Pay is available to you for the purposes of purchasing goods and services with an Eligible Device at merchants that accept Android Pay as a form of payment through near field communication (NFC) enabled payment terminals and for in-app purchases and authorized merchant websites when using a compatible browser. Android Pay allows you to use your Eligible Device to access and use your Card to make such purchases in place of presenting or using your physical Card and to make purchases in-app or on websites at merchants participating in Android Pay. When you select a Card to use with Android Pay, certain account information related to the Card will be transmitted to and stored within your Eligible Device or on Google's cloud platform to facilitate your participation in Android Pay. Once the account information for a Card has been stored on your Eligible Device, it is represented by a virtual representation of your Card within Android Pay. By adding this Card to Android Pay or selecting this Card as the default card in Android Pay, unlocking and/or placing your Eligible Device near a merchant's contactless-enabled point-of-sale terminal or reader or using this Card for an in-app or website purchase, you are authorizing the payment for the merchant's products or services with that Card with Android Pay. To complete transactions above a certain dollar amount, merchants may require presentation of a physical companion card or a government-issued form of identification for inspection at the point-of-sale to authenticate your identity. You may need to present your Eligible Device at a merchant when you return an item purchased using Android Pay on such Eligible Device. You authorize your wireless operator (AT&T, Sprint, T-Mobile, US Cellular, Verizon or any other branded wireless operator) to disclose your mobile number, name, address, email, network status, customer type, customer role, billing type, account activation date, and device make and model, where provided in accordance with your mobile operator's privacy policy, to allow verification of your identity and to compare information you have provided in connection with your Card Account with your mobile operator account profile information. This disclosed data may be used and stored for fraud prevention purposes and/or to complete transactions.

#### YOUR USE OF YOUR CARD THROUGH ANDROID PAY

Please review the Cardholder Agreement, as applicable, for important information on your rights and responsibilities when making purchases. If your Eligible Device is lost or stolen, your fingerprint identity or passcode is compromised or Card has been used through Android Pay without your permission, you must notify the Program Manager, as agent for MCB, immediately using the number provided on the back of your Card or by logging into your Brokerage Account at [www.IBKR.com](http://www.IBKR.com). 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 Android Pay. Refer to your Cardholder Agreement for information regarding your liability for unauthorized transfers.

You agree and acknowledge that the transaction history displayed in Android Pay, in connection with use of your Card in Android Pay, solely represents our authorization of your Android 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 Android Pay transaction history in connection with use of your Card in Android Pay may not match the transaction amount that ultimately clears, settles and posts to your Card Account. We do not impose a fee for using your Card through Android Pay. Your telecommunications carrier or provider or Google may impose web-enablement, data usage or text messaging fees or other charges for your use of Android 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 Android Pay. You acknowledge that (i) Google, the provider of Android Pay technology that supports the Cards in Android Pay, as well as Google'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 Android Pay. We will use, share and protect your personal information in accordance with our Privacy Policy applicable to your Card account. A copy of our Privacy Policy is available for review in your Cardholder Agreement. You acknowledge that the use and disclosure of any personal information provided by you directly to Google, the applicable payment network branded on your Card or other third parties supporting Android Pay will be governed by such party's privacy policy and not MCB's Privacy Policy.

#### COMMUNICATION

You consent to receive certain messages on your Eligible Device from the Program Manager in connection with your use of your Card through Android Pay. You may receive push notifications from time to time reflecting your Card activity. If you do not wish to receive notifications, you may turn off these notifications through the device Settings on your Eligible Device. You agree to receive notices and other communications by e-mail to the e-mail address on file for your Brokerage Account. Also, you agree to receive notices and communications through the "Message Center" for your Brokerage Account at [www.ibkr.com](http://www.ibkr.com), or through the messaging capabilities of Android Pay. To update the contact information on file for you, please log on to your Brokerage Account at [www.ibkr.com](http://www.ibkr.com).

#### MERCHANT RELATIONSHIPS AND DISCLAIMERS

Merchants may present to you certain discounts, rebates or other benefits (e.g. free shipping) ("Offers") in Android Pay. Such Offers are subject to certain terms and conditions and may change at any time without notice to you. Neither IB nor MCB will 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 Cardholder Agreement, all matters, including delivery of goods 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 Android Pay or the Offers that they provide.

#### CHANGES TO PARTICIPATION IN ANDROID PAY AND TERMS AND CONDITIONS

Subject to applicable law, and as provided in the Cardholder Agreement, at any time we may (i) terminate your use of a Card in connection with Android Pay, (ii) modify or suspend the type or dollar amounts of transactions allowed using your Card in connection with Android Pay, (iii) change a Card's eligibility for use with Android Pay and (iv) change the Card's authentication process.

We may amend or change these Terms and Conditions at any time without prior notice to you except as required by applicable law. You will be notified of any change in the manner provided by applicable law prior to the effective date of the change. You are bound by such revisions and should therefore review the current Terms and Conditions as posted on the Program Manager's website at [www.ibkr.com](http://www.ibkr.com) from time to time.

#### INTELLECTUAL PROPERTY

All intellectual property rights including all patents, trade secrets, copyrights, trademarks and moral rights ("Intellectual Property Rights") in Android Pay (including text, graphics, software, photographs and other images, videos, sound, trademarks and logos) are owned either by Google, IB, MCB, their licensors or third parties. Nothing in these Terms and Conditions gives you any rights in respect of any intellectual property owned by Google, IB, MCB, their 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 Android Pay.

#### DISCLAIMERS OF WARRANTY

Android Pay is provided by Google without any warranty from IB or MCB. You acknowledge and agree that from time to time, your use of your Card in connection with Android Pay may be delayed, interrupted or disrupted for an unknown period of time for reasons we cannot control. Neither IB,

MCB, nor their affiliates, agents, directors or officers will be liable for any claim arising from or related to use of your Card through Android Pay due to such delay, interruption, disruption or similar failure.

You acknowledge that we are not party to the terms and conditions for Android Pay between you and Google and we do not own and are not responsible for Android Pay. We are not providing any warranty for Android Pay. We are not responsible for maintenance or other support services for Android Pay and shall not be responsible for any other claims, losses, liabilities, damages, costs or expenses with respect to Android Pay, including, without limitation, any third-party product liability claims, claims that Android 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 Android Pay, including those pertaining to Intellectual Property Rights, must be directed to Google.

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

#### LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE, OUR PROGRAM MANAGER, 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 ANDROID PAY, INCLUDING YOUR USE OF YOUR CARD IN CONNECTION WITH ANDROID 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 ANDROID PAY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE, OUR PROGRAM MANAGER, 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 ANDROID PAY, INCLUDING YOUR USE OF YOUR CARD IN CONNECTION WITH ANDROID 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 ANDROID PAY; (V) ANY BUGS, VIRUSES, TROJAN HORSES OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH ANDROID 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 ANDROID PAY; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL WE, OUR PROGRAM MANAGER, 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 agree to indemnify, defend and hold us and the Program Manager harmless (and the employees, directors, agents, affiliates and representatives of each) 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: (a) any actual or alleged breach of your representations, warranties or obligations set forth in this Terms and Conditions, including any violation of our policies; (b) your wrongful or improper use of Android Pay, including willful misconduct or fraud; (c) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (d) your violation of any law, rule or regulation of the United States or any other country; (e) any other party's access or use of Android Pay with your fingerprint identity 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 Android Pay is your name; (ii) the Card you added to Android Pay is your Card; (iii) you have the authority to authorize the receipt of notices, emails, calls and text messages from MCB or Program Manager at the phone number or email address 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 Android Pay for any fraudulent or illegal undertaking or in any manner so as to interfere with the operation of Android Pay; and (vi) your use of your Card in connection with Android Pay will comply with these Terms and Conditions.

## GOVERNING LAW

These Terms and Conditions, your use of your Card through Android Pay, and any claim, dispute or controversy arising from or relating to these Terms and Conditions shall be governed by the law of the State of New York, without giving effect to the conflict of law principles thereof, except to the extent preempted or governed by federal law. The legality, enforceability and interpretation of these Terms and Conditions and the amounts contracted for, charged and received under these Terms and Conditions, if any, will be governed by such laws. These Terms and Conditions are entered into between you and us in New York. Subject to the arbitration provision in the Cardholder Agreement, you expressly agree that exclusive jurisdiction for any claim or dispute with us or relating in any way to these Terms and Conditions or your use of your Card resides in the state and federal courts located in New York County, New York and you further agree and expressly consent to the exercise of personal jurisdiction in such courts in connection with any such dispute including any claim involving us or our affiliates, subsidiaries, employees, contractors, officers, directors, agents and content providers.