

## Shop Small® Marketing Materials for Merchants Terms of Use

*Last Modified:* May 3, 2019

The Shop Small® Movement is a national movement created by American Express Travel Related Services Company, Inc. (“American Express,” “we” or “us”) dedicated to supporting and celebrating small businesses and the neighborhoods in which they are located. As part of the Shop Small Movement, American Express launched Small Business Saturday®, dedicated to encouraging customers to get out and shop at small businesses the Saturday after Thanksgiving.

Your use of the Shop Small Marketing Materials (the “Program”) is governed by these Shop Small Marketing Materials Terms of Use (the “Terms of Use”). By participating, you represent you are authorized to agree to the Terms of Use on behalf of your organization and you are agreeing, for yourself and your organization, to be bound by these Terms of Use. You are also agreeing that the decisions of American Express with respect to the interpretation and application of these Terms of Use, including decisions about your eligibility, will be final and binding and made by American Express in its sole discretion. American Express reserves the right to modify these Terms of Use at any time. We will indicate that changes have been made by updating the “Last Modified” date above. Your continued use of the Shop Small Marketing Materials (as defined below) after the Terms of Use have been modified constitutes your agreement to the modified Terms of Use.

American Express Card-accepting merchants may also be eligible for additional Shop Small benefits, which are available at [www.americanexpress.com/marketing](http://www.americanexpress.com/marketing).

### PROGRAM OVERVIEW

By participating in this Program, the following marketing materials may be available to you (collectively, the “Shop Small Marketing Materials”), subject to availability and the eligibility requirements set forth in these Terms of Use, as set forth in greater detail below.

Shop Small Marketing Materials may include:

- (i) the Shop Small merchandise kit (if made available by American Express), which may include bags, stickers and other marketing materials (the “Shop Small Kit”); and
- (ii) downloadable materials, which may include generic and/or personalized in-store signage, digital banners, sample social media posts and email templates (the “Downloadable Marketing Materials”).

Shop Small Marketing Materials are provided to you subject to a limited license to promote your business in connection with the Shop Small Movement and/or Small Business Saturday. We may terminate your right to use all or any of the Shop Small Marketing Materials at any time if we determine, in our sole discretion, that (i) your business is not eligible for the Program, (ii) any information provided by you to apply for, download or use Shop Small Marketing Materials, including, without limitation, any description you provide as to the nature of your business or what customers love about your business in any personalized Downloadable Marketing Materials (individually and collectively referred to herein as “Your Content”), is false, misleading, inaccurate, incomplete or otherwise in breach of the Shop Small Marketing Material restrictions (see below), (iii) you alter the Shop Small Marketing Materials in breach of these Terms of Use, (iv) you use the Shop Small Marketing Materials inappropriately or in a manner inconsistent with the values of the Shop Small Movement and American Express, and/or (v) you otherwise breach these Terms of Use.

## ELIGIBILITY REQUIREMENTS FOR THIS PROGRAM:

- You must have at least one physical (or online) business location within the United States and/or the U.S. territories;
- You must have at least 1 but **not** more than 25 business locations;
- You must **not** be part of a franchise brand with more than twenty-five (25) corporate-owned stores, or more than two hundred and fifty (250) stores in total.
- You must **not** be a government agency, public administration organization, charity, religious organization, gas station, business located on the same premises as a gas station, non-profit, trade association, shopping property management company, direct seller, travel agent or political organization;
- You must **not** be a business that is primarily in the business of manufacturing, promoting or selling diet aids, cannabis, pornography, sexual aids, gambling, liquor, tobacco (including tobacco-related equipment, such as e-cigarettes), firearms or other weapons, or any sensitive or controversial topics with respect to current events or otherwise be engaged in any activity that violates any rules, laws or regulations; and
- You may **not** be eligible if you participate in activities that we determine to be inconsistent with the values of American Express, Small Business Saturday or the Shop Small Movement.

## ADDITIONAL TERMS

In addition to the terms and conditions of these Terms of Use, your use of the Shop Small Marketing Materials is subject to and you are also agreeing to be bound by the:

- American Express Terms of Service (a/k/a Website Rules and Regulations) ([www.americanexpress.com/tos](http://www.americanexpress.com/tos)), and
- American Express Online Privacy Statement ([www.americanexpress.com/privacy](http://www.americanexpress.com/privacy)).

In the event of a conflict among or between these Terms of Use, the Terms of Service and the Online Privacy Statement, the precedence shall be, first, the Terms of Service, then the Online Privacy Statement, then these Terms of Use.

## DOWNLOADABLE MARKETING MATERIAL RESTRICTIONS

Except with respect to materials where certain alterations are specifically intended by American Express (such as sample emails, social postings and offer templates Downloadable Marketing Materials may not be modified in any way, except as expressly directed or authorized by American Express in writing.

Any information provided as permitted alterations or modifications to the Downloadable Marketing Materials may not include any statement, opinion, information or other content, or be incorporated into any web page, sign, banner or other marketing material that contains content, that:

- is fictitious, false, inaccurate or misleading;
- promotes sweepstakes (this means any giveaway or promotion in which random chance, rather than skill, determines who wins or gets a prize);
- is disparaging or defamatory to any person or entity;

- contains any profanity or is otherwise obscene, pornographic or offensive;
- contains superlatives (e.g., words like “best,” “first,” “fastest” and “cheapest”);
- promotes any illegal or unlawful product or service or suggests, encourages or promotes the violation of any laws, rules or regulations;
- infringes the rights of any person or entity, including, without limitation, rights of privacy, publicity or intellectual property;
- promotes or advocates for any sensitive or controversial topic; and/or
- is otherwise inconsistent with the values of American Express or the Shop Small Movement.

## **THE SHOP SMALL KIT**

If American Express makes a Shop Small Kit available, you may receive only one Shop Small Kit regardless of the number of business locations you have and regardless of whether you have both online and physical location(s). If you are an online-only retailer, you are only eligible to receive the Shop Small Kit intended for online-only retailers. If you are a business with a physical location, you are only eligible to receive a Shop Small Kit intended for businesses with retail locations. If you receive a Shop Small Kit through this program then you are not eligible to receive a Shop Small Kit through any other program offered by American Express in connection with Small Business Saturday and the Shop Small Movement and vice versa.

MERCHANDISE IN THE SHOP SMALL KIT IS PROVIDED “AS IS” AND “AS AVAILABLE” AND AMERICAN EXPRESS WILL NOT REPLACE OR SUBSTITUTE ANY ITEMS THAT ARE DAMAGED OR DEFECTIVE. MERCHANDISE IN THE SHOP SMALL KIT IS NOT FOR RESALE.

CONTENTS OF KIT MAY VARY. MERCHANDISE IN THE SHOP SMALL KIT MAY NOT BE MODIFIED IN ANY WAY.

Shop Small Kits are available only while supplies last. American Express makes no guarantees with respect to the availability of or the items included in the Shop Small Kits or the dates by which Shop Small Kits will be distributed. American Express makes no guarantees that a Shop Small Kit will be offered or made available.

## **MODIFICATION & CANCELLATION OF THE PROGRAM**

American Express reserves the right to modify or cancel the Program, or any portion thereof, at any time at its discretion, without prior notice or liability to you.

## **DISQUALIFICATION & OTHER REMEDIES OF AMERICAN EXPRESS**

ALL DESIGN ELEMENTS OF THE SHOP SMALL MARKETING MATERIALS, INCLUDING ANY AND ALL IMAGES, GRAPHICS, LOGOS, HASHTAGS, AND COPY DEPICTED ON SHOP SMALL MARKETING MATERIALS, ARE THE INTELLECTUAL PROPERTY OF AMERICAN EXPRESS. SHOP SMALL MARKETING MATERIALS ARE PROVIDED TO YOU SUBJECT TO A LIMITED LICENSE FOR THE PURPOSE OF PROMOTING YOUR BUSINESS IN CONNECTION WITH SMALL BUSINESS SATURDAY AND THE SHOP SMALL MOVEMENT. YOU MAY USE, DISPLAY AND DISTRIBUTE THE SHOP SMALL MARKETING MATERIALS FOR THAT PURPOSE, PROVIDED THAT YOU DO NOT MODIFY THEM IN ANY WAY EXCEPT AS EXPRESSLY DIRECTED OR AUTHORIZED BY AMERICAN EXPRESS IN WRITING.

AMERICAN EXPRESS RESERVES THE RIGHT TO DELETE, EDIT OR MODIFY ANY SHOP SMALL MARKETING MATERIALS AND/OR TO TERMINATE YOUR LICENSE TO USE, DISPLAY OR DISTRIBUTE THE SHOP SMALL MARKETING MATERIALS AT ANY TIME, INCLUDING IF WE DETERMINE, IN OUR SOLE DISCRETION, THAT (I) YOUR BUSINESS IS NOT ELIGIBLE

FOR THE PROGRAM, (II) ANY INFORMATION PROVIDED BY YOU TO US IS FICTITIOUS, FALSE, MISLEADING, INACCURATE, INCOMPLETE OR OTHERWISE IN BREACH OF THESE TERMS OF USE, (III) YOU HAVE ALTERED OR MODIFIED THE SHOP SMALL MARKETING MATERIALS IN ANY WAY IN VIOLATION OF THESE TERMS OF USE, (IV) YOU HAVE USED THE SHOP SMALL MARKETING MATERIALS INAPPROPRIATELY OR IN A MANNER INCONSISTENT WITH THE VALUES OF THE SHOP SMALL MOVEMENT OR AMERICAN EXPRESS, (V) YOU HAVE USED THE SHOP SMALL MARKETING MATERIALS IN CONNECTION WITH SOMETHING OTHER THAN SMALL BUSINESS SATURDAY OR THE SHOP SMALL MOVEMENT, OR (VI) YOU HAVE OTHERWISE BREACHED THESE TERMS OF USE.

Persons who tamper with or abuse any aspect of the Program, who act in an unsportsmanlike or disruptive manner or who violate these Terms of Use, as determined by American Express in its sole discretion, will be disqualified from participating in the Program. ANY ATTEMPT TO DELIBERATELY DAMAGE OR UNDERMINE THE LEGITIMATE OPERATION OF THE PROGRAM MAY BE IN VIOLATION OF CRIMINAL AND CIVIL LAWS AND SHOULD SUCH AN ATTEMPT BE MADE, AMERICAN EXPRESS RESERVES THE RIGHT TO SEEK DAMAGES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) AND OTHER REMEDIES FROM ANY SUCH INDIVIDUAL TO THE FULLEST EXTENT OF THE LAW, INCLUDING CRIMINAL PROSECUTION.

#### **NAME, TRADEMARK & YOUR CONTENT LICENSE**

By participating in the Program, you are granting American Express the right and license to include: (i) your business's name, logo, service marks, trademarks, trade names, Your Content or other content provided by you in connection with the Program or your use of the Shop Small Marketing Materials, (ii) a link to your business's social media handle(s) and/or the URL of your business's official website and/or branded web page(s), and (iii) statements, quotes, descriptions, photos, drawings, screenshots, clippings, social media posts and other images and depictions relating to Small Business Saturday, the Shop Small Movement and/or your use of the Shop Small Marketing Materials, on ShopSmall.com, Facebook.com/ShopSmall and other web pages or social media accounts dedicated to, or otherwise promoting, Small Business Saturday or the Shop Small Movement, and in other advertising, marketing and promotional materials relating to Small Business Saturday and the Shop Small Movement (including the right to re-tweet or re-post any social media posts that you publish), in perpetuity, in any and all media, including as such materials may be displayed, performed or distributed by agents of American Express or supporters of Small Business Saturday and/or the Shop Small Movement, without any compensation or other obligation to you. You further grant American Express the right and license to use, publish and incorporate any and all feedback, ideas, comments, suggestions and concepts shared or contributed by you relating to Small Business Saturday and the Shop Small Movement in perpetuity for any purpose without any compensation or other obligation to you. You acknowledge that American Express has no obligation to exercise any of the foregoing rights.

You further acknowledge that American Express may have developed or may develop ideas and concepts similar or identical to the ideas and concepts that you develop for Small Business Saturday or the Shop Small Movement. Nothing shall restrict the right of American Express to create, protect (whether by patent, trademark, copyright, trade secret or other means), procure or market any programs, products or services whether relating to Shop Small Marketing Materials, Small Business Saturday, the Shop Small Movement or otherwise, and you agree not to challenge or make claims against or to such American Express programs, products or services.

#### **REPRESENTATIONS & WARRANTIES; INDEMNIFICATION**

You represent and warrant that all of the information and other content you provide to us in

connection with the Program, including, but not limited to, the Your Content, is complete and accurate and does not violate any laws, regulations or the rights of any third parties. Further, you acknowledge and agree that you are solely responsible for the content of your personalized or edited Shop Small Marketing Materials (including, without limitation, your physical business location(s)) and your actions in connection with the Program.

You agree to indemnify and defend American Express, participating websites, and their respective parents, affiliates, licensees, direct or indirect subsidiaries, and advertising and promotion agencies, and the respective officers, directors, shareholders, employees, agents and representatives of the foregoing (collectively, "Released Parties") from any against any and all costs or damages (including court costs and reasonable attorneys' fees) resulting from any action, claim or demand, including any governmental inquiries or investigations, that may be made or brought against a Released Party (a "Claim") arising out of or relating to your participation in the Program.

## **GENERAL RELEASE**

You agree to release, discharge and hold harmless American Express and other Released Parties from any and all injuries, liability, losses and damages of any kind to persons, including death, or property resulting, in whole or in part, directly or indirectly, from your participation in the Program.

You acknowledge and agree that the Released Parties are not responsible for lost, late, incomplete, damaged, inaccurate, stolen, delayed, misdirected, undelivered, or garbled submissions; or for lost, interrupted or unavailable network, server, Internet Service Provider (ISP), website, or other connections, availability or accessibility or miscommunications or failed computer, satellite, telephone or cable transmissions, lines, or technical failure or jumbled, scrambled, delayed, or misdirected transmissions or computer hardware or software malfunctions, failures or difficulties, or other errors or difficulties of any kind whether human, mechanical, electronic, computer, network, typographical, printing or otherwise relating to or in connection with the Program. Released Parties are not responsible for injury or damage to any person's computer related to or resulting from participating in this Program or downloading Marketing Materials or other materials from or use of the website. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

## **DISCLAIMERS**

AMERICAN EXPRESS IS PROVIDING THE PROGRAM, INCLUDING SHOP SMALL MARKETING MATERIALS, "AS IS" AND ON AN "AS AVAILABLE BASIS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES OF NON-INFRINGEMENT, SECURITY, OR ACCURACY AND TIMELINESS, TO THE FULLEST EXTENT PERMITTED BY LAW.

You acknowledge that all ideas, tips, suggestions, opinions, advice and information provided in connection with the Program are meant for informational purposes only, and should not be relied upon. You further agree that you are solely liable and responsible for the cost of any events, activities and other promotional efforts that you may undertake in connection with Small Business Saturday or the Shop Small Movement, and for obtaining any necessary permits or permissions in connection with such efforts.

## **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANY OTHER PROVISION HEREOF, IN NO EVENT SHALL AMERICAN EXPRESS, ITS DIRECT OR INDIRECT SUBSIDIARIES, CONTROLLED AFFILIATES, AGENTS, EMPLOYEES OR REPRESENTATIVES BE LIABLE TO YOU FOR ANY LOST PROFITS OR REVENUES, OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE PROGRAM, EVEN IF THEY, OR ANY OF THEM, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE RELEASED PARTIES' AGGREGATE LIABILITY ARISING OUT OF THE PROGRAM WILL NOT EXCEED ONE HUNDRED DOLLARS (\$100). APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, THE RELEASED PARTIES' LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## **GOVERNING LAW**

Any and all disputes, claims or actions arising out of or relating to the Program or your participation therein, including the enforcement and interpretation of these Terms of Use, shall be governed by the substantive laws of the state of New York without regard to conflict of law principles, and shall be brought solely within the state of New York and county of New York.

## **DISPUTES**

You agree that any dispute arising out of or related to the Program ("Disputes") shall be, upon the election of either you or us, submitted for binding arbitration, which shall take place in the State of New York, New York County pursuant to the rules of the American Arbitration Association ("AAA"). Disputes shall be arbitrated on an individual basis. There shall be no right or authority for any Disputes 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. 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. You and we will be responsible for paying your and our respective shares of the arbitration fees (including filing, administrative, hearing and/or other fees) as provided by AAA rules. The provisions of this paragraph may be enforced in a court of competent jurisdiction.

## **THIRD PARTY BENEFICIARIES**

Except as otherwise expressly set forth herein, these Terms of Use are for the sole benefit of the parties hereto and their successors and permitted assigns and nothing herein express or implied shall give or be construed to give any person other than the parties hereto any legal or equitable rights hereunder.

## **ASSIGNMENT**

You may not assign any of your rights or delegate any of your obligations under these Terms of Use without the prior written consent of American Express. Any purported assignment or delegation in breach of this provision will be null and void.

## **ENTIRE AGREEMENT**

These Terms of Use constitute the entire agreement between the parties and supersede all previous discussions, agreements, promises, proposals, representations and understandings

pertaining to the subject matter hereof.

### **SEVERABILITY AND WAIVER**

If any provision(s) of these Terms of Use are held by a court of competent jurisdiction to be void, contrary to law or for any reason otherwise unenforceable, then such provision(s) 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 provision, shall not affect the validity or enforceability of any remaining provisions herein. Our failure to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing.