

# **AMERICAN EXPRESS BUSINESS LOAN TERMS AND CONDITIONS**

These Terms and Conditions, along with the Loan Details, together form the agreement by which we will make the Loan available to you (the “**Agreement**”). You should read this document with the other documents that are part of your Agreement with us. Capitalised words and phrases in this document have special meanings. You can find their meanings in Schedule 1 unless otherwise defined in this document.

We recommend that, before you sign this document:

- you read and make sure you understand this document; and
- you obtain legal advice from a lawyer who does not act for us or the Borrower.

## **PARTIES**

Your Loan is issued by American Express Australia Limited. *We, us, our, Amex and American Express* mean American Express Australia Limited. *You and your* mean the borrower named in the Loan Details. *Guarantor* means the individual named in the Loan Details. The *Debtors* means the borrower and the Guarantor (jointly and severally).

## **1. OUR AGREEMENT TO PROVIDE THE LOAN**

We agree to provide your Loan on the terms of this Agreement. You and any Guarantor(s) agree, in return, to comply with those terms.

We will act reasonably and fairly towards you, taking into account your and our respective business interests. That includes whenever we are:

- considering any request you make; or
- deciding whether to give our consent or to exercise a right, discretion or remedy; or
- setting any conditions for doing any of those things.

Please note that even if we don’t make a decision or do something straight away, we may still do so later on. This includes where we delay or defer doing so, or we temporarily waive a requirement.

## **2. DISBURSEMENT OF FUNDS**

### **2.1 Authorisation**

By completing the Direct Debit and Credit Request Service Agreement, you authorise and direct us to send the loan amount set out in the Loan Details to the Nominated Account designated by you in the Direct Debit and Credit Request Service Agreement. We refer to such payment made by us as a loan disbursement.

### **2.2 How We Disburse Funds**

We will only disburse funds directly to the Australian financial institution account designated by

you during the Loan application process. If you do not designate a current and valid Australian financial institution account, if we are unable to validate the account that you designated, or your financial institution will not accept the funds, you will not receive your loan disbursement and this Agreement may be cancelled.

All loan disbursements are made by electronic means only. We do not issue loan disbursements by cheque or other non-electronic means. We may not make any loan disbursement until we can verify the designated account and financial institution to which the loan disbursement will be made. However, we may rely solely on the accuracy, authenticity and completeness of any account or other information you provide to us. You are responsible for any inaccurate information that you provide to us if we disburse to that account.

The date of advance of the loan amount will be advised to you in writing. We make all reasonable efforts to ensure that your loan disbursement is received in your designated account by the date of advance. If your designated account is not credited with the loan disbursement amount by that time, it is your responsibility to contact us. Once you contact us and provide us with sufficient evidence that the funds were not received by the date of advance, we will credit your loan account any interest we charged you from the date of advance until the date on which the funds were actually deposited into your designated account. If we do not receive notice from you of any delay in receiving funds within thirty (30) days of the date of advance, you agree that you waive any entitlement you may have to such a credit.

### **2.3 Inability to Disburse and Indemnity**

In some cases, we may be unable to complete a loan disbursement. For example, your financial institution may refuse to accept a loan disbursement from us. If this occurs, this Agreement may be cancelled, in which case you will not be required to repay any principal or interest to us. Alternatively, we may, in some cases (and at our sole discretion) allow you to nominate another Australian financial institution account into which the loan disbursement may be made. Any such account will be subject to appropriate validation by us.

You agree to indemnify and hold us harmless in respect of any claim you may have or in respect of any loss you may suffer that results from: (i) our inability, for whatever reason, to complete a loan disbursement; (ii) any delay associated with a loan disbursement; or (iii) any dispute you may have with your financial institution.

## **3. YOUR PAYMENT OBLIGATIONS**

Once the loan has been disbursed, you agree to pay us:

- The loan (or principal) amount;
- The interest amount; and
- Any applicable fees and charges;

as set out in this Agreement.

## **4. FEES**

The fees that apply to your Account are set out and described in the Loan Details. You agree to pay these fees and you authorise us to charge them to your Account when due.

## 5. HOW WE CALCULATE INTEREST

We will charge you interest at the annual interest rate disclosed in the Loan Details. Your interest rate is fixed and will not change during your loan term. Interest will be calculated daily and billed to your loan account weekly. We calculate the daily interest rate by dividing the interest rate by 365. It is not charged on interest nor is it charged on any fees that may apply to your loan account. This means interest does not compound.

## 6. HOW TO MAKE YOUR LOAN REPAYMENTS

Your loan is payable through a series of direct debits from your Nominated Account, known as Scheduled Payments. Your first Scheduled Payment will be due and payable to us on the date specified in the Loan Details. Other than per clause 7.2 below, you cannot vary the frequency, or timing, of those payments.

The Direct Debit and Credit Request Service Agreement must be completed by you for that purpose and you agree to be bound by its terms as if it was a part of this Agreement. See clause 8 below for further details regarding the operation of direct debits.

We may also allow you to make additional payments via the Business Loans Online Account. See clause 7.2 below for further details regarding additional payments.

## 7. PAYMENTS GENERALLY

### 7.1 How we apply your payments

We apply each payment we receive as follows:

- first, to any fees, expenses and other amounts due (excluding principal and interest),
- then, to any accumulated cost of borrowing (any billed interest), then
- to your principal loan balance.

We will apply your payments as described in this section even if you provide a contrary instruction or notation with your payment. If you have missed a Scheduled Payment, we will apply any subsequent payment toward, first, that missed Scheduled Payment, and then in the order stated above.

### 7.2 Excess Payments

You may, via the Business Loans Online Account, schedule one-time additional payments ("**Additional Payments**"). Provided your Account is in good standing, all Additional Payments will be in addition to your Scheduled Payments and will not (unless the limited circumstances identified below apply) reduce your Scheduled Payments. Additional Payments (which are allocated per clause 7.1 above) may reduce the interest payable on your Loan and will be taken into account when determining your final Scheduled Payment. You will never have to pay more principal than originally borrowed.

### **When an Additional Payment will affect your next Scheduled Payment**

An Additional Payment will only affect your next Scheduled Payment if the Additional Payment:

1. pays out your Loan entirely; or
2. is such that the subsequent payment (after the Additional Payment) is both less than your next Scheduled Payment and pays out your Loan entirely – in which case the Scheduled Payment will be reduced to that amount.

### **Example**

As an example, your first Scheduled Payment may be \$1,000, due on Wednesday. On Monday, you decide to pay us an additional \$500. As a result of this additional payment:

1. your Scheduled Payment of \$1,000 is still payable on the Wednesday;
2. other than your final payment, all further Scheduled Payments will remain at \$1,000;
3. you will pay less interest over the course of your Loan, and
4. your principal/interest allocation will be adjusted for all future Scheduled Payments.

### **7.3 Missed Payments**

If a Scheduled Payment is not made (for example, due to insufficient funds in your Nominated Account):

1. we will levy a Missed Payment Fee; and
2. If the missed payment is not paid by you by way of an Additional Payment, we will attempt to direct debit the missed Scheduled Payment when we direct debit the following Scheduled Payment (plus the Missed Payment Fee).

**For example**, you do not make your Scheduled Payment of \$1,000 (as there were insufficient funds in your Nominated Account). Unless you make up this missed Scheduled Payment by way of an Additional Payment prior to your next Scheduled Payment date, we will attempt to direct debit the following amount at your next Scheduled Payment date:

1. The missed payment of \$1,000;
2. The Missed Payment Fee of \$30; and
3. Your current Scheduled Payment of \$1,000.

If there are two consecutive missed Scheduled Payments, and you do not bring your Account into good standing prior to your next Scheduled Payment date, we will not attempt to run any further direct debits. It is up to you to then bring your Account back into good standing. If you do so, we may, at our discretion, allow you to resume Scheduled Payments via direct debit (without waiving any of our rights under this Agreement).

## **8. DIRECT DEBIT AND CREDIT REQUEST SERVICE AGREEMENT**

By completing the Direct Debit and Credit Request Service Agreement, you authorise us to withdraw any amounts owing to us pursuant to this Agreement (including Scheduled Payments and any Fees) from your Nominated Account as set out in that Direct Debit and Credit Request Service Agreement and this Agreement.

### **How Direct Debits operate for your Loan**

We will only run a direct debit once per week, being at the time of your Scheduled Payment. The only exception to this is where you schedule an Additional Payment(s) via direct debit.

If you want to dispute a direct debit that has been made from your Nominated Account, you should contact us immediately. If the debit date is on a weekend or public holiday in Sydney, or a bank holiday, we will process your payment on the next business day (which may mean that the principal and interest split will be adjusted as further interest may have accrued), however your Scheduled Payment amount will not change.

You must make sure that sufficient cleared funds are available in your Nominated Account on the payment date. If there are insufficient funds and your financial institution dishonours the payment then:

- we will charge you a Missed Payment Fee (as outlined in the Loan Details) which will be debited to your Account and, unless you pay it sooner by way of an Additional Payment, levied in the next Scheduled Payment; and
- your financial institution may levy a fee on you.

For clarity, the direct debit will only run on the full amount of the Scheduled Payment (plus any other amounts, such as a Missed Payment Fee, you owe). For example, if the Scheduled Payment is \$1,000 and your Nominated Account contains \$999, we will not direct debit any funds (and you will be levied a Missed Payment Fee).

Note that, if two successive Scheduled Payments are not made, we will discontinue further attempts at direct debiting your Nominated Account. By us doing so, we are not waiving any of our rights under this Agreement, and your obligations under this Agreement will continue.

We also reserve the right to cancel the direct debit request if any debit is returned unpaid by your financial institution.

## **9. STATEMENTS**

A Statement will be made available to you each month during the Loan Term via the Business Loans Online Account. The Statement will include:

- Your outstanding Loan balance and any overdue amounts; and
- Details of payments made (including interest paid), and Fees charged, during the previous statement period;

If you have any questions about your Statement, please contact us.

## **10. YOUR ONLINE ACCOUNT**

At any time, you may use our Business Loans Online Account to obtain information about your Loan, including:

- Your Loan balance;
- Upcoming Scheduled Payments; and
- Details of previous payments made.

You may also schedule Additional Payments or request changes to be made to your Account (for example, update contact details) via the Business Loans Online Account.

You must not share your user name or password for the Business Loans Online Account with any other person (other than us and your appropriately authorised officers and employees, where applicable).

## **11. GUARANTEE**

Each Guarantor, jointly and severally, unconditionally and irrevocably, guarantees the payment to us of all amounts due payable to us by the Borrower under this Loan Agreement (the “**Guaranteed Money**”) and agrees to pay the Guaranteed Money to us on demand.

### **11.1 Consideration and solvency**

Each Guarantor represents and warrants to us that:

- a) the Guarantor has received valuable consideration for providing this Guarantee;
- b) the Guarantor considers that the Guarantor will benefit by providing this Guarantee;
- c) there are no reasonable grounds to suspect that, after entering into this Guarantee, the Guarantor will be unable to pay the Guarantor's debts or meet the Guarantor's obligations under this Guarantee as and when they fall due;
- d) the Guarantor has full power and authority to enter into and perform this Guarantee;
- e) the Guarantor has received or had the opportunity to receive independent legal (and if appropriate, independent financial and expert) advice regarding the subject matter of this Guarantee and in relation to their obligations as Guarantor under this Guarantee and the effect of entering into this Guarantee before entering into this Guarantee;
- f) the Guarantor considers that the terms of this Guarantee are fair and reasonable in all the circumstances;

- g) the Guarantor enters into this Guarantee voluntarily and without duress or undue influence;
- h) the Guarantor has relied on their own inquiries and, save as expressly set out in the Guarantee, have not relied on any representation, promise, statement, conduct, warranty or undertaking of any kind made by or on behalf of any Party in entering into this Guarantee or document; and
- i) the terms of this Guarantee are binding upon them according to its terms.

### **11.2 Nature of obligations and enforcement**

A Guarantor's obligations under this Guarantee are principal obligations (and not ancillary or collateral or limited to or by reference to any other right or obligation), are independent of and not in substitution for or affected by another security interest or guarantee or other document or agreement which any party may hold concerning the Guarantor's obligations in this Guarantee and may be enforced against that Guarantor without us first being required to:

- a) exhaust any remedy against the Borrower or any other person or to enforce any security it may hold with respect to the obligations in the Guarantee; or
- b) enforce any other guarantee we may hold relating to the Guaranteed Money.

### **11.3 Continuity and preservation of Guarantor's obligations**

Unless otherwise specified in this Guarantee, this Guarantee is a continuing guarantee and indemnity. The Guarantor's obligations under this Guarantee are absolute and unconditional and irrevocable. The liability of the Guarantor under this Guarantee is not affected by anything that might otherwise affect it at law or in equity including by the grant of any time or indulgence to the Borrower, Guarantor, co-guarantor or any other person; the death, mental or physical disability, legal incapacity, or insolvency of the Borrower, Guarantor, co-guarantor or any other person; the release of any security, guarantee and/or indemnity; or the variation of the Loan Agreement.

The Guarantor irrevocably waives in our favour any right the Guarantor has against us, any co-guarantor or any other person, or their estates or assets which would reduce the Guarantor's liability to us or the amount we can recover from the Guarantor or any of them.

The Guarantee:

- a) is not wholly or partially discharged by the payment of any amount payable by the Borrower under the Loan Agreement or the settlement of any account by the Borrower; and
- b) continues until all obligations of the Borrower under the Agreement have been completely fulfilled and/or until we release the Guarantor from the Guarantor's obligations as guarantor under the Guarantee.

#### **11.4 Limitations on Guarantor's rights**

Until the Guaranteed Money has been paid in full, the Guarantor may not without our prior written consent, recover any amount in competition with us against any co-guarantor in an insolvency, under any right of contribution or indemnity, or in any other way; claim the benefit, or seek the transfer, of any security, guarantee or indemnity from any co-guarantor; take over any of our rights as creditor; or require us to resort to any security or our rights before or when we resort to the Guarantor.

#### **11.5 Indemnity in respect of Guaranteed Money**

For the consideration mentioned in clause 11.1, each Guarantor unconditionally and irrevocably indemnifies and will keep indemnified us against, and must pay us on demand, the amount of, any loss or damage that we may suffer because:

- a) the Guarantee or Loan Agreement is unenforceable because of legal limitation, death, insolvency, disability, incapacity or any act or omission by, or other circumstances affecting, the Borrower;; or
- b) the Guaranteed Money is not recoverable from the Borrower (for example, because of any legal limitation, death, insolvency, disability, incapacity or any act or omission by, or other circumstances affecting, the Borrower) or is repaid or restored after it has been recovered,

including the amount of any Guaranteed Money (or any money which, if recoverable, would have formed part of the Guaranteed Money) that is not or may not be recoverable.

For clarity, the Guarantor is not liable to the extent that any loss or damage results from the fraud, negligence or wilful misconduct of American Express.

#### **11.6 Indemnity for administration, preservation or enforcement**

Each Guarantor must indemnify and keep indemnified us against, and must pay us on demand the amount of, all losses, liabilities, debts, costs, expenses and taxes that we reasonably incur in connection with the actual or attempted preservation or enforcement of any rights under this Guarantee.

For clarity, the Guarantor is not liable to the extent that any loss, liability, debt, cost, expense, tax or damage results from the fraud, negligence or wilful misconduct of American Express.

#### **11.7 Demand by the Provider**

A demand by us under this Guarantee may be signed by any of our managers or other officers, or by any of our solicitors, and served on the Guarantor at the address shown for the Guarantor



in the Loan Details, or served personally on the Guarantor.

### **11.8 Statements by the Provider**

A statement by one of our authorised representatives stating the amount owing by the Guarantor to us, whether currently due and payable or not, is, in the absence of satisfactory evidence to the contrary, to be treated as correct and sufficient evidence of the amount owing at the time of the statement

### **11.9 Multiple Guarantors**

If there is more than one Guarantor for this Loan Agreement then, unless otherwise specified in this Loan Agreement:

- a) an obligation of those Guarantors is joint and several;
- b) a right of those persons is held by each of them severally;
- c) any other reference to that person, or that term, is a reference to each of those persons separately; and
- d) the parties irrevocably and unconditionally acknowledge and agree that this Guarantee and/or document binds each person who signs it even if another person who was intended to sign or may be a party to it does not sign it or is not bound by it.

### **11.10 Survival**

Despite any other provision of this document, each indemnity in favour of us in this document in particular in clauses 11.5 and 11.6 survive any termination or performance of this document.

## **12. EVENTS OF DEFAULT**

### **12.1 We consider your Account to be in default if:**

- a) you fail to comply with any of your obligations under this Agreement, for example:
  - i. if you fail to pay a Scheduled Payment in full by the Due Date (or if your payment is returned or not honoured) ("**Monetary Default**");
- b) you, or a Guarantor, are in default of any other facility with us, including any card account;
- c) you, or a Guarantor, have a controller appointed, are in liquidation, in provisional liquidation, bankrupt, under administration or wound up or have had a Receiver appointed to any part of your property;
- d) we have any reason to believe that you, or a Guarantor, may not be creditworthy; or
- e) any dealing by you in relation to the Agreement may breach any laws, including but not limited to AML-CTF and Sanctions Laws;
- f) you are a partnership and any of the events in paragraphs (b) to (e) occurs in relation to

one or more of the partners, in which case, the event is deemed to have occurred in relation to you.

If we do not take any steps available to us upon an event of default, that does not constitute a waiver by us of any default.

## **12.2 Our rights if you are in Default.**

If your Account is in default, we may;

- require you (or any Guarantor) to pay us immediately the full amount outstanding on the Loan, including all fees and interest outstanding on your Account and any other amounts which become payable by you under the Agreement. We will only do this in relation to a Monetary Default if the default continues for at least 30 days;
- cancel the Account, and any other card account or facility you have with us (subject to issuing any relevant notices required by law);
- take any appropriate steps to recover any outstanding amounts from you;
- enforce any Guarantee;
- suspend or not perform any of our obligations under the Agreement; and/or
- do anything else that we have agreed with you or that is allowed under the law.

In the event of any default, you will be responsible for costs incurred by us or our agents and service providers in collecting or recovering any amounts unpaid and in protecting ourselves from any harm we may suffer as a result of the default (except to the extent that the costs arise because of our fraud, negligence or misconduct).

## **13. COMMUNICATING WITH THE DEBTORS**

We may communicate with the Debtors by any reasonable means including mail, email, mobile phone or landline, SMS, fax, mobile app push notifications by posting a message on an American Express website (including [www.americanexpress.com.au](http://www.americanexpress.com.au)) or within your online account.

### ***Electronic Statements & Other Important Communications***

Statements, changes to this Agreement, regulatory disclosures and notices, and other communications will generally be sent to you electronically by email or posted to your online account (with a notice being sent to you by email). You agree to receive these communications electronically. It is your responsibility to access and check your online account and emails regularly.

### ***When are Communications Received?***

- Mailed communications that we send you by post will be deemed to be received 7 business days after the date of mailing (unless actually received earlier).
- Communications delivered by hand will be deemed to be received upon delivery.

- Electronic communications will be deemed to be received on the day that we post or send the electronic communication or send you the corresponding notification (even if you do not access the electronic communication or notification).

### ***Changing your Address***

You must inform us immediately if you change address or contact information (such as postal or email address, telephone or mobile phone number). If we have been unable to deliver any Statements or other communications or these have been returned, 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 Statement or any other notice) if we send it to the address or in accordance with other contact information you have provided to us. You must inform us if you want an address or other contact information to apply to more than one account with us.

You must also inform us of any changes to other information previously provided to us such as information you provided when you applied for your Account. You also agree to give us any additional information and support documentation that we request or as required by law.

## **14. SET OFF**

The Debtors each agree that we may set off any amount that the Debtors owe to us against any amounts that we owe to the Debtors under this Agreement or any other agreement the Debtors have with us.

## **15. APPLICABLE LAW AND JURISDICTION**

This agreement is governed by the laws of the State or Territory of Australia as stated on your billing address or if your billing address is overseas, as stated on your last known Australian billing address and the courts of that State or Territory shall have jurisdiction over all parties to the agreement.

## **16. LIMITATION OF OUR LIABILITY**

We are not responsible or liable to you for:

- Purchases, including any dispute with a merchant about goods and services purchased with the funds provided by way of your Loan;
- any costs, damages or expenses arising out of our failure to carry out our obligations under this Agreement if that failure is caused by something outside of our control (for example, the actions of a third party or an industrial dispute); and
- loss of profits or any incidental, indirect, consequential, punitive or special damages regardless of how they arise.

## **17. ENDING THE AGREEMENT**

The Agreement will only come to an end once you, or any Guarantor, have paid off all amounts

you owe us. Until this time, all of the terms of the Agreement will continue to apply (including our right to change the terms of the Agreement). We may end this Agreement if your Account is cancelled and you, or any Guarantor, have paid off all amounts you owe us.

## **18. RESOLVING DISPUTES**

American Express is committed to resolving disputes raised by its customers as part of its service philosophy. American Express has established internal procedures to resolve complaints, whilst also being a member of an external dispute resolution scheme, the Australian Financial Complaints Authority (AFCA). If you have a complaint about the provision of our services, you can take the following steps:

- Contact us by phone on 1300 132 639; or
- Chat with us online via [americanexpress.com.au/contact-us](https://americanexpress.com.au/contact-us) or in your American Express Mobile App; or
- Write to us at:  
Global Customer Research & Solutions  
American Express Australia Limited  
GPO Box 1582  
SYDNEY NSW 2001
- We aim to address your complaint within 5 calendar days, with most complaints solved within 30 calendar days. If we can't solve your issue within 30 calendar days, we'll stay in touch with you and try to find alternative solutions
- American Express makes every endeavour to resolve complaints in a prompt and fair manner, having regard to the law. If however you continue to remain dissatisfied with American Express' decision, you may (if you meet the relevant eligibility criteria) seek to have your complaint considered by AFCA, an independent, external dispute resolution body. AFCA will review our actions in accordance with its Scheme Rules to determine if we have fulfilled our obligations to you. Please note that AFCA will refer you to American Express if you didn't first raise your complaint with us.

You may contact AFCA by the following means:

Mail: Australian Financial Complaints Authority Limited GPO Box 3, Melbourne VIC 3001

Telephone: 1800 931 678

Internet: [www.afca.org.au](https://www.afca.org.au)

## **19. PRIVACY**

The collection, use and disclosure of your information by us is regulated by the Privacy Act 1988. We will handle your information in accordance with the American Express Card Member Privacy Policy which sets out policies on the management of your personal information.

In particular, it sets out policies dealing with:

- The collection, use and disclosure of your credit information and personal information by American Express; How you can access your personal information; and how you can opt-out from American Express marketing lists.

A full copy of the American Express Card Member Privacy Policy is provided at the end of this agreement and is available online. Please note that the Privacy Policy is varied from time to time, and we will provide you with reasonable notice of any change in our Privacy Policy.

## **20. SEVERABILITY**

If any part of this Agreement is found by a court or governmental authority to be invalid or unenforceable, that part will be deemed omitted from this Agreement. The remainder of this Agreement will remain in full force and effect, and will be modified only as necessary to give such force and effect to the remaining provisions.

## **21. ASSIGNMENT**

We may sell, transfer or assign our rights under this Agreement or your Loan. We may do so at any time without notifying you. You, or any Guarantor, may not sell, assign or transfer your loan or any of your obligations under this Agreement. Any such sale, assignment or transfer by you will be null and void.

## **22. NO WAIVER**

We may choose to delay enforcing or to not exercise rights under this Agreement. If we do this, we do not waive our rights to exercise or enforce them or any other rights under this Agreement on any other occasion.

## **23. MAKING CHANGES TO THE AGREEMENT**

We may make changes to this Agreement at any time, including reasonable changes to fees, how we apply payments and changes affecting your payment obligations. Your annual percentage rate is fixed and will not be changed during the term of the loan. We will provide you with 60 days' notice of any change in accordance with applicable law, except where the change is in your favour, for example if it reduces what you have to pay under this Agreement.

## **24. AMERICAN EXPRESS PRIVACY STATEMENT**

**Effective October 2019**

### **About American Express**

American Express Australia Limited holds an Australian Credit Licence number 291313.

You can contact American Express in the following ways:

Mail: American Express Australia Limited

GPO Box 1582

SYDNEY NSW 2001

Telephone: 1300 132 639 (in Australia) or +61 2 9271 8664 (if overseas)

This Card Member Privacy Statement describes how American Express collects, uses, shares and keeps your credit information and personal information in accordance with the Privacy Act and the Australian Privacy Principles. If you do not agree to our use of your credit information and personal information in this way, we may be unable to provide our products and services to you.

In addition to this Card Member Privacy Statement, we also have more specific information available regarding how we handle your:

- Online Information. Please see our Online Privacy Statement, which describes how we handle information we collect about you from your use or access of American Express websites, online applications and any of our online services or content. Our Online Privacy Statement is available at: [americanexpress.com.au/privacy](http://americanexpress.com.au/privacy)
- Credit Reporting Information. Please see our Credit Reporting Policy for further detail about when, how and why we access Credit Reports about you, which credit reporting bodies American Express is likely to disclose your credit information, and how you may complain about a failure by American Express to comply with the Privacy Act and how American Express will deal with a complaint. Our Credit Reporting Policy is available at: [www.americanexpress.com.au/creditinfo](http://www.americanexpress.com.au/creditinfo)

#### **Collection use and sharing of credit information by American Express**

American Express may obtain both consumer and commercial credit reports about you from a credit reporting body. We will use this information along with other information we hold about you (including Online Information) for purposes including:

- assessing your credit worthiness
- assessing this application
- collecting overdue payments
- American Express' internal management purposes relating to the provision or management of consumer credit or commercial credit as relevant
- helping you to avoid defaulting on your obligations with American Express
- to determine if you're ineligible for certain marketing offers from us
- for any other use in connection with your account as permitted under the Privacy Act 1988

American Express may disclose information about you to credit reporting bodies before, during or after credit is provided to you. This includes:

- that you have applied for a Card, including the account credit limit
- that American Express is a credit provider to you, including the type of credit, account opening and closing dates, and credit limit
- 24 months of repayment history on your Card account

- default information related to payments that are at least 60 days overdue (and advice that overdue payments have been paid in full)
- that you have committed a serious credit infringement
- that you have made a request to correct your personal information
- any other information as permitted under the Privacy Act 1988

American Express may exchange information about you with credit providers named in your application or in a credit report issued by a credit reporting body. Among other things, this is to:

- assess your credit worthiness, this application and any subsequent application for credit
- notify other credit providers of a default by you
- exchange information about your account when you are in default with other credit providers
- complete any approval process for any transactions you wish to make on your account
- administer your Card account
- notify that you have made a request to correct your account

American Express may also exchange credit information about you with any person considering whether to act as a guarantor in relation to this and future applications by you for credit.

For more information about how we use credit information, see our Credit Reporting Policy at [www.americanexpress.com.au/creditinfo](http://www.americanexpress.com.au/creditinfo).

### **Collection of personal information**

Generally, if you are applying for a Card account, we collect your personal details (such as name, date of birth and address), details about your employment, financial circumstances and other information relevant to your Card account.

American Express collects information about you in a number of ways, including:

- directly from you, such as in your credit application or when you enter one of our competitions or promotions
- from your use of our products and services, such as when you make a purchase using your Card account
- from your use of or access to American Express websites, mobile applications any of our other online services or products (such as your IP Address and location, device type and browser version) ('Online Information') – For more information about how we collect and use Online Information see our Online Privacy Statement at [www.americanexpress.com.au/privacy](http://www.americanexpress.com.au/privacy).
- from credit reporting bodies, as described above for credit information or for identity verification

- from people or companies named in your credit application (for example your employer)
- from other information providers and sources that we may contact to verify your identity and financial information (such as, data aggregators, companies that process or administer your superannuation contributions, payroll providers, financial institutions and government bodies and agencies).

### **Using personal information**

We may use the information we collect about you (including Online Information) on its own or combine it with other information to:

- deliver products and services, including:
  - for the same purposes as for credit information listed above
  - issuing your Card
  - verify your identify when you contact us
  - manage your Card account and your transactions
  - tell you about new features, benefits and updates to your accounts, products, and services
- advertise and market our products and services – and those of our business partners – including to:
  - send or provide you with marketing, promotions and offers
  - analyse whether our marketing, promotions and offers are effective
  - help us determine whether you may be interested in new products or services
- conduct research and analysis, including to:
  - better understand our customers
  - allow you to rate and review our products and services
  - produce data analytics, statistical research, and reports
  - review and improve our products and services and make them easier to use
  - develop new products and services
- manage fraud, security and credit risks, including to:
  - detect and prevent fraud or criminal activity
  - safeguard the security of your information
  - assess your credit worthiness, and make decisions about whether or not to approve your application for credit
  - to manage your existing accounts and credit limits
- verify your identify and your financial details, including to:



- verify your income;
- verify your identity and your identification documents.
- use it in other ways as required or permitted by law or with your consent

### **When we might share your Personal Information**

We do not share Personal Information with anyone except as described below. We only share Personal Information as required or as permitted by law as follows:

- people you authorise to use or access your account (for example, additional Card Members)
- with credit reporting bodies, for the same purposes as for credit information listed above
- the provider of any payment service you use to make payments to American Express
- with regulatory authorities, courts, and governmental agencies to check your identity, comply with legal orders, legal or regulatory requirements, and government requests and to detect and prevent fraud or criminal activity, and to protect the rights of American Express or others
- within the American Express Family of Companies
- with government agencies (such as official record holders or document issuers) to verify your identity;
- with other information providers and sources (such as, data aggregators, companies that process or administer your superannuation contributions, payroll providers and financial institutions) that we may contact to verify your identity and financial information.
- with Service Providers who perform services for us and help us operate our business (for example, card manufacturers, collection agents, mail houses and reward redemption partners). We require Service Providers to safeguard Personal Information and only use your Personal Information for the purposes we specify
- share and exchange information with business partners and co-brand partners with whom we jointly offer or develop products and services for marketing, planning, product development and research purposes (but they may not use your Personal Information - in particular your email address - to independently market their own products or services to you unless you provide your consent)
- with third parties in the context of a sale of all or part of the American Express Family of Companies or their assets
- any other purpose you have consented to

### **Aggregated and De-identified Information**

Aggregated or de-identified Information is not personal information and does not identify you individually; however, it may be derived from personal information. It helps us to analyse

patterns among groups of people. We may share aggregated or de-identified Information in several ways, for example:

- for the same reasons as we might share Personal Information
- with any Business Partners to help develop and market programs, products or services and present targeted content and marketing
- with Business Partners to conduct analysis and research about customers

### **Recording Phone Calls**

American Express may also monitor and record your telephone conversations with us for staff training and service quality control purposes.

### **Direct Marketing**

From time to time, American Express, its agents and business partners (including insurance companies) will send you and any additional Card Members information about products, services, offers and other promotions on offer from American Express or jointly with its business partner. These communications may be sent electronically (for example by email, mobile message or push notification), by phone or by post. You can opt-out from receiving direct marketing at any time by calling 1300 132 639. You can also adjust your communication preferences using our Online Preferences or opt-out of email marketing by clicking 'unsubscribe' in the footer of our emails. This will continue until you opt-out or until twelve months after you cease being an American Express Card member.

### **Transfer of your personal information and credit information overseas**

American Express is a global organisation and we may use international entities to help our business functions. As a result, American Express may need to share your information outside of Australia. It is impracticable for American Express to list out each and every country that we may share your information to, but such countries include the United States of America, Malaysia, India and the United Kingdom. American Express will ensure that any transfer of your personal information is subject to appropriate conditions of confidentiality to ensure your information is handled consistently with the Australian Privacy Principles.

### **How we store your personal information**

American Express stores personal information in a combination of secure computer storage facilities and paper-based files and other records. American Express has taken a number of steps to protect the personal information we hold from misuse, loss and unauthorised access, modification or disclosure. American Express uses generally accepted technology and security so that we are satisfied that your information is transmitted safely to us through the internet or other electronic means. American Express will take reasonable steps to securely destroy or permanently de-identify personal information when we no longer need it.

### **Information about other persons**

If you provide personal information about someone else to American Express, you must make sure that the individual has seen, understood and agreed to:

- their personal information being collected, used and disclosed by American Express in accordance with this notice
- their ability to access that information in accordance with the Privacy Act 1988 and to advise American Express if they think the information is inaccurate, incomplete or out-of-date
- the contact details of the American Express Privacy Officer

### **Complaints, Access and Corrections**

We endeavour to provide you reasonable access to the personal information we hold about you where it is legal, reasonable and feasible for us to do so. There is no fee to request access to your personal information, however we may charge a fee to collate and provide your personal information with your consent.

If you think any of the information we hold about you is inaccurate, incomplete or out-of-date, you can ask us to update it or correct it.

To request access to your personal information, request a correction or make a complaint, please call us on 1300 132 639 or write to:

The Privacy Officer  
American Express Australia Limited  
GPO Box 1582  
SYDNEY NSW 2001

In the event we refuse to give you access to your personal information, or do not consider that your information needs correcting we will provide you a written explanation of our decision and your options of review. You may ask us to include a statement alongside your personal information which says that you think your personal information is inaccurate, incomplete, misleading or out of date.

Where you make a complaint we will confirm in writing that it has been received by us within seven days. We endeavour to resolve your complaint within 30 days and where we are unable to we will contact you to explain why and request more time.

Where you are unsatisfied with the way we have handled your complaint you may escalate your complaint to the Australian Financial Complaints Authority (AFCA) who facilitates a free dispute resolution service. AFCA will generally ask if you have tried to resolve the issue with us first. You may contact AFCA on 1800 931 678, through [www.afca.org.au](http://www.afca.org.au) or at GPO Box 3, Melbourne, VIC, 3001.

American Express Australia Limited (ABN 92 108 952 085).

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## **Schedule 1 – Definitions**

**Account** means the business loan account that we maintain for your Loan.

**Additional Payments** has the meaning given in clause 7.2 of these Terms and Conditions.

**AML-CTF and Sanctions Laws** means any anti-money laundering, counter-terrorism financing or economic or trade sanctions laws or regulations.

**Direct Debit and Credit Request Service Agreement** means the separate agreement completed by you during the Loan application, and as amended by you from time to time, to provide American Express with the request and authority to debit and credit your nominated Australian financial institution.

**Guarantee** means the Guarantee and Indemnity given by the Guarantor (specified in the Loan Details) pursuant to section 11 of these Terms and Conditions.

**Loan** means the business loan that you applied and have been approved for pursuant to this Agreement.

**Loan Details** means the separate document (titled “American Express Business Loan Agreement - Loan Details”) issued to you that sets out, among other things, the key terms of your Loan, including the applicable interest rate, the term of the Loan, and any fees and charges.

**Missed Payment Fee** means the amount of \$30, payable by you.

**Nominated Account** means the Australian bank account held at your financial institution as nominated in the Direct Debit and Credit Request Service Agreement, or as otherwise nominated by you.

**Business Loans Online Account** means a secure website maintained by us where you can access information about your Account and Loan.

**Scheduled Payments** has the meaning given in clause 6 of these Terms and Conditions. The relevant amount is specified in the Loan Details (subject to any variations per these Terms and Conditions, for instance if you make an Additional Payment).