

## MERCHANT SITE

### TERMS OF USE

Last Modified: [August 29, 2024)

**BY INDICATING YOUR AGREEMENT TO THESE TERMS OF USE OR OTHERWISE USING ANY PORTION OF THE SERVICES (AS DEFINED BELOW), YOU AGREE TO BE BOUND BY THESE TERMS OF USE, EFFECTIVE ON THE DATE THEREOF. IF YOU DO NOT AGREE WITH THESE TERMS OF USE, YOU ARE NOT AUTHORIZED TO USE THE SERVICES.**

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## **1 SCOPE OF TERMS OF USE AND DEFINITIONS.**

These terms of use (hereinafter referred to as "Terms of Use"), along with the terms set forth below in Section 8, govern you and your company's use of and access to (i) the American Express website located at the URL [www.AmericanExpress.com/merchant](http://www.AmericanExpress.com/merchant) (the "Merchant Site") and (ii) our Services (as defined below) available to you and other Merchants (as defined below) on or through the Merchant Site. Please review them carefully before using the Services.

As used in these Terms of Use, the words "you" and "your" refer to the Merchant (that is, the legal entity primarily responsible for the Merchant Account (as defined below) through which you are accessing the Merchant Site) and also include all Covered Parties (as defined below) the Merchant expressly authorizes to use the Services on their behalf and authorized signers who apply to use or access the Services under your Merchant Account. The words "American Express", "we", "our" and "us" refer to American Express Travel Related Services Company, Inc.

The capitalized terms used in these Terms of Use shall be defined as indicated below or shall have the meanings ascribed to them in the U.S. Merchant Regulations or your Card Acceptance Agreement:

"Access Code" means the number associated with the Merchant created upon the Merchant entering into the Agreement with a third party authorized by American Express.

"Agreement" means (a) the Agreement for American Express Card Acceptance between the Merchant and American Express, or (b) the agreement between the Merchant and your payment card processor authorized by American Express pursuant to which you permit Card Members to Charge purchases by means of a Card.

"Card" means (i) any card, account access device, or payment device or service bearing a trademark, service mark or logo owned by American Express or an affiliate of American Express and issued by an Issuer or (ii) a Card number.

“Card Member” means an individual or entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.

“Charge” means a payment or purchase made on a Card.

“Chargeback”, when used as a verb, means (i) American Express’ reimbursement from you for the amount of a Charge subject to such right under the Agreement or (ii) American Express’ reversal of a Charge for which you have not been paid; when used as a noun, means the amount of a Charge subject to reimbursement from you or reversal.

“Covered Parties” means any or all of the Merchant’s employees, agents, representatives, subcontractors, Processors, Service Providers, providers of the Merchant’s point-of-sale (POS) equipment or systems, or payment processing solutions. Entities associated with the Merchant Account, and any other party to whom the Merchant may provide Cardholder Data or Sensitive Authentication Data (or both) access in accordance with the Agreement.

“Inquiry” means a request for information made by American Express.

“Issuer” means any entity (including American Express and its affiliates) licensed by American Express or an American Express affiliate to issue Cards and to engage in the Card issuing business.

“Merchant” means any seller of goods or services, non-profit, or government entity that enters into an agreement with American Express or a third party authorized by American Express pursuant to which the seller agrees to permit any Card Member to Charge purchases of goods and services at or with such Merchant by means of a Card.

“Merchant Account” means the account created by American Express or a third party authorized by American Express upon the Merchant entering into the Agreement.

“Merchant Regulations” means the American Express Merchant Regulations – U.S., which are available at [www.americanexpress.com/merchantpolicy](http://www.americanexpress.com/merchantpolicy) and can be accessed by entering your online Merchant Account user ID and password.

“Processor” means a Service Provider to Merchants who facilitates Authorization and Submission processing to the Network.

“Service Providers” mean Authorized Processors, third party processors, gateway providers, integrators of POS Systems, and any other providers to Merchants of POS Systems, or other payment processing solutions or services.

## **2 DESCRIPTION OF THE SERVICES.**

We provide the Services through a web-based interface, and provide you with access to the following: (i) the ability to review and manage the Merchant Account information, including, but not limited to, financial reconciliation information related to Charges you have submitted,

Card Member billing inquiries/retrieval requests or disputes/Chargebacks, updates to the Merchant’s banking account information, and other administrative functions pertaining to the

Merchant Account ("Merchant Account Information") and (ii) access to and use of various point-of-purchase materials, merchant-specific and industry reports ("Reports"), industry content, marketing enrollment programs, and other content, information, products and services (items (i) and (ii) are collectively the "Services"). Not all Services or features of the Services are available to all Merchants or their Covered Parties. For example, you may not have access to any Merchant Account Information or any Reports or, if you are the Merchant, you may not wish to give a Covered Party access to all Merchant Account Information or Reports available to you. Accordingly, some of the provisions in these Terms of Use may not apply to you. Any Merchant Account Information or Reports you have access to is provided by American Express solely for your own use and not for further resale or redistribution. If you are a Covered Party authorized to access any information provided to perform services on the Merchant's behalf related to their Merchant Account, you must not resell or redistribute such information, nor may you aggregate such information with the information of any other Merchants. We reserve all rights not expressly granted to you herein.

Your use of the Services in no way affects our right to Chargeback under the Agreement. In the event of equipment, systems, or other communications failure, you agree to respond in writing and within the time frames set forth in the Agreement to all Card Member Inquiries and disputes we may send you. You must have access to the Internet to use the Services, and you (and not American Express) are solely responsible for, without limitation, obtaining and maintaining all telecommunications, broadband, and computer hardware, equipment, and services needed to access and use the Services, and paying all charges related thereto. You are responsible for ensuring that your equipment is compatible with the Services. You must be logged in to the Merchant Site to have access to any Services. Some Services may be available for a limited time only and not all Services are available to all merchants.

### **3 AUTHORITY AND CAPACITY.**

You represent, warrant and covenant that:

- (i) you are at least eighteen (18) years old;
- (ii) you have the power, authority and capacity to agree to these Terms of Use;
- (iii) you have a legitimate business need to use the Services;
- (iv) you are an authorized representative or Covered Party of the Merchant on behalf of which you are using the Services and all use of the Services by you is at the Merchant's direction and with the Merchant's knowledge;
- (v) you have the authority from the Merchant to use all features and functions of the Services that you have permission to access in accordance with your designated User Role and Access Level;
- (vi) any information you provide American Express will be true, accurate, current and complete;
- (viii) you will update your information as necessary so that it remains true, accurate, current and complete; and
- (ix) you are not (i) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at

www.treas.gov/ofac); (i) listed on the US Department of State's Terrorist Exclusion List (available at www.state.gov); or (iii) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member.

#### **4 ENROLLMENT AND CANCELLATION.**

In order to access the Services, you must provide all information required in the enrollment process; for example, information may include your personal information, e-mail addresses, and account number(s) at financial institutions with which you conduct business. If you are a Merchant looking to authorize a Covered Party to have access to the Services on your behalf, you must enroll such Covered Party yourself by calling American Express at 1-800-528-5200 ("US Servicing Number") and speaking directly with an American Express service representative to obtain credentials to access the Services for such Covered Party. Note that the US Servicing Number is available from Monday to Friday 8AM to 8PM Eastern Standard Time. Please refer to Section 5 hereof for further detail on the information required to enroll a Covered Party. You may not, under any circumstances, redistribute the above US Servicing Number to anyone, including a Covered Party, to complete the enrollment process for a Covered Party on your behalf. For the avoidance of doubt, all information available via the Services shall be considered Confidential Information (defined in Section [15] below). You agree to provide true, accurate, current and complete information about yourself, a Covered Party (as applicable) and your accounts and you agree not to misrepresent your identity, a Covered Party's identity (as applicable) or your account information. You acknowledge that we are relying upon the accuracy of that information in order to provide the Services, and to the extent the information you supply is inaccurate, incomplete or misleading, we will not be able to provide adequate Services to you. You agree to keep your enrollment, the enrollment of a Covered Parties (as applicable), and the Merchant Account Information up-to-date and accurate. You will have access to the Services only after we have received your enrollment information and have had a reasonable opportunity to act upon it. We will not be liable for any loss that you may incur as a result of inaccurate, incomplete or misleading information, including banking information, you provide to us.

Once you provide your Merchant Account number during registration, for enrollment in the Services, we require 24 - 48 hours to make your Merchant Account Information available via the Services. During this period, you will not be able to review or manage your Merchant Account Information via the Services.

In order to cancel your use of the Services, you, as the Merchant, must call us at the US Servicing Number and speak directly with an American Express service representative. If the Agreement expires or is terminated for any reason, we will cancel your online account and you will no longer be able to use the Services. The cancellation of your Internet services provider account does not cancel your enrollment in the Services.

You, as the Merchant, are also responsible for immediately notifying us in the event that you wish to discontinue a Covered Party's access to your Merchant Account through the Services. In order to cancel a Covered Party's access, you must call American Express at the US Servicing

Number and speak directly with an American Express service representative. Upon receipt of such notification, it may take up to five (5) business days for American Express to discontinue a Covered Party's access to the Services and the information related to your Merchant Account. American Express reserves the right to discontinue a Covered Party's access to the Services at any time for any reason. Should a Covered Party's access to the Services be discontinued, American Express shall use reasonable efforts to notify you; however, you shall remain responsible for your Merchant Account and all obligations under the Agreement.

In case your American Express Merchant Account number changes, you will need to log into the Services and provide, among other things, your new Merchant Account number and banking account information in order to access (or have any Covered Party access) the Services available in your prior account.

## **5 PROFILE CREATION; PASSWORD SECURITY.**

When you enroll (or enroll any Covered Party) in the Services, we ask you to provide profile and contact information and create a user identification ("User ID") and password. You must not impersonate any person or entity or misrepresent your identity or affiliation with any person or entity, including by using another person's username, password or other account information or another person's name or other identifying information. If we have reason to suspect that any information you provided is not authorized, accurate, current, or complete, we may, among other remedial options, refuse you access to the Services or any of its resources without notice.

You are responsible for maintaining the confidentiality and security of your password and for all activities that occur using your User ID and/or password. As such, you should not share your User ID or password with others, including any Covered Parties that should obtain a unique User ID and password with your authorization. We will not be liable for any loss that you may incur as a result of someone else using your User ID and/or password, either with or without your knowledge. In the event you become aware that the security of your User ID and/or password may have been compromised, you shall immediately contact us by calling the US Servicing Number.

## **6 ACCESS LEVELS**

All users of the Services must be enrolled as either an "Email User," a "Merchant User," or a "Bank User" (each, a "User Role"). In accordance with Section 4 hereof, you, as the Merchant, are responsible for enrolling any Covered Party you authorize to access the Services and selecting the User Role that is assigned to them. The User Roles are defined as follows:

An Email User can only access technical specifications, policy documents, and their User Profile via the Services. To enroll a Covered Party as an Email User, you must provide American Express with a valid email address for such Covered Party during the enrollment process.

A Merchant User can access the Point-of-Purchase store, technical specifications, policy documents, and their User Profile via the Services. To enroll a Covered Party as a Merchant User, you must provide American Express with a valid email address for such Covered Party and the applicable SE number during the enrollment process.

A Bank User can access the Point-of-Purchase store, technical specifications, policy documents, their User Profile, payments and e-statements, disputes management, and account services via the Services. To enroll a Covered Party as a Bank User, you must provide American Express with a valid email address for such Covered Party, the applicable SE number, and your bank account information during the enrollment process.

In addition to a designated User Role, each user of the Services is granted either "Limited Access" or "Flexible Access" to the Services (each, an "Access Level"). You, as the Merchant, are responsible for determining the Access Level that is assigned to any Covered Party that you authorize to access the Services. The Access Levels are defined as follows:

Limited Access means a user cannot modify their access to additional features without your permission, as the Merchant. For instance, a Bank User with Limited Access may only have permission to manage disputes, but will otherwise have no permission to add payments, access account services, or perform any other actions via the Services.

"Flexible Access" means a user can modify the features they can access at any time without permission from you, as the Merchant. Importantly, this is limited by such user's User Role. For example, if a Merchant User is granted Flexible Access, they can add or remove their own access to the Point-of-Purchase store or technical specifications or policy documents. They cannot, however, freely grant themselves access to disputes management, as that is not a feature of the Services that they can see as a Merchant User.

Flexible Access is the default Access Level assigned to all newly enrolled users. To change a Covered Party's Access Level from Flexible Access to Limited Access, you, as the Merchant, must contact an American Express service representative by calling the US Servicing Number and requesting such an update. Furthermore, you, as the Merchant, may elect to view or have a Covered Party view the Card numbers for Card accounts involved in disputes. By default, all users cannot view such Card numbers. If you, as the Merchant, wish to enable this option for yourself or a Covered Party, you must call the US Servicing Number and make such a request to a service representative.

## **7 VIOLATIONS OF TERMS.**

American Express reserves the right to investigate suspected violations of the Terms (as defined below) and seek all remedies available at law and in equity for violations of the Terms, including blocking access from a particular Internet address to the Services or otherwise suspending or terminating access without notice.

American Express reserves the right to interrupt or restrict your access to the Services, without notice to you, if we suspect fraudulent or abusive activity or otherwise as appropriate to ensure the security and integrity of the Services. We use commercially reasonable efforts to maintain the security and integrity of the Services; however, you acknowledge and agree that there is no guarantee of absolute security of information that is communicated over the Internet.

## **8 ACCOUNT INACTIVITY.**

We reserve the right, without notice to you, to suspend, terminate and/or purge any User ID that has not accessed or used the Services for a period of one (1) year or more from the date of last access or use. You acknowledge that in the event all User IDs for your Merchant Account are suspended, terminated and/or purged, you may not have access to the Services.

## 9 ADDITIONAL TERMS.

In addition to these Terms of Use, your use of the Services is subject to and you are also agreeing to be bound by the:

- American Express Terms of Service (a/k/a the Website Rules and Regulations) and
- American Express Online Privacy Statement.

These Terms of Use do not amend, modify or supplement the Agreement (as applicable). In the event of a conflict among or between the Agreement (as applicable), these Terms of Use, the American Express Terms of Services and the American Express Online Privacy Statement, the precedence shall be, first, the Agreement (as applicable), then these Terms of Use, then the American Express Online Privacy Statement, then the American Express Terms of Service.

The word "Terms" means, collectively:

- these Terms of Use;
- the American Express Terms of Service (a/k/a the Website Rules and Regulations); and
- the American Express Online Privacy Statement.

## 10 MODIFICATION OF TERMS OF USE.

We reserve the right to modify these Terms of Use at any time without notice to you. We will indicate that changes to these Terms of Use have been made by updating the date indicated after "Last Modified" at the beginning of the document. Unless otherwise noted, such modifications are effective immediately upon their posting to the website through which you access the Services. It is your sole responsibility to check this website periodically to be aware of such modifications. Your access, link to, or use of the Services after the posting of the modifications to these Terms of Use will constitute your acceptance of these Terms of Use, as modified.

## 11 AVAILABILITY, MODIFICATION & DISCONTINUATION.

We reserve the right to discontinue the Services, whether temporarily or permanently, or otherwise supplement, change, or modify their appearance and/or any features or functions of the Services, in any way, in whole or in part at any time for any reason without notice.

**WE SHALL NOT BE LIABLE AND SHALL HAVE NO OBLIGATION TO YOU OR ANY THIRD PARTY IN THE EVENT WE EXERCISE OUR RIGHT TO DO SO.**

The Services are subject to transmission limitation or interruption. You acknowledge and agree that access to the Services and/or the Merchant Account Information may not be available on a continuous basis and that the Services will be subject to periodic downtime to permit hardware and/or software maintenance to take place.

You acknowledge and agree that we are not responsible for performance degradation and delays. You acknowledge that we shall not be liable to you if the Services are interrupted for any reason. If you are dissatisfied with the Services, you agree that your sole remedy shall be to cease using of the Services. Also, after you have logged on to the Services, we reserve the right to log you off the Services if there are extended periods of inactivity or the session continues to run for an extended period of time.



You may discontinue use of the Services at any time and cancel your use or a Covered Party's use of the Services by contacting us at the US Servicing Number. Note that only a Merchant may cancel use of the Services; Covered Parties do not have this authority.

## **12 ELECTRONIC COMMUNICATIONS AND PAPERLESS STATEMENTS.**

When you enroll in the Services as described in Section 4 above, you consent to receiving all notices, statements and other communications about the Merchant Account via any lawfully permitted electronic means, including by (i) transmission to your electronic address (e.g. email), (ii) posting it on an American Express website, or (iii) making it available to you on an American Express website through a link provided on a notice, statement or other communication. Communications sent to you electronically will be effective the earlier of when (i) we send it to you, or (ii) send or otherwise provide you with notice that the communication has been posted on an American Express website. You also consent to receive information from us in the same manner on products, services and resources available to your business. You agree that we may use any electronic address you, or any of your authorized representatives, provide to us in the course of our relationship with you. You will provide us with your current electronic address(es) and notify us promptly with any updates to those address(es) so we may continuously and effectively communicate with you. It is your responsibility to access and retain copies of all electronic communications that we provide you.

Except as otherwise described for CAP Level Accounts below, when you select "View Payments" and/or "Resolve Disputes" under "Enrollment Options", you (i) consent to receive electronic communications for those aspects of the Merchant Account as described above and (ii) understand that by doing so, you may no longer receive such communications related to those aspects of the Merchant Account in paper form. To learn more about how we use your information and protect your privacy, please read the American Express Online Privacy Statement.

### CAP LEVEL ACCOUNTS

The following applies to you only if you have access to Merchant Account Information. If your Merchant Account corresponds to a Merchant Number that is at the top of a merchant hierarchy ("CAP Level Account"), meaning that there are other dependent merchant accounts that are directly related to the CAP Level Account ("Dependent Locations"), and you are enrolling in the Services at the CAP Level Account, please read this section carefully to determine what effect your enrollment will have on management of the dispute process.

#### A) Managing the Dispute Process:

(i) If the CAP Level Account enrolls in the Services to resolve Card Member disputes and elects to centrally manage disputes for all of the Dependent Locations, you acknowledge that it is the responsibility of the CAP Level Account user to respond to all Card Member disputes for the CAP Level Account and all of the Dependent Locations.

(ii) If the CAP Level Account enrolls in the Services to resolve Card Member disputes and elects to have each Dependent Location manage its own disputes, the CAP Level Account user will not be able to manage any disputes related to the Dependent Locations. However, the CAP Level Account will be able to passively review Card Member dispute information for the Dependent Locations that have also enrolled under the "Resolve Disputes" tab. It is the

responsibility of each Dependent Location to respond to its own Card Member disputes.  
(iii) The CAP Level Account user, and/or the Dependent Location user, is responsible for accessing the Card Member dispute list regularly to check for new items, and must respond to such disputes by providing us with all requested information regarding the Inquiry or dispute. This information must be transmitted to us online. You will be required to mail or fax or electronically transmit (if such functionality is available) any supporting documentation necessary for resolution within the timeframes set forth in the Agreement with us.

#### B) Courtesy E-Mail Notification of Card Member Disputes:

We may, but are not obligated to, forward a courtesy e-mail to the CAP Level Account or Dependent Location user's designated e-mail address to inform such user that a Card Member dispute is available on the Services for review.

WE DO NOT GUARANTEE THAT SUCH COURTESY E-MAIL WILL BE SENT OR OTHERWISE EFFECTIVELY DELIVERED FOR ALL CARD MEMBER DISPUTES AND WE ARE NOT OBLIGATED OR OTHERWISE RESPONSIBLE FOR ANY FAILURE TO SEND SUCH COURTESY E-MAIL. YOU ACKNOWLEDGE THAT IT IS YOUR SOLE RESPONSIBILITY TO ACCESS THE SERVICES ON A REGULAR BASIS TO MANAGE AND RESPOND TO CARD MEMBER DISPUTES.

### **13 FEES FOR SERVICES.**

There presently is no fee that applies to your use of the Services; however, we review fee policies from time to time, and reserve the right to adjust the fees that apply to your use of the Services in our sole discretion at any time. In addition, you acknowledge that some features of the Services may require you to subscribe to, and pay an annual fee for, such features. If additional fees apply for such features, you will be required to agree to pay such fees prior to accessing them.

### **14 INFORMATION ABOUT DEPENDENT LOCATIONS.**

This following applies to you only if you have access to Merchant Account Information. If you have Dependent Locations that accept the American Express® Card under the terms of the Agreement, or avail themselves of a lower discount rate by participating in American Express® Card acceptance under your merchant hierarchy, then you acknowledge that your use of the Services may permit you to access information of the Dependent Locations if such Dependent Locations are integrated within the segment of your merchant hierarchy for which you are using the Services. If you are not legally authorized to access information of the Dependent Locations, then you should not utilize the Services. In the event that you have Dependent Location(s), by agreeing to these Terms of Use and accessing the Services, you represent to us that you have the legal authority to access, review and utilize the information of the Dependent Locations. If a Dependent Location(s) contacts us stating that you are not authorized to access, review and utilize the information of such Dependent Location, then we will contact you to resolve the issue. If you do not respond to this inquiry within three (3) business days, then we reserve the right to immediately suspend your ability to access, review and utilize the information of such Dependent Location. You acknowledge that such suspension may cause an interruption of your ability to use the Services to manage the Merchant Account until the issue is resolved. If your access to the Services is suspended pursuant to this Section 12 you will not be entitled to any refund of fee paid, if any, for the suspended time period.

## **15 CONFIDENTIALITY.**

In the event that you access and/or use the Services in any capacity, the following confidentiality obligations shall apply:

You agree to regard and preserve as confidential all information disclosed or made available to you in connection with the Services ( "Confidential Information"). You agree to hold Confidential Information in trust and confidence and shall not (i) disclose such information to any person or entity (including, without limitation, any franchisors, franchisees, units, subsidiaries, affiliates or co-brand partners), or (ii) use (directly or indirectly) any such information for your own benefit or the benefit of any other party, unless authorized in advance by American Express in writing, and even then, to limit access to and disclosure of such Confidential Information to a "need to know" basis only and only to your employees and agents that are subject to confidentiality obligations that are, at a minimum, as stringent as the provisions contained herein. You shall be responsible for any breach of confidentiality with respect to the Confidential Information by any parties to whom you disclose Confidential Information.

The obligations in this section shall not apply to information which (i) is already lawfully known by the receiving party without any obligation of confidentiality at the time it is obtained by the receiving party; (ii) is in the public domain through no wrongful act by the receiving party; or (iii) is lawfully revealed to the receiving party by a third party without any obligation of confidentiality with respect thereto.

You acknowledge and agree that, in the event of a breach or threatened breach of any of the provisions of this section American Express will have no adequate remedy in damages and, accordingly, shall be entitled to injunctive relief against such breach or threatened breach without the requirement of posting a bond or other security; provided, however, that no specification of a particular legal or equitable remedy shall be construed as a waiver, prohibition or limitation of any other legal or equitable remedies in the event of a breach hereof.

## **16 DOWNLOADS/LICENSE.**

You acquire no rights or licenses in or to the Services other than the limited non-exclusive right to utilize the Services in accordance with these Terms of Use. Should you choose to access, order and/or download content from or through the Services, including without limitation, Reports, you shall do so pursuant to these Terms of Use. Such downloaded content is licensed to you by American Express solely for your personal or your company's own noncommercial use pursuant to these Terms of Use and American Express does not transfer any other rights to you.

## **17 NO INVESTMENT ADVICE OR OFFERS.**

Nothing in the Services or on the Merchant Site constitutes, or should be construed to constitute, advice regarding advisability of investing in securities generally or on the advisability of investing in the securities of any particular industry or issuer of securities and American Express is not making recommendations regarding the purchase or sale of any securities. You are solely responsible for any action taken by you directly or indirectly utilizing the Services. Further, American Express provides investor relations materials for convenience and information only. In addition, investor relations materials and other Service are not offers to sell or solicitation of an

offer to buy any security.

## **18 DATA SECURITY**

You shall comply with the Data Security Operating Policy in the U.S. Merchant Regulations and/or any other applicable provisions of the Card Acceptance Agreement for all issues relating to data security.

## **19 GLOBAL TECHNICAL DOCUMENTS.**

The following applies to your access to the Global Technical Documents. "Global Technical Documents" means the set of mandatory, conditional, and optional requirements related to connectivity to the American Express global network and electronic processing of American Express® Card charge and credit transactions (sometimes called "specifications" in our materials), which we may update from time to time, and which we make available on the Merchant Site.

### **A. Grant of Limited License**

American Express hereby grants you a limited, non-exclusive, non-transferable, royalty-free right and license to use the Global Technical Documents for a legitimate business purpose(s), which shall in all cases be limited to designing, manufacturing, marketing, distributing and selling products and services that involve processing transactions on, or otherwise facilitate a merchant's acceptance of, an American Express® Card ("Card Related Products"). No rights are conveyed herein to create any derivative work based on the Global Technical Documents or any portion thereof or to modify them in any way without the express written consent of American Express. Notwithstanding the grant of license above, American Express has and retains all rights, including copyrights, patents and other intellectual property or proprietary rights, in and to the Global Technical Documents, and you agree that you shall not, at any time, assert or claim any interest therein or make any use thereof except pursuant to and in compliance with these Terms of Use. American Express reserves the right to terminate the foregoing license in the event you fail to comply with these Terms of Use.

### **B. Performance Standards**

You shall use the Global Technical Documents only as set forth herein in connection with Card-Related Products, and you agree that all of your Card-Related Products will comply with, or be implemented according to, all applicable Global Technical Documents. American Express may modify the Global Technical Documents at any time (including by adding new terms or modifying or deleting existing terms) on at least 180 days' prior notice, which notice shall be deemed given at the time the modified Global Technical Documents are posted on the Merchant Site. You must implement all changes to the Global Technical Documents which are applicable to you and/or your Card-Related Products by the due date specified on the Merchant Site.

### **C. Prohibition on Use of Confidential Information for Testing**

Your use of Card Member information is subject to the agreement under which such information was obtained. During the design, manufacture and testing of Card-Related Products, the use of

live or production data or any Confidential Information including customer information, is strictly prohibited.

## **20 DISCLAIMER OF WARRANTIES.**

THE SERVICES (INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION ACCESSED BY ANY MEANS THEREOF) IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES OF NON-INFRINGEMENT. TO THE FULLEST EXTENT PERMISSIBLE BY LAW,

WE MAKE NO WARRANTIES THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE SERVICES WILL RESULT IN ANY PARTICULAR OUTCOME OR THAT ANY OF YOUR PARTICULAR GOALS WILL BE ACHIEVED. WE SHALL NOT BE LIABLE FOR THE USE OF THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY INTERRUPTION OF OR ERROR IN THE SERVICES UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, OUR NEGLIGENCE. YOU EXPRESSLY AGREE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK, AND THAT WE MAKE NO WARRANTY THAT SECURITY BREACHES WILL NOT OCCUR.

YOU UNDERSTAND AND AGREE THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR EQUIPMENT OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THESE TERMS OF USE.

YOU AGREE THAT (A) THE FOLLOWING ELEMENTS OF THE SERVICES WILL HAVE UNKNOWN DATA AND/OR EXCLUSIONS; AND (B) UNLESS OTHERWISE AGREED UPON BY THE PARTIES, IF ANY OF YOUR ESTABLISHMENTS, BUSINESSES, ENTITIES OR SIMILAR CONSTRUCTS BECOMES INACTIVE DURING THE TERM OF YOUR USE OF THE SERVICES, AMERICAN EXPRESS MAY ELIMINATE THE DATA FOR SUCH ESTABLISHMENT, BUSINESS ENTITY OR SIMILAR CONSTRUCT FROM THE SERVICES.

## **21 LIMITATION OF LIABILITY.**

YOU ACKNOWLEDGE AND AGREE THAT WE SHALL NOT BE LIABLE TO YOU FOR ANY CLAIMS, DAMAGES, LOSSES, OBLIGATIONS, COSTS OR EXPENSES OR OTHER LIABILITY ARISING DIRECTLY OR INDIRECTLY FROM OR OTHERWISE PERTAINING TO: (I) ANY TERMINATION, SUSPENSION, DELAY OR DISRUPTION OF YOUR INTERNET SERVICES, (II) ANY FAILURE, DELAY, DISRUPTION OR MALFUNCTION OF THE SERVICES, THE INTERNET OR ANY COMMUNICATIONS NETWORK, FACILITY OR EQUIPMENT BEYOND OUR REASONABLE CONTROL, (III) ANY DAMAGES ARISING FROM YOUR FAILED ATTEMPTS TO ACCESS THE SERVICES, OR (IV) ANY DAMAGES ARISING FROM ANY FAILURE TO TRANSMIT, OBTAIN OR COLLECT DATA OR FOR HUMAN, MACHINE OR SOFTWARE ERRORS OR FAULTY OR ERRONEOUS INPUT BY YOU. THIS LIMITATION OF LIABILITY INCLUDES, BUT IS NOT LIMITED TO, THE TRANSMISSION OF ANY VIRUSES WHICH MAY AFFECT YOUR EQUIPMENT, FAILURE OF MECHANICAL OR ELECTRONIC EQUIPMENT OR COMMUNICATION LINES, TELEPHONE OR OTHER INTERCONNECT PROBLEMS (E.G., YOU CANNOT ACCESS YOUR INTERNET SERVICES PROVIDER), UNAUTHORIZED ACCESS, THEFT, OPERATOR ERRORS, STRIKES, OR OTHER LABOR PROBLEMS OR ANY FORCE

MAJEURE.

TO THE FULLEST EXTENT PERMISSIBLE BY LAW, UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS OF USE, THE MAXIMUM LIABILITY WE HAVE FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY YOU FOR USE OF THE SERVICES. BOTH PARTIES AGREE THAT THE PROVISIONS OF THIS SECTION ARE OF THE ESSENCE OF THESE CONDITIONS AND THAT ABSENT SUCH LIMITATION OF LIABILITY, NEITHER PARTY WOULD HAVE ENTERED INTO THESE TERMS OF USE.

## **22 INDEMNIFICATION.**

You agree to indemnify and hold us, our parents, subsidiaries, affiliates, officers and employees, harmless from and against any claim or demand, including reasonable legal fees, made by any third party resulting from or arising out of your use or a Covered Party's use of the Services (or the Services by persons using your User ID and/or password), including, without limitation, any claim that your use (or a Covered Party's use) of the Services infringes any third party intellectual property rights or any right of privacy or publicity, or otherwise results in injury or damage to a third party, any breach of these Terms of Use, or any negligence or willful misconduct with respect to your use (or a Covered Party's use) of the Services.

## **23 INTELLECTUAL PROPERTY.**

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## **24 LAWFUL USE OF SERVICES; RULES OF CONDUCT.**

You warrant that you will not access or use the Services in any unlawful manner, for any unlawful purpose or in violation of these Terms of Use or applicable laws, rules and regulations.

You must not engage in the uploading, posting, decompiling, reverse engineering, disassembling, modification, copying, distribution, transmission, reproduction, republication, licensing, display, sale, transfer or creation of derivative products or other works of or from any product, service, information, content, software, message, advertisement or any other work found at, aggregated at, contained on, distributed through, linked to or from, downloaded to or from or in any other manner accessed from the Services.

You agree not to use, transfer, distribute, or dispose of any content, information or materials downloaded from the Merchant Site or otherwise originating through the Services in any manner that could compete with the business of American Express.

You must not post, transmit, publish, disseminate, or otherwise communicate any information or material: (a) that is defamatory, libelous, indecent, obscene, fraudulent, threatening, abusive, or

invades another person's privacy, proprietary or any other legal rights; (b) that contains any viruses, cancel bots, Trojan horses, harmful code, or other computer software or program designed to interrupt the Services or the proper functioning of any software, hardware, equipment or materials used in connection with the Services; (c) that is bulk unsolicited advertising, promotional information, e-mail, or other solicitation, including without limitation, junk mail, "spam," chain letters or pyramid schemes of any sort, to any person through the use of the Services. We reserve the right to take any appropriate action if we become aware of any use of the Services which we believe violates any law or is otherwise wrongful. We reserve any right not expressly granted to you herein.

## **25 ACCESS TO PASSWORD PROTECTED; SECURE AREAS.**

Access to and use of password protected and/or secure areas of the Services is restricted to authorized users only. Unauthorized individuals attempting to access these areas of the Services may be subject to prosecution or any other remedy at law or in equity that American Express may pursue in its sole discretion.

## **26 USE OF "COOKIE" FILE FEATURES.**

The American Express Online Privacy Statement provides information regarding American Express' use of cookies as well as procedures for disabling cookies.

## **27 FORCE MAJEURE.**

Neither party shall be liable for non-performance due to acts of God, civil disturbances, strikes, power failures, telecommunications breakdowns, changes in applicable laws or regulations, fire or any other cause which such party cannot prevent by the exercise of reasonable diligence.

## **28 GOVERNING LAW.**

These Terms of Use are governed by and will be construed in accordance with the laws of the State of New York, regardless of the laws that might otherwise govern under its principles of conflicts of laws. Subject to any dispute resolution provision in the Agreement, any action by either you or American Express will be brought in the appropriate federal or state court located in the County and State of New York and each of said parties consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

## **29 ASSIGNMENT.**

You shall not assign these Terms of Use, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign these Terms of Use without your consent. Except as otherwise specified herein, these Terms of Use bind, and inure to the benefit of, the parties and their respective successors and permitted assigns.



### **30 WAIVER; CUMULATIVE RIGHTS.**

The failure of either party to enforce any rights granted by these Terms of Use or to take action against the other party in the event of any breach hereof shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

### **31 SEVERABILITY.**

If any provision of these Terms of Use is held by a court of competent jurisdiction to be void, contrary to law or for any reason otherwise unenforceable, then such provision shall be construed, as nearly as lawfully possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. The severance of any void, unlawful or otherwise unenforceable section shall not affect the validity or enforceability of any remaining provisions herein.

### **32 ENTIRE AGREEMENT.**

These Terms of Use represent the entire agreement between you and us regarding the use of the Services and supersede any previous agreements, understandings, or courses of dealings regarding the use of the Services.

### **33 ALTERNATIVE DISPUTE RESOLUTION.**

(A) Procedures: You and American Express agree that in the case of any dispute, claim or controversy arising out of or related to these Terms of Use, including any claims under any statute or regulation ("Dispute"), the party having the Dispute shall send a written notice (a claim notice) to the other party before beginning a lawsuit or arbitration in order to provide an opportunity to resolve the claim informally. Go to [[americanexpress.com/claim](https://americanexpress.com/claim)] for a sample claim notice. The claim notice must describe the claim and state the specific relief demanded. Notice to you may be provided by your account statement or sent to the address we have on file for you. Notice to us must include your name, address and account number and be sent to American Express ADR c/o CT Corporation System, 28 Liberty Street, NY, NY 10005. Within 30 days after sending or receiving a claim notice, either party may elect to submit the Dispute to JAMS (1-800-352-5267, [jamsadr.com](https://jamsadr.com)) or the American Arbitration Association ("AAA") (1-800-778-7879, [adr.org](https://adr.org)) for non-binding mediation. If the Dispute is not resolved through mediation, the Dispute then shall be submitted for binding arbitration. Unless the parties agree otherwise, any mediation and/or arbitration shall take place in the State of New York, New York County, and shall be administered by, and pursuant to the rules of, the AAA or JAMS. Any mediation and/or arbitration will follow the selected organization's rules in effect when the Dispute is filed, except where those rules conflict with this agreement. Disputes will be decided by a single, neutral arbitrator. The arbitrator will apply New York law, without regard to its choice of law principles, except that this arbitration provision is governed by the FAA. The arbitrator will apply applicable substantive law, statutes of limitations and privileges. The arbitrator will not apply any federal or state rules of civil procedure or evidence in matters relating to evidence or discovery. Both parties agree not to disclose the content of the arbitration proceeding or its outcome to anyone, but may notify any government authority as permitted or required by law.

(B) Restrictions on Arbitration: Disputes shall be arbitrated on an individual basis. There shall be no right or authority for any Dispute to be arbitrated on a class action basis or in a purported representative capacity on behalf of the general public or other persons or entities similarly situated. The arbitrator's authority to resolve a Dispute and to make awards is limited to Disputes between you and American Express alone, and is subject to the Limitations of Liability set forth in these Terms of Use. Furthermore, Disputes brought by either you or American Express against the other party may not be joined or consolidated in arbitration with Disputes brought by or against any third party, unless agreed to in writing by all parties. No arbitration award or decision on any Disputes shall be given preclusive effect as to issues or claims in any dispute with anyone who is not a party to the arbitration. Should any portion of this paragraph B of this Alternative Dispute Resolution section be stricken from these Terms of Use or deemed otherwise unenforceable, then this arbitration shall be stricken from these Terms of Use.

(C) Enforcement: The provisions of this Alternative Dispute Resolution section may be enforced in a court of competent jurisdiction and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses (including attorney fees) incurred in obtaining the enforcement of this provision, to be paid by the party against whom enforcement is ordered.

(D) Costs of Arbitration Proceedings: The parties will be responsible for paying their respective shares of the arbitration fees (including filing, administrative, hearing and/or other fees).

(E) The parties expressly disclaim any entitlement to prejudgment, post-verdict, or post-judgment interest imposed by New York law or any other applicable law. If applicable law does not permit disclaiming such interest, any interest awarded by a court, tribunal, or arbitrator related to a Dispute shall be calculated using a rate equivalent of the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment, but in no event shall the interest rate exceed 5%. Any award for prejudgment, post-verdict, or post-judgment interest, if not permitted to be disclaimed under applicable law pursuant to the first sentence of this paragraph, shall use this rate and this rate only.