

## Terms and Conditions

### 1. Introduction

**1.1** These terms and conditions (“Terms”) and your completed FX International Payments new account application (“Application”), together with any supplementary terms which may be provided from time to time, constitute your agreement with American Express for the FXIP Service (“Agreement”). It is important that you read the Agreement carefully.

**1.2** American Express Services Europe Limited has its registered office at Belgrave House, 76 Buckingham Palace Road, London, SW1W 9AX, United Kingdom. It is registered in England and Wales with Company Number 1833139 and authorised and regulated by the Financial Conduct Authority.

**1.3** You can request a further copy of these Terms or any other part of the Agreement at any time during the term of the Agreement. The Agreement and all related communications between you and us shall be in English.

### 2. Definitions

In the Agreement:

“**Access Methods**” has the meaning in clause 5.1 below;

“**Agreement**” has the meaning in clause 1.1 above;

“**American Express**”, “**we**”, “**us**”, or “**our**” means American Express Services Europe Limited or any of its successors or assigns;

“**Application**” has the meaning in clause 1.1 above;

“**Authorised Users**” means Customer Admin Users, primary contact and all other users designated by you or by us in connection with the FXIP Service;

“**Business Day**” means any day except Saturday, Sunday, bank or other public holidays in England and Wales;

“**Customer Admin User**” means users who have been designated as such in accordance with clause 5.8 below;

“**Designated Account**” means the payment account specified by you and held in your name with a bank or building society in the UK, and which you will use in connection with the FXIP Service;

“**EEA**” means the European Economic Area;

“**Forward Exchange Contract**” has the meaning in clause 11.1 below;

“**FXIP Online**” means the internet-based portal through which FXIP Orders can be processed, the FXIP Service can be accessed and through which we may communicate with you;

“**FXIP Orders**” means a request for a payment or related transaction under the FXIP Service;

“**FXIP Service**” or the “**Service**” means the foreign exchange international payments service provided by American Express;

“**GBP**” means Pounds Sterling;

“**Login Details**” has the meaning in clause 5.4 below;

“**Microenterprise**” has the meaning in clause 4.1(i) below;

“**Online Privacy Statement**” has the meaning in clause 16.4 below;

“**Payment Services Regulations**” means the Payment Services Regulations 2017 (SI No. 2017/752) or any amendment to and any replacement legislation;

“**Payment Service Transaction**” means a regulated money remittance payment services transaction under the Payment Services Regulations;

“**Security Measures**” has the meaning in clause 5.2(i) below;

“**Small Charity**” has the meaning in clause 4.1(ii) below;

“**Terms**” has the meaning in clause 1.1 above;

“**You**” and “**your**” means the company or other organization who applied for the FXIP Service and in whose name an account is opened.

### 3. Provision of FXIP Service and required information

**3.1** The FXIP Service is provided subject to the terms of the Agreement.

**3.2** You agree that:

i) you will only use the Service for transactions which are directly associated with the conduct of your business and you will not use the Service on behalf of another person or business. Further, you agree that you will not use the Service for speculative purposes; and

ii) without prejudice to any other rights we may have under the Agreement, if you breach clause 3.2(i) above, or we have reasonable grounds for believing that you have breached clause 3.2(i) above, we may refuse to enter in to or continue to process any FXIP Order and/or terminate the Agreement with immediate effect.

**3.3** The FXIP Service does not involve use of a payment account held with American Express within the meaning of the Payment Services Regulations. References to “account” in the Agreement means the FXIP facility provided to you by American Express and should be read accordingly. The FXIP Service may involve, separately or in combination, a variety of products and services, including foreign currency exchange transactions, money remittance (wire transfers), foreign currency drafts and other services. Not all of these services are Payment Service Transactions.

**3.4** Subject to clause 3.7 below, we shall only provide you with the FXIP Service if we are satisfied that we have received:

i) a completed Application, including current details regarding your Authorised Users;

ii) appropriate account opening information and supporting documents as may be requested by us; and

iii) a direct debit mandate in respect of your Designated Account (unless we agree an alternative means for funding your FXIP transactions).

**3.5** In the course of establishing or operating your account from time to time:

i) we may require you to provide certain information, documents and other materials to enable us to verify your identity and the identity of any of your beneficial owners, shareholders or directors and the identity of your Authorised Users. You agree to provide such additional information to us promptly on request and warrant that any information so supplied shall be authentic, accurate and lawfully disclosed to us;

ii) we may make such enquiries with you or third parties as we consider appropriate to assess your creditworthiness, to protect against fraud and misuse of the banking system and to fulfil our statutory and regulatory obligations;

iii) you authorise us to make such enquiries. If false or inaccurate information is provided and we suspect any unlawful activity such as fraud or if fraud is identified, this will be recorded and we may pass details to fraud prevention agencies. Law enforcement agencies may access and use this information; and

iv) we may require you to provide additional information concerning your business activities or transactions with us, including but not limited to information regarding funds transfers, sources of funds, the purposes of FXIP Orders (including, but not limited to, invoices, contracts and/or other order documentation between you and the proposed beneficiary), beneficiaries, foreign draft payees and expected

amount and frequency of funds transfers or draft orders. You agree to provide such additional information to us promptly on request and warrant that any information so supplied shall be authentic, accurate and lawfully disclosed to us.

**3.6** You must inform us of any changes to the information you have provided to us pursuant to clause 3.5 above.

**3.7** We reserve the right to decline to open an account for you or to provide you with the FXIP Service.

#### **4. Customer status**

**4.1** If you meet the following criteria at the time when you enter into the Agreement with us and/or on relevant subsequent dates:

i) your annual turnover or annual balance sheet does not exceed €2 million and you employ fewer than 10 people ("Microenterprise"); or

ii) you are a registered UK charity with an annual income of less than £1 million ("Small Charity"),

we will treat you as a Microenterprise or Small Charity (as applicable) for the purposes of the Agreement.

**4.2** As a Microenterprise or Small Charity, you are entitled to the same protections available to consumers under the Payment Services Regulations in respect of Payment Service Transactions. Certain terms in the Agreement apply to you only if you are a Microenterprise or Small Charity. Please note that some of the Services are not Payment Service Transactions and therefore not subject to the Payment Services Regulations.

**4.3** You agree to notify us promptly in the event your status changes from or to a Microenterprise or Small Charity at any time.

**4.4** If you are not a Microenterprise or Small Charity, you agree that, to the fullest extent permitted by applicable law, provisions of law that would otherwise be applicable to the Agreement but which can be disapplied, or applied differently, to non-consumers are disapplied, or applied differently, under the Agreement including without limitation, all provisions set out in Part 6 of the Payment Services Regulations (Information Requirements for Payment Services) and all provisions referred to in Part 7, regulation 63(5) (Rights and Obligations in relation to the Provision of Payment Services) of the Payment Services Regulations.

**4.5** The FXIP Service is intended for customers established and otherwise operating from the UK. Accessing these Services from outside of the UK is possible but you are responsible for ensuring that doing so is not against the law in the country concerned.

#### **5. FXIP Orders**

**5.1** You or your Authorised Users may place FXIP Orders and provide related instructions using means approved by us, including the following:

i) through FXIP Online in accordance with the procedures and functionality required by the FXIP Online system;

ii) by fax, if you have provided us with a completed fax instruction mandate;

iii) at our discretion, and if you have provided us with a completed appropriate mandate, by telephone; and

iv) at our discretion, and if you have provided us with a completed appropriate mandate, by email,

(together, "Access Methods").

**5.2** For fax, telephone and email FXIP Orders and instructions, the following shall apply:

i) you authorise American Express to accept and act upon fax, telephone and email orders and instructions from an Authorised User. We will attempt to verify the authenticity of such instructions against

the Authorised User information we hold, using a specimen signature in the case of fax orders, ensuring that an email address is in the name of an Authorised User in the case of email orders and such other security authentication measures as we may notify to you from time to time (together, "Security Measures") and we may reject an FXIP Order if we reasonably suspect that the FXIP Order is or may not be authentic;

ii) you do not need to send confirmation of a telephone order. If you wish to do this, you must ensure that your confirmation is clearly marked "CONFIRMATION ONLY – DO NOT DUPLICATE"; and

iii) all aspects of transactions submitted via telephone, email or fax, including, but not limited to, foreign currency exchange rates and fees are subject to final approval and confirmation by American Express in writing or by email.

**5.3** You are responsible for obtaining and maintaining your own compatible computer system, software, and communications lines required by you to properly access FXIP Online and make use of the FXIP Service. We have no responsibility or liability in respect of your equipment.

**5.4** For use of FXIP Online, you will be given a unique user ID and password, and may be provided with other authentication methods specified by us from time to time, for each Authorised User (together, "Login Details"). We may also require you to use additional Security Measures to access and use FXIP Online from time to time. You must ensure that your Access Methods, Security Measures and Login Details are kept secure and known to, and used only by, your Authorised Users to whom they relate and that your Authorised Users observe all security provisions referred to in the Agreement.

**5.5** You are responsible for ensuring that security measures are in place and followed at all times to prevent persons other than your Authorised Users gaining access to or otherwise using the FXIP Service on your behalf. This will include security measures to keep Login Details and Security Measures protected, such measures may include destroying any communication which sets out Login Details or Security Measures and not keeping any written record of the Login Details or Security Measures.

**5.6** You must notify us immediately by contacting us on number 0800 085 3456 (+44 1273 576 880 if calling from outside the UK) or the number set out on our website at [www.american.express.co.uk/fxip](http://www.american.express.co.uk/fxip) if at any time your Security Measures or Login Details become accessible to a person who is not an Authorised User or if you discover that your Security Measures or Login Details have been lost, stolen, misappropriated or otherwise compromised.

**5.7** You accept responsibility for all acts or omissions of any person using the FXIP Service through your Access Methods, and you will be bound by the terms of FXIP Orders and other instructions placed through the Service using your Access Methods. If you are a Microenterprise or Small Charity and your Access Methods are used to process an unauthorised Payment Service Transaction, you may have additional rights under clause 14.4 below.

**5.8** Customer Admin Users will be able to create new Authorised Users and further Customer Admin Users as well as specifying such new Authorised Users' and further Customer Admin Users' permissions independently of us. The first Customer Admin User will initially be designated by you on the Application (or at a later date as agreed with us). We will approve the first Customer Admin User in accordance with our dual verification procedure. We retain the ability to approve new Authorised Users and Customer Admin Users and/or manage their permissions at our absolute discretion. Dual verification will be necessary in all cases where we create or modify an Authorised User or Customer Admin User on your behalf, and in all cases where a Customer Admin User creates or modifies an Authorised User or Customer Admin User and you have specified on the application form that you require dual verification.

## 6. Availability of the FXIP Service

**6.1** The FXIP Service will be made available to you at such times and with respect to the currencies, payment jurisdictions and minimum or maximum transactions sizes which American Express in its sole discretion determines from time to time. You must use the FXIP Service only to make lawful payments that relate to your business activities.

**6.2** FXIP Online may be modified, suspended or rendered unavailable from time to time. In particular, access to FXIP Online may not be possible on occasions due to planned maintenance work or because of system outages.

**6.3** We may immediately withdraw or suspend the FXIP Service, your ability to use certain Access Methods and/or Security Measures, and cancel individual payments at any time for security or legal reasons, if we suspect fraud or unauthorised use or if we believe there is a risk that you will be unable to fulfil any payment obligations to us or you are otherwise in default under the Agreement. In these cases we may seek to notify you beforehand or immediately afterwards, by contacting you on the telephone number and/or email you have provided to us, and we may provide you with the reasons for our decision. However, we do not need to inform you in cases where to do so would compromise reasonable security or would be unlawful. We will remove the suspension or reactivate the FXIP Service, your ability to use certain Access Methods and/or Security Measures once the reason for suspicion ceases to exist.

**6.4** Access to your account and to the FXIP Service may be restricted or suspended in the event that you do not keep your account active by undertaking a transaction in any rolling 12-month period. If that happens, your account will be treated as 'dormant'. If you wish to reactivate it you must notify us, following which we will carry out some routine due diligence assessments.

You must provide us with any information we ask for during this reactivation process. You will be required to complete the full application process if the registered number of your company has changed since your account was last active.

## 7. Acceptance and processing of FXIP Orders

**7.1** We will treat an FXIP Order as complete when we receive full payment instructions as set out in clause 7.2 below and, subject to clause 7.3 below, cleared funds have been received by us in the amount of the transaction. Such instructions will be treated as your consent to the FXIP Order being processed.

**7.2** For outgoing remittances, full payment instructions include:

- i) amount and currency of FXIP Order;
- ii) beneficiary name;
- iii) full beneficiary bank account details comprising:
  - a) BIC and IBAN for payments in a currency of the EEA to bank accounts in the EEA, Switzerland or Monaco; or
  - b) full bank details including account number and routing code for payments not covered in (a) above;
- iv) if the FXIP Order is to be processed in the future, the requested date of the payment; and
- v) confirmation that you accept the exchange rate quoted.

**7.3** In the case of outgoing remittance instructions to be funded via a direct debit from your Designated Account, we may, at our discretion, consider cleared funds to have been received once the direct debit request has been submitted to your bank. For these purposes, you agree that we may process FXIP Orders prior to actual receipt of cleared funds.

**7.4** For the purposes of clause 7.5 below, completed FXIP Orders received on a day which is not a Business Day or after the cut-off time of 3:00pm London time on a Business Day will be treated as being

received on the following Business Day. FXIP Orders to be carried out on a future date will be treated as being received on that future date.

**7.5** We will make all reasonable efforts to ensure the prompt delivery of your FXIP Order. For outgoing remittances within the EEA, following receipt of a complete FXIP Order (subject to clause 7.4 above) the maximum execution times will normally be as follows:

Timetable for remittance of FXIP Orders within the EEA			
Order method	Sterling payments	Euro Payments	Payment in other currencies of the EEA, e.g. Swedish Krona
FXIP Online	1 Business Day	1 Business Day	4 Business Days
Fax	2 Business Days	2 Business Days	4 Business Days
Telephone	1 Business Day	1 Business Day	4 Business Days
Email	1 Business Day	1 Business Day	4 Business Days

### Timetable for remittance of FXIP Orders outside of the EEA and remittances in currencies other than EEA currencies

Remittances to be delivered outside the EEA or within the EEA in currencies other than EEA currencies may take longer than the execution times listed above. Please contact us regarding processing times for such payments and in all cases allow sufficient time for your payments to be made.

**7.6** The above execution times do not take into account differing weekends, public holidays or working hours of foreign banks in other jurisdictions to which the FXIP Order has been remitted. Please allow sufficient time for your FXIP Order to be processed and for your payments to be made.

**7.7** We reserve the right to reject or stop processing any FXIP Order that is incorrect or incomplete, or otherwise where we have a right or obligation to do so pursuant to applicable law or regulation.

**7.8** You agree that we may rely on the information provided by you in processing FXIP Orders. You are responsible for providing correct payment instructions. You agree that American Express shall have no liability for FXIP Orders processed using incorrect information supplied by you. If you have supplied incorrect information we will take reasonable steps to recover a payment on your behalf and will be entitled to charge you our reasonable costs of recovery.

**7.9** In the case of FXIP Orders, you agree that American Express may make payment to the beneficiary based solely on the beneficiary bank account number or other identifying number provided by you, even if the name in the FXIP Order differs from the name on the beneficiary bank account.

**7.10** Unless we inform you of a pre-set spending or settlement limit, each FXIP Order is approved based on the transaction value and your credit history with us as well as on your credit history with other financial institutions and the financial information we hold on you. We may at our discretion decide and inform you of a temporary transaction limit applicable to your account which is the maximum aggregate amount of transactions which can be in process or outstanding at any time unless we have received cleared funds from you to make such payments.

**7.11** We may use any method of funds transfer which we deem appropriate to a transaction you undertake with us.

**7.12** When you instruct us to send funds to a beneficiary and those funds are not in the same currency as either (i) the official currency of the receiving country and/or (ii) the designated currency of the receiving account, the third party financial institutions involved in the payment process, either within the UK or in the foreign country, may convert your payment to another foreign currency. You may reduce the likelihood of this conversion occurring if you insert the following reference, "Do Not Convert" in the payment reference field. You agree that we will not be liable for any loss (whether direct, indirect or consequential) suffered by you as a result of any further conversion which takes place once the funds have left American Express.

**7.13** For Forward Exchange Contracts, incoming foreign currency drafts and remittances, and cross-currency transactions we will consider a legally binding contract to have been entered into at the point when we confirm your acceptance of a quote that we have provided to you at your request. You will then be bound by the terms of clauses 11, 12 and 13 below (as applicable).

## **8. Payment terms, charges and exchange rate**

**8.1** You agree to settle FXIP Orders by direct debit or bank transfer from your Designated Account or as otherwise permitted by the Agreement. You may not settle transactions in cash and we will not provide you with cash. When settling your account by bank transfer, the funds must come from your Designated Account.

**8.2** Upon receipt and acceptance of an FXIP Order, we will issue a transaction confirmation to you via FXIP Online or by other means. If you have agreed to pay by direct debit, upon acceptance of a payment instruction we shall initiate a direct debit from your Designated Account in the amount indicated on the transaction confirmation. American Express shall not be responsible for any loss or damage arising from errors made in the direct debit process which are beyond our direct control. Alternatively, if you choose to pay by bank transfer then you must ensure that the funds are credited to our bank account before the value date of the currency transaction you entered in to as specified in the transaction confirmation. If the payment does not reach us in time, we may take steps to recover amounts owing as per clause 8.5 below.

**8.3** You agree to notify American Express in writing of any change, closure or variation of your Designated Account at least one week prior to the effective date of the change, closure or variation. You agree to complete a new direct debit mandate for any new Designated Account.

**8.4** You will generally be charged a transaction fee for all FXIP Orders. The standard transaction fees will be notified to you upon acceptance of the Agreement and upon the submission of each FXIP Order you make. The transaction fees may vary depending on the type or nature of the transaction you request. Where your FXIP Order includes a currency conversion, the foreign currency exchange rate we offer will be notified to you in advance and will be the exchange rate which applies to such currency conversion should you accept the rate we offer. You are not obliged to accept any foreign currency exchange rate offered to you in connection with an FXIP Order. If you do not accept the exchange rate then we will not be able to process your FXIP Order.

**8.5** In the event of amounts remaining unpaid by you, including in the case of a rejected direct debit request, American Express reserves the right to:

- i) charge interest on such amount at the rate of 5% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment;
- ii) suspend and refuse to process any FXIP Orders;
- iii) cancel any pending FXIP Orders and sell the corresponding positions;
- iv) take steps to recover amounts owed to us; and

v) charge you for costs incurred by us.

**8.6** If your FXIP Order is for a payment in any currency to a bank account within the EEA, Switzerland or Monaco you agree to pay our charges, together with the charges of any agent bank that we use to effect the payment, and the beneficiary will pay their bank's charges. We are not liable or accountable for any fees or charges levied by the beneficiary bank in respect of your FXIP Order and, if your FXIP Order involves a currency conversion, you agree to pay the relevant fees if required.

**8.7** Our charges for processing your FXIP Order, together with all other amounts payable under this clause 8, will either be debited from your Designated Account or alternatively we reserve the right to invoice you for them separately.

**8.8** Our exchange rates for foreign currency payments are based on the live rates offered to us by our vendors, plus a margin. You can get details of the relevant prevailing rate by contacting us or by accessing FXIP Online.

## **9. Cancellation, amendment and recall of FXIP Orders**

**9.1** You will not normally be permitted to cancel or amend an FXIP Order once you have given and we have accepted full payment instructions.

**9.2** If you are a Microenterprise or Small Charity, you may however revoke or cancel a Payment Service Transaction for a future outgoing Payment Service Transaction by providing us with written notice prior to the end of the Business Day before the Business Day on which the transaction is to be carried out.

**9.3** In the event American Express seeks to revoke, cancel, recall or amend an FXIP Order, whether at your request or as a result of your breach of the Agreement, you agree to be responsible for our fees and charges, any applicable fees or charges imposed by third parties or exchange rate differences involved in reversing, recalling, amending or cancelling the FXIP Order (or seeking to reverse, amend or cancel a transaction).

## **10. Future dated FXIP Orders**

**10.1** From time to time, we may agree to provide you with a quotation for an FXIP Order for delivery on a specified future value date. If you accept such quotation, then our providing electronic confirmation of your acceptance will constitute a legally binding contract to fulfil that future dated FXIP Order.

**10.2** The initial exchange rate(s) quoted will be provided on an indicative basis only and will be subject to change until two business days prior to the agreed value date. We will provide you with an initial communication of your future dated FXIP Order, together with the indicative exchange rate(s) and indicative payment value required, as confirmation of your acceptance. We will then provide you with confirmation of the actual exchange rate(s) and payment value that will apply to your future dated FXIP Order two business days before the agreed value date.

**10.3** Either party may cancel a future dated FXIP Order at any time prior to having given or received (as appropriate) confirmation of the actual exchange rate(s) and payment value that will apply to your future dated FXIP Order by giving notice in accordance with clause 16 of the Agreement. In the event of any future dated FXIP Order that is cancelled, unpaid or for any reason unfulfilled by you after you have been provided with such confirmation, you irrevocably agree to reimburse and indemnify us in respect of any costs, expenses or losses we incur in closing-out, reversing or terminating the future dated FXIP Order. You agree that we may recover such costs, expenses or losses incurred by us by Direct Debit from your Designated Account (if applicable) or alternatively we reserve the right to invoice you separately or recover the funds by other means.

## 11. Forward Exchange Contracts

**11.1** With our prior agreement, we may allow you to purchase, and we may purchase from you, foreign currency at such exchange rate and on such terms as we may agree for delivery on a specified future maturity date or dates or during a specified period, for a specified future payment need (a "Forward Exchange Contract"). We may require you to provide one or more advance payments or other collateral or security in a specified amount in respect of any Forward Exchange Contract.

**11.2** American Express may from time to time establish minimum and maximum transaction sizes and drawdown amounts for Forward Exchange Contracts.

**11.3** You agree that you will use Forward Exchange Contracts in connection with your lawful future payment needs and shall not use Forward Exchange Contracts other than by way of a direct investment or to facilitate a means of payment for identifiable goods and services. You acknowledge that we are unable to enter into a Forward Exchange Contract with you unless you are using that Forward Exchange Contract by way of a direct investment or to facilitate a means of payment for identifiable goods and services.

**11.4** We shall be entitled to close-out, reverse or terminate a Forward Exchange Contract by any reasonable method and without prior notice if:

- i) you fail to pay any amount due and owing to American Express under the Agreement or are otherwise in default under the Agreement;
- ii) we reasonably believe that you will be unable to pay any such amount when due; or
- iii) the Agreement is terminated and such Forward Exchange Contracts have not reached their maturity date.

**11.5** In the event of any close-out, reversal or termination, you agree to reimburse and indemnify any costs, expenses or losses we incur in closing-out, reversing or terminating the Forward Exchange Contract. You agree that we may apply any prepayment or part-payment received in respect of any Forward Exchange Contract towards any such expenses or losses incurred by us and in the event of any shortfall, recover such further amounts by direct debit from your Designated Account (if applicable) or alternatively we reserve the right to invoice you separately or recover the funds by such other means.

## 12. Incoming foreign currency drafts and remittances

**12.1** From time to time, we may agree to purchase from you foreign currency in the form of an incoming draft (from a third party) or a remittance payable to you.

**12.2** We reserve the right to withhold payments for incoming drafts or remittances until we, in our sole discretion, are satisfied that cleared funds have been actually and irrevocably received by us. Subject to this, payments received prior to 2:00pm on a Business Day will normally be released to you on that Business Day. Payments received after 2:00pm on a Business Day will normally be released to you on the next Business Day. If you have not given us advance notice of an incoming remittance or the payment details are otherwise incomplete, and we have not otherwise agreed the applicable currency conversion rate, this process could take longer.

**12.3** In the event of any incoming draft or remittance sold by you to American Express which is subsequently returned or recalled, you irrevocably agree to indemnify us in respect of such amount, together with any costs or expenses incurred by us, including any foreign exchange losses or charges, in handling the returned or recalled item and you authorise us to recover such amounts by direct debit from your Designated Account or alternatively we reserve the right to invoice you separately.

**12.4** Unless otherwise agreed, payments we make to you in respect of incoming foreign currency drafts and remittances will be made in GBP to your Designated Account.

## 13. Cross-currency transactions

**13.1** From time to time, we may agree to purchase from you foreign currency in the form of a remittance payable to you in settlement (in whole or part) of an outgoing foreign currency draft or remittance.

**13.2** In respect of such arrangements, either the incoming or outgoing remittance must come from or go to your Designated Account. We will not accept remittances where neither the payer's account nor the payee's account is your Designated Account.

## 14. Statements and notification of unauthorised or incorrectly executed FXIP Orders

**14.1** For the purpose of this clause 14:

- i) an 'incorrectly executed FXIP Order' means a non-executed or defective Payment Service Transaction initiated by you as described in regulation 91 of the Payment Services Regulations; and
- ii) an 'unauthorised FXIP Order' means a Payment Service Transaction initiated by you that was unauthorised as described in regulation 76 of the Payment Services Regulations.

**14.2** You may review your transaction history via FXIP Online. You may also request transaction confirmations or periodic statements from us. Your transaction history and any periodic statement will show important information concerning your recent transaction history, including the payments made and the related foreign currency exchange rates and other transaction fees agreed by you.

**14.3** You agree to check your transaction history and/or periodic statements regularly for accuracy and contact us should you need any further information regarding your transactions.

**14.4** You must contact us without undue delay if you become aware of an unauthorised or incorrectly executed FXIP Order and in any event by not later than:

- i) in the event you are a Microenterprise or Small Charity and you believe that a Payment Service Transaction was unauthorised or has been incorrectly executed, thirteen (13) months after the debit date of the Payment Service Transaction; and
- ii) in all other cases, within sixty (60) days from the debit date of the Payment Service Transaction.

**14.5** If you are a Microenterprise or Small Charity and have notified us of an incorrectly executed FXIP Order in accordance with clause 14.4(i) above, we will refund any money paid to us and any transaction fees and charges paid to us in connection with that FXIP Order. Such amounts will only be refunded if we cannot demonstrate to you (and if necessary, the beneficiary's bank) that the FXIP Order was properly executed. If requested by you, we will make immediate efforts to trace the incorrectly executed FXIP Order and notify you of the results of the action.

**14.6** If you are not a Microenterprise or Small Charity and have notified us of an incorrectly executed FXIP Order in accordance with clause 14.4(ii) above, and you demonstrate to our reasonable satisfaction (including, but not limited to, providing us with such documentation as we may reasonably require from you) that the FXIP Order was incorrectly executed, we will refund any money paid to us and any transaction fees and charges paid to us in connection with that FXIP Order. We shall not be liable for any charges or other loss suffered by you as a result of that incorrectly executed FXIP Order.

**14.7** If you have notified us of an unauthorised FXIP Order in accordance with clause 14.4 above, we will refund you the amount of the unauthorised FXIP Order as soon as possible and, where applicable, ensure that your Designated Account is credited so that it is in the state it would have been in had the unauthorised FXIP Order not occurred.

**14.8** The provisions of clauses 14.5, 14.6 and 14.7 above only apply to Payment Service Transactions.

**14.9** You must give us all relevant information we request concerning an unauthorised or incorrectly executed payment transaction.

**14.10** We will not be liable for any incorrectly executed FXIP Orders or unauthorised FXIP Orders not notified to us by you in accordance with clause 14.4 above.

## 15. Liability and rights

**15.1** We are not responsible to you or liable for loss of profits or revenues or for any incidental, indirect, exemplary, consequential, punitive or special damages regardless of how they arise.

**15.2** We shall not be in breach of the Agreement or otherwise liable to you for any failure to perform or delay in performing our obligations under the Agreement to the extent that such failure or delay is due to or arose from:

i) circumstances beyond our reasonable control (this includes any act of God, government or state, war or other hostilities, terrorist activity, industrial action and any failure of power supplies, computer systems or communication lines);

ii) circumstances where we reasonably believed that a relevant action or omission would have violated any law, guideline, rule or regulation of any governmental or regulatory authority if carried out by us;

iii) the error, failure, negligence, act or omission of any third party, including but not limited to any system, any funds transfer system, any national bank or other domestic banking system, institution or payment infrastructure operated by a third party in each case and beyond our reasonable control; or

iv) technical problems affecting systems essential to the provision of the FXIP Service and which fall within the circumstances set out at (i) to (iii) above.

**15.3** You shall be liable to reimburse us on demand for any loss which we suffer as a result of any acts, proceedings, claims, demands, losses, damages, liabilities, costs, charges and expenses which may be incurred by us as a consequence of your actions or breach of the Agreement.

**15.4** If you are a Microenterprise or Small Charity, your maximum liability for unauthorised Payment Service Transactions arising from the use of lost, stolen or misappropriated Security Measures or Login Details is £35 unless:

i) you or an Authorised User, whether intentionally or due to gross negligence, did not comply with the obligation under the Agreement to keep the Access Methods, Security Measures and Login Details secure; or

ii) you or an Authorised User acted fraudulently, in which case you will be liable for all losses suffered in respect of the unauthorised Payment Service Transaction.

## 16. Privacy and use of information

**16.1** For the purpose of this clause 16, references to the word "you" and "your" will be deemed to include your company, its directors, its employees, its contractors and the Authorised Users.

**16.2** This clause describes how we process information about you. This clause will apply to you if you are a sole trader or a partnership among individuals or other person without separate legal personality, in which case we are required to disclose the information in this clause to you.

**16.3** If you are a company, a partnership or other legal person with separate legal personality, you represent and warrant (i) that you have provided any relevant directors, employees, contractors and Authorised Users ("Data Subjects") with details (or a copy) of these

terms and (where necessary) have obtained their consent to our processing of information as set out below and (ii) that if any information that we hold about them is inaccurate, incorrect or out of date, you will let us know as soon as possible.

**16.4** We will process personal data about Data Subjects either where such individuals have consented to the specified purposes, in order to comply with a legal or contractual obligation, or because it is necessary for the purposes of our legitimate interests. Additional information in respect of the collection and processing of information, and rights arising in relation to such processing, can be found in the Privacy Statement on our website [www.americanexpress.com](http://www.americanexpress.com) ("Online Privacy Statement").

### Information collected

**16.5** We may collect information about you:

i) from the Application;

ii) from any document provided by you;

iii) through credit references, fraud prevention agencies and other due diligence checks;

iv) through the way you use your account and our services; and

v) from third parties, such as marketing lists which we lawfully obtain.

### Information disclosed

**16.6** We may disclose information about you, the Application, your account usage and transactional information (which may include details of payments) to:

i) companies within the American Express worldwide group of companies and third party organisations who provide services on our behalf including our processors, agents and suppliers and their appointed representatives;

ii) any party approved by you;

iii) the providers of services associated with your account including your bank or other payment service provider or other payment systems selected by you;

iv) collection agencies and lawyers for the purpose of collecting debts on your account;

v) anyone to whom we may transfer our contractual rights; and

vi) authorities when such disclosure is required by law.

**16.7** We may also obtain information about you from these parties.

### Use of information

**16.8** We may use information about you (including by profiling) in order to:

i) manage your account, including making decisions about whether to approve your Application and through the way you use our services;

ii) develop lists for use within the American Express group of companies worldwide and other select companies in order that we or these companies may develop or make offers to you of products and services in which you may be interested, with your consent where required;

iii) communicate with you (by mail, e-mail, telephone, SMS or via the internet) about your account including for the purpose of servicing and by way of account alerts; and

iv) give you important information about updated and new features and benefits, with your consent where required.

**16.9** We may use information about you, your account and transactions made on it to prepare reports for ourselves or third parties concerning your account usage. Such reports will only contain aggregated or anonymised data and we will not disclose any information which identifies you.

**16.10** We may use information about you and your account (including by profiling) to improve our products and services and to conduct research and analysis, which may include:

- i) learning about you, including your needs, preferences and behaviours;
- ii) analysing the effectiveness of our ads, promotions and offers, including data analytics, statistical research and reports including on an aggregated basis;
- iii) conducting testing (when we update our systems), data processing, website administration and information technology systems support and development; and
- iv) conducting market research including giving you the opportunity to provide feedback, ratings or reviews of our products and services, and those of our business partners, including through transaction experience surveys.

**16.11** We may use your information for the purpose of advertising and marketing our products and services, and those of our third party business partners, which will include any of the following (with your consent, where necessary):

- i) sending you promotions and offers by email, fax, SMS, direct mail and through telemarketing in accordance with your marketing preferences; and
- ii) personalising our communications and offers for you.

**16.12** We will not provide your contact details to our third party business partners without your consent. However, we may send you offers on their behalf. Keep in mind that if you take advantage of an offer from a business partner and become their customer, they may independently send communications to you. In this case, you will need to inform them separately if you wish to decline receiving future communications from them.

#### Marketing communications, surveys and market research

**16.13** We and other companies within the American Express group of companies may:

- i) have access to and use information about you and how you use your account to develop lists of products and services in which you may be interested; and
- ii) communicate with you (by mail, e-mail, telephone, fax, SMS or via the internet) in connection with similar products and services in which you may be interested, including the sending of 'rate alerts' by SMS, provided you have opted in where required.

**16.14** If you wish to opt-out of marketing at any time, please write to us at American Express FX International Payments, 1 John Street, Brighton, BN88 1NH or by e-mail to [international.payments.uk@aexp.com](mailto:international.payments.uk@aexp.com).

**16.15** The information used to develop these lists may be obtained from:

- i) the Application and process;
- ii) information on how and where you use the account;
- iii) surveys and research (which may involve contacting you by mail, email, telephone, fax, SMS or via the internet); and
- iv) information obtained from external sources such as marketing organisations, to the greatest extent permitted by law.

**16.16** We may make other offers to you (by mail, email, telephone, fax, SMS or via the internet) of products and services in which you

may be interested. If you wish to opt-out of such communications, please write to us using the details set out in clause 16.14 above.

#### Credit reference agencies and prevention of fraud

**16.17** We may exchange information about you and your account with credit reference agencies. If you owe us money and do not repay in full or on time, we may tell credit reference agencies who will record the outstanding debt. This information may be shared with other organisations in assessing applications from you and applications from any other party with a financial association with you for credit or other facilities and for preventing fraud and tracing debtors.

**16.18** We may carry out credit checks (including at credit reference agencies or by contacting your bank, building society or any referee approved by you). We may also disclose information about you and your account to collection agencies and lawyers for the purpose of collecting debts on your account.

**16.19** We may check your details with fraud prevention agencies. If false or inaccurate information is provided and we suspect any unlawful activity such as fraud or fraud is identified, this will be recorded, and we may pass details to fraud prevention agencies. Law enforcement agencies may access and use this information.

**16.20** We and other organisations may also access and use this information to prevent fraud and money laundering, for example, when:

- i) checking details on applications for insurance, credit and credit related or other facilities;
- ii) managing credit, credit related accounts or facilities, and insurance policies;
- iii) recovering debt;
- iv) checking details on applications, proposals and claims for all types of insurance; or
- v) checking details of job applicants and employees.

**16.21** You are entitled to access your personal records held by credit and fraud prevention agencies. If you wish to do this, or to receive details of the relevant UK fraud prevention and credit reference agencies, please write to us at the following address and we will supply the names and addresses of the agencies we have used: FX International Payments, American Express, 1 John Street, Brighton, BN88 1NH.

#### Electronic or telephone communications

**16.22** If you contact us by any electronic means, we may record any electronic identifier, including telephone numbers or internet protocol address, supplied at the time.

**16.23** We may monitor and/or record your telephone calls to us, or ours to you, either ourselves or by reputable organisations selected by us, to ensure consistent servicing levels (including staff training) and account operation, and to assist, where appropriate, in dispute resolution. We may retain all or any such recordings for such period as we consider appropriate and you agree that such recordings may be relied on by us in the event of any dispute, including in any proceedings.

#### Transfer of your data outside of the UK and EU

**16.24** We may undertake all the above both within and outside the UK and the European Union ("EU"). This includes processing your information in countries in which data protection laws are not as comprehensive as the EU. In these cases, please note that we always take appropriate steps to ensure an adequate level of protection as required by laws in the EU.

#### New Users

**16.25** The provisions of this clause also apply to any new directors, employees, contractors and Authorised Users (together "New Users").

**16.26** You confirm that you have notified New Users of (a) the disclosure of their information to American Express; (b) processing that will be performed for the above purposes; and (c) their rights in respect of such processing as set out herein, including obtaining their consent to the extent required by law. You acknowledge that we will disclose to the New Users details about your account including details of transactions, the outstanding account balance and of any overdue payments.

#### Third party consents

**16.27** Where you provide us with information relating to a third party (including New Users) you confirm that you have informed and obtained consent, if necessary, of that third party to the processing of his or her information by American Express and third parties as described in this clause. In respect of New Users, this may include the use of their details for marketing purposes or disclosure for the purposes set out in detail in clauses 16.17 to 16.21 above.

#### Security

**16.28** We use advanced technology and well-defined employee practices to help ensure that your information is processed promptly, accurately, completely and securely. The processing of your information is performed by manual and automated means. In order to maintain the effectiveness and security of these systems, policies and procedures, it will be necessary from time to time to process your information for testing purposes.

#### Retention of information

**16.29** We keep information about you for the purposes described in this clause 16 for only so long as is appropriate for the purposes of the Agreement and in order to fulfil our legal obligations in accordance with applicable law.

**16.30** You have the right to request a copy of the information that we hold about you and the other rights granted to you under applicable law. If you would like a copy of some or all of the personal information or additional information about your rights as a data subject, please write to us at the following address: FX International Payments, American Express, 1 John Street, Brighton BN88 1NH or via the contact details in our Online Privacy Statement referred to at clause 16.4 above.

#### Correction of inaccurate information

**16.31** If you believe that any information we hold about you is incorrect or incomplete you must ask us to correct or remove this information from our records immediately. Any information which is found to be incorrect or incomplete will be corrected promptly.

#### Changes to this Clause

**16.32** We may change any provision of this clause 16 at any time. We will inform you in advance of any such change in accordance with clause 23 below.

#### Query or complaint

**16.33** In the event of any query or complaint in connection with the information we hold about you, please contact us using the details in clause 19.2 below or via the contact details in our Online Privacy Statement referred to at clause 16.4 above.

### 17. Communicating with you

**17.1** You agree that statements, notices, disclosures, account alerts, important messages and any other communications may be sent or made available to you electronically, via FXIP Online, by fax, or by post. You agree that it is your responsibility to access all such communications made available or sent to you and that all such communications will be treated as being provided in writing. Notices

of changes to the Agreement will be given to you in accordance with clause 23 below.

**17.2** If you do not wish to receive communications electronically, you must notify us and we will, upon receipt of your notification, send all communications to you in writing by mail to the address we have for you in our records.

**17.3** If we do not have an email address for you, we will continue to send communications to you in writing by mail to the address we have for you in our records.

**17.4** You agree that we may also communicate with you verbally through representatives working on behalf of American Express.

**17.5** You must inform us immediately if you change the address or other contact information (such as a postal or email address and/or telephone or fax numbers) you have given to us. If we have been unable to deliver any communications to you or these have been returned, we will consider you in breach of the Agreement and we may stop attempting to communicate with you until we receive accurate contact information. We are not responsible for any failure to receive any communication (including a transaction statement) if we send it to the address or in accordance with other contact information for your account appearing in our records or if we do not send the communication because previous communications have been undeliverable.

**17.6** Written communications will be treated as received:

- i) 2 Business Days after the date of mailing, where sent by mail;
- ii) upon delivery, where delivered by hand;
- iii) at the time of transmission, for communications by fax; and
- iv) on the day we send the notification email, SMS, or where posted securely on an American Express website (even if you do not access the electronic communication for any reason).

**17.7** You are responsible for obtaining and maintaining your own compatible computer systems, software or communications lines required by you to properly access and view communications sent to you electronically by email or other means.

### 18. Default

**18.1** We may treat you as being in default or breach of the Agreement at any time in the event that you fail to comply with your obligations under the Agreement, such as failure to make any payment when it is due or if any form of payment is returned or not honoured in full.

**18.2** We may also treat you as being in default at any time if any statement made, or information supplied, by you to us in connection with your account was false or misleading, you breach any other agreement that you may have with us or with any of our affiliates, or if bankruptcy or other creditor (or similar) proceedings are threatened or initiated against you or we have any reason to believe that you may not be creditworthy.

**18.3** In the event of any default, you will be responsible for all reasonable costs incurred by us or our agents including collection, collection agency, and legal adviser fees and costs, in recovering any amounts unpaid and in protecting ourselves from any harm we may suffer as a result of the default.

### 19. Complaints

**19.1** At American Express we do everything we can to ensure our customers get the best possible service. We do recognise, however, that we may not always get it right. When that happens we encourage you to please tell us so that we can put matters right.

**19.2** If you are not satisfied with any aspect of our services, you can tell us about your concerns or make a complaint by contacting your relationship manager or, alternatively, by contacting the Customer Care Team on 0800 085 3456 or by writing to us at FX International



Payments Complaint Handling Team, American Express, 1 John Street, Brighton, East Sussex BN88 1NH. Details of our internal complaints handling procedures are available on request.

**19.3** Our aim is to resolve your complaint as soon as possible. If you are not satisfied with the decision in our final response you may be able to refer your complaint to The Financial Ombudsman Service, Exchange Tower, London E14 9SR. Details of eligible complaints can be obtained from The Financial Ombudsman Service, which will usually only review your complaint if you refer it within 6 months of the date of our final response.

**19.4** We do not use any third party dispute resolution service to resolve complaints made under this Agreement. All complaints will be dealt with in accordance with our internal complaints handling procedures and you will receive a final response from us confirming our response to your complaint.

## **20. Intellectual property**

**20.1** American Express grants you a personal, limited, nonexclusive, revocable, non-transferable licence to use the FXIP Service. You may not, under any circumstances, rent, lease or sub-license the FXIP Service. You may not reverse engineer, decompile, disassemble or modify the FXIP Service, nor may you attempt to gain knowledge of the source code of the system in any manner whatsoever.

**20.2** All copyright, trademarks, service marks, trade secrets, registered and unregistered design rights and other intellectual property rights in the FXIP Service and FXIP Online, shall remain at all times the sole and exclusive property of American Express (or of any third party or affiliate owner from whom we licence any such rights) and you shall have no right or interest in or to any such intellectual property rights, except the right to access and use the FXIP Service as provided for in the Agreement. All rights not expressly granted to you are reserved.

## **21. Assignment**

You may not assign or transfer any rights or obligations arising under the Agreement. We may assign, delegate or transfer our rights or obligations at any time in whole or in part to a holding, subsidiary or affiliated company and you hereby consent to this.

## **22. Enforceability**

**22.1** If any provision of the Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**22.2** We do not intend, and you agree that you do not intend, these Terms or the other terms in the Agreement or any contract, arrangement, dealing or transaction between you and us to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 and accordingly, no one other than you will have any rights or be able to enforce these Terms or the other terms in the Agreement or any such contract, agreement, arrangement, dealing or transaction.

**22.3** If we do not exercise, or delay in exercising, any right or power under the Agreement it shall not be a waiver of any such right or power in the future.

**22.4** The Agreement supersedes and replaces any prior agreement entered into by you and us in respect of the FXIP Service.

## **23. Changes or amendments to the Agreement**

**23.1** We may remove, change or add to the provisions of the Agreement at any time by notice to you. If you are a Microenterprise or Small Charity, we will give you at least 60 days' notice of any changes to the terms of the Agreement in so far as they affect Payment Service Transactions. Such removal, changes or additions

may be communicated to you electronically, via FXIP Online, by fax, or by post.

**23.2** You will be deemed to have accepted the changes unless you notify us in writing prior to the date on which the changes will take effect that you do not accept the changes. If you do not accept any changes to the Agreement, you can end the Agreement immediately and at no cost by settling all amounts due to us, cancelling any transactions in progress and requesting closure of your account.

## **24. Term of the Agreement**

**24.1** The Agreement has no fixed term. Either you or we may terminate the Agreement at any time, and without giving reason, on written notice to the other.

**24.2** If you are a Microenterprise or Small Charity, we will give you 60 days prior written notice of termination unless you are in default or breach of the Agreement, in which case we may terminate the Agreement immediately.

**24.3** In the event of termination, all debts and obligations you owe us will become immediately due and payable. You agree that American Express may take any action it is entitled to take under the Agreement or under applicable law, including to set-off the whole or any part of any amount owing to you against any or all amounts payable by you to us.

**24.4** All obligations and rights of a continuing nature shall survive termination of the Agreement.

## **25. Governing law**

The Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with English laws and you agree to submit to the exclusive jurisdiction of the courts of England.