

A photograph of a person's hand holding the handles of three black shopping bags. The person is wearing a dark green t-shirt and dark blue trousers. The background is a blurred indoor setting with warm lighting.

Card Acceptance for American Express

AMERICANEXPRESS.CO.NZ/MERCHANT

Terms & Conditions

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This Agreement forms the basis of your affiliation with American Express.

Please read carefully and retain for your records.
Edition October 2020

TERMS AND CONDITIONS FOR AMERICAN EXPRESS CARD ACCEPTANCE

1. GENERAL PROVISIONS

- a. **Scope.** This Agreement (which we may amend from time to time) governs your acceptance of American Express® Cards and any Third Party cards in New Zealand. You agree to cause your Affiliates to comply with this Agreement.
- b. **Merchant Regulations.** The *Merchant Regulations* set forth certain policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the *Merchant Regulations*. The *Merchant Regulations* are a part of, and are hereby incorporated by reference into, the Agreement. The *Merchant Regulations* and releases of scheduled changes therein are provided in electronic form on our website at www.americanexpress.com/InternationalRegs. We reserve the right to make changes to the *Merchant Regulations* and accompanying schedules and exhibits to the Agreement at any time as set forth in [Section 15 f](#). You agree to be bound by and accept (and shall cause your Affiliates to agree to be bound by and accept) all provisions in the *Merchant Regulations* and accompanying schedules and exhibits to the Agreement.
- c. **Definitions.** Frequently used terms are defined in [Schedule A – Definitions](#) of this Agreement.
- d. **Accepting these Terms.** By accepting our Cards you agree to be bound by this Agreement. If you do not accept the terms and conditions of this Agreement, you must not accept the Card or submit Charges to us or continue to display American Express materials but must notify us immediately and return all American Express materials to us.
- e. **Promotional Materials.** You agree to prominently display American Express signs, decals or other identification prominently at all points of purchase (including in-store and online) of your Establishment(s) for the duration of this Agreement, unless otherwise agreed with us.
- f. **Information about your Business.** You must provide to us a list of your Establishments, and notify us of any subsequent changes in the list, including any change in the premises at which you accept the Card. You agree to advise us immediately of a change of ownership or any other significant change to the way you or your Affiliates carry on business which could impact the way we provide services to you under this Agreement.
- g. **For Your Use Only.** This Agreement covers only you. You must not obtain Authorisations, submit Charges or Credits, or receive payments on behalf of any other party.
- h. **Joint and Several Liability.** You are jointly and severally liable for the obligations of your Establishments under this Agreement.

2. ACCEPTING THE CARD

- a. **Acceptance.** You agree to accept all valid Cards in accordance with this Agreement and without discrimination, as payment for goods and services sold at all of your Establishments.
- b. **Communicating Payment Methods.** Whenever you communicate the payment methods you accept to customers, you must indicate your acceptance of the Card and any Third Party Products (if applicable), and display our Marks according to our guidelines, as prominently and in the same manner as Other Payment Products without discrimination.
- c. **Honouring the Card.** You must not, directly or indirectly,:
 - (i) try to dissuade Card Members from using the Card;

- (ii) criticise or mischaracterise the Card or any of our services or programmes;
 - (iii) try to persuade or prompt Card Members to use any Other Payment Products or any other method of payment (e.g. payment by cash);
 - (iv) promote any Other Payment Products (except your own card that you issue for use solely at your Establishments) more actively than you promote the Card;
 - (v) make Card Members feel unwelcome or embarrassed if they wish to use the Card;
 - (vi) charge the Card Member any additional fees or surcharges in excess of the fees or surcharges you apply to other credit cards;
 - (vii) engage in activities that harm our business or brand; or
 - (viii) impose any restrictions or conditions on the use or acceptance of the Card that you do not impose equally on Other Payment Products, or otherwise financially discriminate against the Card or Card Member.
- d. **Prohibited Uses.** You must not accept the Card for purposes of transactions other than bona fide purchase by Card Members of goods and services from you. This means, by way of example and not limitation, that you must not accept the Card for:
- (i) damages, losses, penalties, or fines of any kind;
 - (ii) costs or fees over the normal price of your goods or services (plus applicable taxes) or Charges that Card Members have not specifically approved;
 - (iii) overdue amounts, or amounts covering returned or stop- payment cheques;
 - (iv) gambling goods or services;
 - (v) adult digital content sold via the internet;
 - (vi) cash back or cash equivalents;
 - (vii) sales made by third parties;
 - (viii) amounts that do not represent bona fide sales of goods or services at your Establishments, e.g., purchases at your Establishments by your owners (or their family members) or employees or any other person contrived for cash flow purposes;
 - (ix) Goods or services for which the provision is illegal under laws applicable to us, you, or the Card Member (e.g., drug trafficking, online/internet sales of prescription medications, sales of any goods that infringes the rights of the rights-holder); or
 - (x) other items of which we notify you.

3. PAYMENT FOR CHARGES

- a. **Payment Amount.** We will pay into your Account according to your payment plan the face amount of Charges submitted from your Establishments less:
- (i) the Merchant Service Fee (excluding GST) and/or any other applicable fee;
 - (ii) any taxes or duties we are or become liable to pay in respect of any supplies made to you;
 - (iii) applicable deductions, withholdings or any amounts you owe us under this Agreement or any Other Agreement;
 - (iv) any amounts for which we have Full Recourse; and

- (v) any Credits you submit.

All payments will be made in Local Currency, unless otherwise agreed by us. We have no obligation to pay any party other than you under this Agreement.

- b. **Fees.** Your Merchant Service Fee is indicated in the Application, this Agreement or otherwise provided to you by us. We reserve the right to change our Merchant Service Fee from time to time and to charge a different Merchant Service Fee for Charges submitted by your Establishments that are in different industries. Additional fees that apply to you are set out in this Agreement or shall be notified to you from time to time. We reserve the right to charge interest on any late payments owing on your Account.
- c. **Direct Debit.** You must provide us with authority to direct debit your Account for all amounts that you become liable to pay us under this Agreement. We may deduct any amount owing, including interest, from your Account in accordance with any existing direct debit arrangements, or to invoice you for such amount, in which case you agree to pay the invoiced amount together with late payment interest within seven (7) days.
- d. **Notice of Error or Omission.** You must notify us in writing of any error or omission in respect of your Merchant Service Fee or other fees or payments for Charges or Credits within one hundred and eighty (180) days of the date of the statement containing such claimed error or omission or we will consider the statement to be complete and correct in respect of such amounts. We shall not be liable for any delayed or misdirected payment to you if you have not promptly provided us with updated or changed banking information.
- e. **Payments in Error.** If we determine at any time that we have paid you in error, we may exercise Full Recourse to recover such erroneous payment. If you receive any payment from us not owed to you under this Agreement, you must immediately notify us (by calling our telephone service centre) and if applicable your Processing Agent and return such payment to us promptly. Whether or not you notify us, we may withhold future payments to you or debit your Account until we fully recover the erroneous payment.
- f. **Collecting from Card Members.** You must not bill or collect from any Card Member for any purchase made on the Card unless we have exercised Full Recourse for such Charge, you have fully paid us for such Charge, and you otherwise have the right to do so.
- g. **Payment Withholding Obligations.** We have the right to withhold on payments to you and/or remit such funds to the applicable government agency in order to comply with all laws of the United States of America and any other jurisdiction applicable to American Express and/or its Affiliates, including, without limitation, U.S. tax laws.

4. FULL RECOURSE

- a. **When Full Recourse Applies.** All our payments are subject to our right of Full Recourse. We have rights to Full Recourse:
- (i) whenever a Card Member informs us of a Disputed Charge or has rights under law to withhold payments;
 - (ii) in cases of actual or alleged fraud relating to Charges;
 - (iii) where an Establishment is subject to our Fraud Full Recourse Programme (see below);
 - (iv) if you do not comply with this Agreement including all procedures in the Schedules; or
 - (v) as specifically provided elsewhere in this Agreement. We shall give you prior notice if we take action under this clause. Our right of Full

Recourse remains even if we had notice of the above facts when we paid you.

- b. **How We Exercise Full Recourse.** We will recover the full amount of each Charge that is subject to Full Recourse by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Account); notifying you of your obligation to pay us in which case you must pay within seven (7) days of any notification; or reversing a Charge for which we have not paid you. Our failure to demand payment does not waive our rights to Full Recourse.
- c. **Fraud Full Recourse Programme.** We may put you or any of your Establishments onto a Fraud Full Recourse programme for all Charges, or charge you a fee or create a Reserve, if an Establishment experiences a disproportionately high number or amount of fraud relative to your prior history or industry standards or you are in the internet electronic delivery or automated fuel dispensers industry. We reserve the right to add additional business categories to this list from time to time. If you are on the Fraud Full Recourse programme, we will have the right to Full Recourse for all Charges which are for any reason uncorrectable due to fraud. We are not obliged to contact you first or give you the opportunity to provide a written response to any dispute for which we have exercised this right. We will have this right even if we had notice of such defect at the time of payment, you have received an Authorisation and have complied with all other provisions of the Agreement.

5. SECURITY

- a. **Protective Actions.** You acknowledge that your entry into this Agreement provides a direct financial benefit to you and your Affiliates. Accordingly, we shall be entitled to take reasonable actions which we consider necessary if there is a risk that you will be unable or unwilling to perform your contractual obligations to us under this Agreement or any Other Agreement. In particular, we shall be entitled to:
- (i) change the speed or method of payment for Charges,
 - (ii) change your Merchant Service Fee or payment plan,
 - (iii) exercise Full Recourse,
 - (iv) suspend or stop any payments to you,
 - (v) change the Floor Limit,
 - (vi) introduce additional Authorisation procedures
 - (vii) charge you fees for Disputed Charges, or
 - (viii) create a Reserve.
- b. **Creating a Reserve.** If we believe that we need to create a Reserve, we may do so immediately by
- (i) withholding amounts from payments we otherwise would make to you under this Agreement; or
 - (ii) require you to deposit funds or other collateral with us. Such amounts or funds are called a "Reserve". The amount of the Reserve may change from time to time, and we will only hold an amount that we consider to be reasonable and necessary to cover our financial exposure or risk to us or our Affiliates under this or any Other Agreement. Some of the events that may cause us to establish a Reserve include:
 - (A) your ceasing a substantial portion of, or adversely altering, your operations;
 - (B) your selling all or substantially all of your assets or any third party acquiring 25% or more of the equity interests issued by you;

- (C) your suffering a material adverse change in your business;
- (D) your becoming insolvent;
- (E) our receiving a disproportionate number or amount of Disputed Charges at your Establishments;
- (F) our reasonable belief that you will not be able to perform your obligations under this or any Other Agreement; or
- (G) you become subject to any protective action by any third party with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products.
- (H) you change your physical location and/or ownership or any other significant change to the way you conduct your business, which could impact the way we provide services to you under this Agreement.

You agree to notify us immediately upon the occurrence of any of the events described above.

- c. **Set-Off.** We shall be entitled to deduct and withhold amounts held by us (including but not limited to payments for Charges, deposits, or the Reserve) or any other indebtedness and liability owed by us to you, and offset these amounts against any actual or contingent debts, obligations, debit balances or amounts owing by you or any of your Affiliates to us or any of our Affiliates under this or any Other Agreement. We may do so without prior notice to you.
- d. **Related Entities.** If you are a corporation or a partnership, you further agree that we may deduct, withhold and offset any amounts your directors and/or partners owe to us or to any of our Affiliates from any amounts we or our Affiliates owe to you or to any of your Affiliates under this or any Other Agreement.
- e. **Providing Information.** You must provide to us promptly, upon request, information about your finances, creditworthiness and operations, including your most recent certified financial statements.

6. NOTICES

- a. **Notifying us.** Communications shall be in writing and sent via the methods set out in Paragraph 6.b. Notices sent to us will be processed in accordance with our policies and procedures which may require you to provide us with additional information or documentation to be effective.
- b. **Our Notice Address.** Unless we notify you otherwise, you will send notices to us at:
- American Express International (NZ), Inc.
Attention: Global Merchant Services
Jarden House, Level 5,
21 Queen Street, Auckland, 1010
- c. **Notices to you.** You agree that we may notify you in person, in writing or electronically, depending on the nature of the matter being notified. You must notify us prior to any change in your notice address. For the purposes of this clause, "electronically" means an email communication to your nominated business email address, an email via our secure merchant website (OMS), statement message or by making particulars of the change(s) available via our website www.americanexpress.co.nz/merchant.

7. INDEMNIFICATION AND LIMITATION OF LIABILITY

- a. **Indemnity.** You will indemnify and hold harmless us, any Third Party, and our Affiliates, licensees, successors and permitted assigns from and against all damages, liabilities, losses, costs, and expenses, including and

legal fees or financial penalties imposed by a government or industry body, arising or alleged to have arisen from or in connection with your breach or failure to perform under this Agreement (Indemnity Obligations). Your Indemnity Obligations will also apply to failure in the provision of your goods or services, any act or omission done wilfully, recklessly or negligently by you, your employees or agents, any promotion or marketing of any goods or services sold by you, or any violation by you, your employees, agents or contractors of this Agreement or any applicable laws or regulations. This indemnity shall remain in force after termination.

- b. **Limitation of Liability.** We (including a Third Party), our Affiliates, successors or assigns will not be liable to you for any malfunction, unavailability or failure of, or delay in processing through, any point of sale terminal, direct payment service, direct connection or other devices or associated equipment operated by us or others which is beyond our reasonable control. Neither of us will be responsible or liable to the other for any incidental, indirect, speculative, consequential, special, punitive or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other source of law) howsoever arising out of or in connection with this Agreement. Neither you nor we will be responsible to the other for damages arising from delays or problems caused by telecommunications carriers or the banking system. Any events described in this provision shall not impair our rights to Full Recourse or to create Reserves pursuant to this Agreement.

8. TERM AND TERMINATION

- a. **Effective Date/Termination Date.** This Agreement begins as of the date:
- (i) you first accept the Card after receipt of this Agreement or otherwise indicate your intention to be bound by this Agreement, or
 - (ii) we approve your Application, whichever occurs first. This Agreement shall continue unless and until terminated by either party by giving not less than thirty (30) days written notice.
- b. **Termination for Breach.** Either party may terminate for any material breach not remedied within thirty (30) days after written notice from the other party specifying such breach.
- c. **Other Events That May Cause Termination.** We may terminate this Agreement immediately upon the occurrence of any of the following events:
- (i) you default in your obligations under this or any Other Agreement
 - (ii) we have reason to believe that you are involved in fraudulent or illegal business transactions or activities;
 - (iii) you are wound up, dissolved, liquidated, made bankrupt, or any trustee in bankruptcy, receiver, monitor, liquidator or any other officer with similar powers is appointed in respect of you, or you make or agree to any filing or arrangement for the purposes of protection from creditors;
 - (iv) You default under any agreement with respect to any indebtedness or other obligation to any person other than us which results in the acceleration of such indebtedness or obligation or the right of such person to realise upon any of your property and/or
 - (v) any event or series of events occurs that in our opinion impairs your prospects of performing your obligations under this or any Other Agreement.

You agree to notify us within 24 hours if any of the above events occur. We will notify you as soon as reasonably practicable of our termination

under this clause. Notices of termination shall be effective immediately upon receipt. If you continue to accept Charges after we notify you of termination, we may not pay you for those Charges.

- d. **Inactive Account.** If you have not submitted a Charge within any period of twelve (12) consecutive months, we will deem this an offer by you to terminate this Agreement, which we may accept by blocking your access to our services under this Agreement. We reserve the right to notify your point of sale terminal provider of termination of this Agreement. An offer to terminate under this clause does not preclude you from exercising any other rights of termination you may have under this Agreement.
- e. **Post-Termination.** If this Agreement terminates, we may create a Reserve in relation to all amounts owing to us and our Affiliates. You and your successors and permitted assigns will remain liable for any unpaid amounts immediately upon termination. You must also remove all displays of our Marks and any Third Party Marks, return our materials and equipment immediately, and submit to us any Charges and Credits incurred prior to termination.
- f. **Surviving Provisions.** All obligations of a continuing nature will survive termination or expiry of this Agreement. Our direct debit and set off rights will also survive until such time as all credits and debits permitted by this Agreement, and relating to transactions prior to the effective date of termination, have been made.
- g. **Discontinuance of Accepting Third Party Products.** Notwithstanding anything in this Agreement, we may require you to discontinue acceptance of any Third Party Product at your Establishment(s).
- h. **Withdrawal of Acceptance.** We may:
 - (i) refuse to allow any Establishment to accept or continue to accept the Card or
 - (ii) suspend any Establishment's Card acceptance privileges, without notice and in our sole discretion, on a reasonable business basis, including legal or compliance risk, or risk of credit or fraud loss.

9. CONFIDENTIALITY AND PRIVACY

- a. **Confidentiality.** You must keep confidential and not disclose to any third party the terms of this Agreement and any information that you receive from us that is not publicly available relating to your relationship with American Express or its Affiliates, and your acceptance of the Card, including your Merchant Service Fee. You must take all steps necessary to prevent the transfer or disclosure of Card Member Information to any third party, and will not copy, reproduce or store in any form the names and addresses of Card Members for any reason.

Any Card Member Information is confidential and our sole property. Except as otherwise specified, you must not disclose Card Member Information, nor use it other than to facilitate Card transactions in accordance with this Agreement. You are responsible for ensuring that Card Member information remains secure in accordance with clause [10. Protecting Card Member Information](#), and our [Data Security Operating Policy](#).

- b. **Your Information Privacy Obligations.** You must:
- (i) comply with the Privacy Law (including the Privacy Act 1993); and any American Express privacy protocol we provide you with in respect of all Personal Information;
 - (ii) promptly follow any reasonable direction we give you in relation to Personal Information;
 - (iii) only use Personal Information for the purpose of this Agreement and not for any other purposes;

- (iv) ensure that only your authorised personnel have access to Personal Information and all relevant personnel are properly trained to meet the requirements of this Clause and the Privacy Law;
- (v) maintain complete and accurate records of your use, copying and disclosure of Personal Information and immediately produce these records and the records of the Personal Information on request to us or our authorised representative;
- (vi) provide reasonable assistance to us to enable us to resolve any inquiry or complaint relating to Personal Information; and
- (vii) immediately notify us if
 - (A) you know of or suspect unauthorised use, copying or disclosure of Personal Information;
 - (B) any law prevents or may prevent you from complying with this clause. In this clause, "Privacy Law" means the Privacy Act 1993 and any legal or regulatory requirement in New Zealand or elsewhere which relates to privacy or the protection of Personal Information and which American Express or you must observe. "Personal Information" means information about an individual which is collected or held by you in the course of performing this Agreement. This includes but is not limited to information about American Express Card Members.

c. **Consent to Collect, Use and Disclose Your Personal Information.** You agree that American Express will collect information about you, which may be used or disclosed as follows:

- (i) to our Affiliates, to other organisations which issue the Card or operate the Card service and to persons who have signed an agreement for the acceptance of the Card, in order to administer and service your account, process and collect Charges at your Establishment and manage any benefits or programmes in which you may be enrolled;
- (ii) to the extent permitted by law, to agents or subcontractors of American Express or to any other person for the purpose of fraud prevention in connection with card products;
- (iii) to the extent permitted by law, credit reference agencies which information may be shared or exchanged in assessing your applications for financial/credit facilities or for preventing fraud or tracing debtors;
- (iv) to the extent permitted by law, to credit reporting agencies, credit bureaus or any other person, corporation, firm or enterprise with whom you have or propose to have a financial relationship to carry out further credit checks (including contacting your financial institution);
- (v) to collection agencies and lawyers for the purposes of collecting debts due to American Express;
- (vi) as permitted by or to comply with legal or regulatory requirements;
- (vii) to analyse information about you and Charges at your Establishment to assist us in managing your account and authorising Charges, and to prevent fraud;
- (viii) monitor and/or record your telephone calls to us, either ourselves or by selected organisations, to ensure consistent servicing levels and account operation; and
- (ix) use other third party databases or references provided by you to obtain or verify information about your financial circumstances, your background or to identify you;
- (x) We will use your email address to enrol you in Online Merchant Services, send you occasional customer service messages and to

notify you of important information about your Merchant account. To learn more about how we use your information and protect your data privacy, please read our Privacy Statement at <https://www.americanexpress.com/nz/about-us/disclosures/privacy-statement>.

All of the above may be undertaken within and outside New Zealand in respect of any of your locations. This includes processing your information in the USA.

- d. **Use of Personal Information for Marketing Purposes.** By accepting the Card you agree to our use of your Personal Information for marketing purposes. This includes putting your name and contact details on marketing lists for the purposes of customer research, or developing or making offers to you (by mail, email, or telephone) about products or services, or having our Affiliates or selected third parties do so directly. We may obtain this information from your Application, from surveys and research, and/or from other external sources such as merchants or marketing organisations. We shall remove your name from any such list if you ask us to.
- e. **Collection and Disclosure to Government Agencies.** You acknowledge and agree that American Express' ultimate parent company is headquartered in the United States of America and, as such American Express is subject to the laws of that jurisdiction. You consent and agree to and shall provide to us all information and/or sign all necessary documents (including properly executed and valid, applicable U.S. Internal Revenue Service forms) that we require to allow us or our Affiliates to collect, use, and disclose information to comply, and maintain compliance, with all applicable laws of the United States of America and any other jurisdictions that are applicable to them, including, without limitation, U.S. tax laws.
- f. **Privacy Queries.** You may download a copy of the American Express Privacy Policy Statement, from our Merchant Services website. We will use your email address to enrol you in Online Merchant Services, send you occasional customer service messages and to notify you of important information about your Merchant account. To learn more about how we use your information and protect your data privacy, please read our Privacy Statement at <https://www.americanexpress.com/nz/about-us/disclosures/privacy-statement>. To request access to information about you held by us please write to: The Privacy Officer, American Express International (NZ) Inc., Jarden House, Level 5, 21 Queen Street, Auckland, 1010, P.O. Box 2909 Shortland Street, Auckland 1001. If you request, we will tell you what information we hold about you as required by law. If you believe that any information is incorrect or incomplete, you should write to us and we will correct it.

10. PROTECTING CARD MEMBER INFORMATION

- a. **Data Security.** You must comply with our Data Security Operating Policy, a copy of which is available within the *Merchant Regulations* and which we may amend from time to time. Under that policy you have additional (a) indemnity obligations if you suffer a data incident and (b) obligations based on your Card transaction volume, including providing to us documentation validating your compliance with the Payment Card Industry Data Security Standard performed by Qualified Security Assessors or Approved Scanning Vendors (or both, as defined in that policy). Your data security procedures for the Card shall be no less protective than for Other Payment Products you accept.
- b. **Data Sharing.** The information that you collect to facilitate the Charge must be provided directly to you by the Card Member and not from a third party. You must not share any Card Member Information obtained either from the Card Member at the point of sale or during Authorisation or Submission with any third parties other than your Covered Parties, without the express consent of the Card Member. At the point of sale,

you must clearly and conspicuously inform the Card Member which entity is making the offer of goods or services, so that the Card Member can clearly distinguish you from any other party involved in the sale.

11. INTELLECTUAL PROPERTY

- a. **Proprietary Rights.** Neither party has any rights in the other party's Marks, nor may one party use the other party's Marks without its prior written consent, except that we or a Third Party, if applicable, may use your name, address, (including your website addresses or URLs), and customer service telephone numbers in any media, including any promotional or other materials that we or such Third Party may issue. Additionally, you may not issue any press release or make any public announcement related to us, our Affiliates or this Agreement without our prior written consent. All Card Member Information is confidential and our sole property or the sole property of our Affiliates' third party licensees.
- b. **Permitted Uses of Amex Proprietary Information.** Except as otherwise specified, you must not disclose Card Member Information, nor use it other than to facilitate Card transactions in accordance with this Agreement. Where you mention the Card as a payment method, you must use the Marks, and as applicable, Third Parties' Marks that we have approved for your use. Once you have obtained our initial written approval to do so, you may refer to the Card as a payment method accepted by you in your advertising or other promotional materials without our case by case approval, so long as the reference is strictly limited to a listing of the Card as a payment method. You may use our Marks for such listing references so long as you have obtained and complied with our instructions regarding the proper use of our Marks. You may use Card Art strictly in connection with your use of Tokens for the purposes of displaying the Card Member their Card type. We reserve and will have the right in our discretion to refuse such listing references by you or to require you to obtain case by case written approval for them.
- c. **Permitted Uses of Your Proprietary Information.** We may refer to you and list details of each of your Establishments in guides, directories, or other lists of merchants warmly accepting the Card, or have our Affiliates or selected third parties do so on our behalf. You also agree that we may use your Marks for this purpose, so long as we have obtained and complied with your instructions regarding the proper use of your Marks.

12. REPRESENTATIONS AND WARRANTIES

You represent and warrant to us that:

- (i) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business;
- (ii) you have full authority and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due;
- (iii) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts hereunder;
- (iv) you are authorised to enter into this Agreement on behalf of your Establishments and Affiliates, including those indicated in this Agreement, and the individual who signs this Agreement or otherwise enters into it has authority to bind you and them to it;
- (v) you have not assigned to any third party any payments due to you under this Agreement;
- (vi) all indebtedness arising from all Charges submitted by you is genuine and free from liens, claims or encumbrances;

- (vii) all information that you provided in connection with this Agreement is true, accurate, and complete; and
- (viii) you have read this Agreement and kept a copy for your file. We reserve the right to terminate this Agreement for breach, if any of your representations or warranties becomes untrue, inaccurate or incomplete at any time, even if you have notified us.

13. DISPUTE RESOLUTION

- a. **Claims.** All Claims arising in connection with this Agreement, upon your or our election, shall be referred to and finally resolved by arbitration under the Arbitration Protocol Rules of the Arbitrators' and Mediators' Institute of New Zealand Inc, which Rules are deemed to be incorporated by reference into this clause. "Claim" means any claim (including initial claims, counter-claims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to this Agreement, including any question regarding its existence, validity or termination, or the relationship resulting from this Agreement, whether based in contract, tort (including negligence, strict liability and fraud), statutes, regulations or other body of law, but excluding any debt recovery action that we take against you in relation to any unpaid amounts owing to you pursuant to this Agreement.
- b. **Arbitration Procedure.** It is agreed that:
 - (i) the tribunal shall consist of one arbitrator;
 - (ii) the place of the arbitration shall be Auckland; and
 - (iii) the language of the arbitration shall be in English. The arbitrator will have the power and authority to grant equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, will grant specific performance whenever possible. The arbitrator will have no power or authority to alter this Agreement or any of its separate provisions, including this clause, nor to determine any matter or make any award except as provided in this clause.
- c. **Small Claims.** We will not elect to use arbitration under this clause for any individual Claim that you properly file in accordance with the special procedure for handling smaller claims in a local or county court, so long as the Claim is pending only in that court. Injunctive relief sought to enforce the confidentiality provisions of this Agreement will not be subject to the requirements of this clause.
- d. **Complaints.** If you have any complaints or problems in connection with this Agreement, please contact Customer Service on 0800 800 855.

14. TAX

- a. **Taxes.** Unless specifically stated, all amounts payable under this Agreement are exclusive of taxes, which if applicable, should be added to the amount payable, whether monetary or non-monetary consideration is provided. The following provisions shall apply in relation to Taxes:
 - (i) Taxes that are payable under this clause are due at the same time as any amount payable under the agreement is due.
 - (ii) If any payment under this Agreement is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the amount of any input tax credit the other party is entitled to claim is deducted from that payment;
 - (iii) Where amounts payable under this Agreement are in respect of a taxable supply, the parties will agree to issue a tax invoice in respect of the supply. Each Party shall otherwise be responsible for its own taxes arising in connection with this Agreement.

15. MISCELLANEOUS

- a. **Governing Law; Jurisdiction.** This Agreement will be governed and construed in accordance with the laws of New Zealand. The parties submit to the jurisdiction of the courts of New Zealand in relation to any dispute arising out of this Agreement.
- b. **Interpretation.** In construing this Agreement, unless the context requires otherwise:
- (i) the singular includes the plural and vice versa;
 - (ii) the term “or” is not exclusive;
 - (iii) the term “including” means “including, but not limited to”;
 - (iv) the term “day” means “calendar day”;
 - (v) any reference to any agreement (including this Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time;
 - (vi) all captions, headings, and similar terms are for reference only;
 - (vii) the term “may” (unless followed by “not”) shall mean “has the right, but not the obligation, to”;
 - (viii) unless otherwise noted, all amounts are in Local Currency.
- c. **Assignment.** You must not assign, novate, subcontract or transfer any of your rights or obligations under this Agreement, in whole or in part, without our prior written consent. We may assign, novate or subcontract any or all of our rights or obligations under this Agreement to any of our Affiliates or a Third Party. Except as otherwise specified herein, this Agreement binds the parties and their respective successors and permitted assigns.
- d. **Waiver.** Any failure to exercise any right, power or remedy under this Agreement or delay in enforcing any right, power or remedy shall not be deemed a waiver thereof. A waiver of our rights on any occasion will not constitute a waiver of such rights on any other occasion. No waiver of any term of this Agreement will be effective unless it is in writing and signed by us.
- e. **Severability.** If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall continue in full force and effect and shall be binding and effective on the parties hereto.
- f. **Amendments.** We may amend this Agreement at any time on at least ten (10) days prior notice to you. In the event of an immediate regulatory or security need to amend this Agreement, we will give you notice in advance of the change, or as soon as possible afterward. Your continued acceptance of the American Express Card constitutes your acceptance of the amended terms and conditions.
- g. **Force Majeure.** Neither party will be liable for any failure or delay in performance resulting from circumstances beyond their reasonable control including, without limitation, acts of God or nature; government intervention; power, communications, satellite or network failures; unauthorised access or theft; acts of terror; or labour disputes or strikes.
- h. **No Third Party Beneficiaries.** Unless otherwise provided for herein, this Agreement does not and is not intended to confer any rights or benefits on any person that is not a party to this Agreement.
- i. **Entire Agreement.** This Agreement is the entire agreement between us and supersedes any prior agreements, representations or understandings with respect to the subject matter hereof.
- j. **Compliance with Laws.** You agree to comply with all Laws that are applicable to you and your Affiliates.

SCHEDULE A – DEFINITIONS

Account means your designated bank account at a financial institution in New Zealand.

Affiliate means any legal entity or organisation that controls, is controlled by, or is under common direction, management or control with the relevant party, including its subsidiaries.

Agreement means this document, your Application, the *Merchant Regulations*, our Operating Policies and Procedures, the Specifications and any accompanying schedules and exhibits (which we may amend or supplement from time to time).

American Express (also **we, us, our**) mean American Express International (NZ), Inc., its related companies, agents and licensees that issue the Card or participate in the Card Service.

Application means the Merchant Card Acceptance form you have completed, signed and submitted to participate in the American Express Card service.

Authorisation means the process for obtaining approval for a Charge, as described in this Agreement.

Card and American Express Card means any card or account access capability issued by us, our Affiliates or an authorised Third Party.

Card Art means any picture, image, branding or information (e.g., website URL, phone number) related to a Card product provided as part of the Token Service.

Card Member means the person or entity whose name appears on the Card (or the holder of a Prepaid Card whose name may or may not be printed on the Card).

Card Member Information means any information about Card Members and Card transactions, including the names, addresses, account numbers, and card identification numbers.

Card Data includes the following elements: Card Member name, Card number, expiration date, Charge date, the amount of the Charge, the six-digit approval code, description of goods and services, your name, your address, your merchant number and if applicable the Establishment Number, Card Member signature (for Card Present transactions only), and all other information as required from time to time by us or applicable law.

Charge means a payment or purchase made on the Card.

Covered Parties has the meaning given in our Data Security Operating Policy.

Credit means the amount of the Charge that you refund to Card Members for purchases or payments made on the Card.

Disputed Charge means a Charge about which a claim, complaint, or question has been brought.

Electronic Commerce Indicator (ECI) – A data element related to American Express SafeKey (AESK) Charge.

Establishments means all places where you sell your goods and services, including your physical stores or office locations, online sites and mobile applications (including websites and mobile apps) and those of your Affiliates.

Establishment Number (sometimes called the “merchant” or “SE” number in our materials) is the unique number we assign to your Establishment; if you have more than one Establishment, we will assign to each a separate Establishment Number.

Floor Limit means a Charge amount above which you must obtain an Authorisation.

Fraud Full Recourse Program is a program that allows us to exercise Full Recourse without first sending an inquiry any time a Card Member disputes a Charge for any reason based on actual or alleged fraud.

Full Recourse when used as a verb, means (i) our reimbursement from you for the amount of a Charge subject to such right, or (ii) our reversal of a Charge for which we have not paid you; when used as a noun, means the amount of a Charge subject to reimbursement from you or reversal.

Laws means all laws, codes, guidelines, and the like, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles, regulatory requirements, statutory rules of an industry body, statutory and mandatory codes of conduct, writs, orders, injunctions, judgments, New Zealand generally accepted accounting principles and industry-wide non-statutory rules or obligations (including any guidance, frameworks or standards issued or promulgated by an industry body and any policies or process that we develop in response) in force and as applicable from time to time.

Local Currency means New Zealand Dollars.

Marks mean names, logos, service marks, trademarks, trade names, taglines, card art, design or imagery or other proprietary designations.

Merchant Regulations means the *American Express Merchant Regulations – International*, which are available at https://merchantharbor.americanexpress.com/internationalregulations/new?locale=en_NZ.

Merchant Service Fee is an amount we charge you for accepting the Card as set out in your Application or elsewhere in this Agreement.

Merchant Account means an account established with us upon entering into this Agreement.

Operating Policies and Procedures means any agreement (other than this Agreement) between you or any of your Affiliates and us or any of our Affiliates, or you and the Card Member.

Other Agreement means any agreement (other than this Agreement) between you or any of your Affiliates and us or any of our Affiliates, or you and the Card Member.

Other Payment Products means any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the Card.

PAN means the primary Card account number.

Personal Information has the meaning given to it under the Privacy Laws. Personal Information includes but is not limited to information you receive or access about American Express, Card Members or information we receive or access about you (if you are a person) and any individual employed by you whose details are provided to us as part of the Application or in the course of your acceptance of the Card.

Prepaid Card means a Card marked “prepaid” or bearing such other identifier that we notify to you.

Privacy Laws means the Privacy Act 1993 and all principles, codes and guidance issued under it by the Office of the Privacy Commissioner and any other legal or regulatory requirements in New Zealand or elsewhere which relate to privacy or the protection of Personal Information and which American Express or you must observe.

Processing Agent means a third party retained by you that we have approved to obtain Authorisation and submit Charges and Credits on your behalf.

Specifications means the set of mandatory, conditional, and optional requirements related to connectivity to the American Express network and electronic transaction processing, available upon request from your American Express representative, and includes the Token Specifications.

Transaction means a Charge or Credit completed by the means of a Card.

Taxes are defined to include but are not limited to Goods and Services Tax (GST) and all other taxes and duties levied or assessed in connection with a supply made under this Agreement. Words or expressions used with respect to the application of ‘GST’ have the same meaning as words defined in the New Zealand: Goods and Services Tax Act 1985.

Third Party means any other third party card issuer whose card (Third Party Product) you agree to accept under this Agreement.

Token means a surrogate value which corresponds to a PAN issued by us.

Token Data means data provided by us to you in connection with the Token Service including Card Art, as set out in the Token Specifications.

Token Specifications means the specifications set forth at <https://developer.americanexpress.com/products/amex-token-service/resources>.

You and **your** mean the legal entity or person accepting the Card under this Agreement, and its Affiliates conducting business in the same industry.

Other defined terms may appear in quotation marks or capitalized in the body of this Agreement.

SCHEDULE B – OPERATIONAL AND OTHER PROCEDURES

1. PAYMENT METHOD

- a. **Maintaining an Account.** You are required to maintain the Account for the purposes of this Agreement and you agree to provide us with the information we request regarding your Account. You agree to advise us immediately of any changes to your Account including a change to your financial institution. Your Account will be governed by your account agreement with the financial institution.
 - a.1. **Failure to Maintain an Account.** If your Account does not meet our requirements or we are otherwise unable to verify the bank account for the purpose of this Agreement, we may immediately suspend your Card acceptance privileges and we have the immediate right to hold your payments without interest until you provide us with acceptable bank account information and we are able to deposit your payments into such bank account.
- b. **Access to the Account/Electronic Funds Transfer.** You agree that we may access your Account for crediting and debiting purposes and agree to provide us with an authority to direct debit your Account. Your Authorisation to debit your Account applies to all fees, any payments improperly made to your Account, any amounts for which we exercised our rights to Full Recourse, and any other adjustments and fees covered by this Agreement and resulting from your transaction of business with us under this Agreement or under any Other Agreement.
- c. **Account Deposits.** We credit your Account for payments according to your payment plan so long as we receive your Charge submissions before the local cut-off time for that day at the processing centre
- d. **we designate for you, or on the next available business day if submissions are received after the cut-off time.** We will not be responsible if any such debit, credit or adjustment is not honoured by your financial institution or is improperly applied to your Account.
- e. **Improperly Applied Credits and Debits.** If any credit or debit is improperly made to the Account you authorise us to have such transaction reversed.

- f. **Returned Credits and Debits.** If any credits or debits we apply to the Account are not honoured or accepted for any reason by the financial institution at which the Account is maintained:
- (i) subject to [Paragraph 5.a.1.](#), we will provide you a credit after we receive notification of the rejected payment; and
 - (ii) we may offset such debits against future payments we are to make to you under this Agreement. If debits are greater than the payments, we will debit your Account in an amount up to the difference or you must pay us immediately upon notification by us of any amount owing.
- g. **Payment Plans.** We offer a number of payment plans from time to time, and you may choose any one for which you are eligible, including:
- Next Day Payment Plan: We initiate payment **one business day** after we receive and process Charges.
 - Three Days Payment Plan: We initiate payment **three business days** after we receive and process Charges.
 - Weekly Cheque Payment: We initiate payment **seven business days** after we receive and process Charges. A fee of NZ\$5.00 will be charged for each payment we make by cheque.

Some conditions may apply to your choice of payment plan, for example you may be required to submit electronically or we may need to carry out an inspection of your premises. Your initial choice of a payment plan is indicated in the Application Form, or otherwise notified to us giving 15 days' notice. It may take several days for us to implement any change to your payment plan. In the event that you fail to select a payment plan, then we will select a payment plan for you. We may amend the payment plans or offer other payment plans, and will notify you of their terms.

- h. **Statements.** We will provide you with a statement confirming credits and debits to your Merchant Account, normally in electronic format. If you choose to receive paper statements, we may charge you a fee.

2. POINT OF SALE EQUIPMENT

- a. **Use of Third Party Terminals.** Your use of terminals supplied to you by third parties for Card acceptance is subject to our approval. You must comply with any request from us to modify or discontinue your electronic submission of transaction data through use of a third party terminal. All costs and expenses associated with such modification shall be borne by you.
- b. **Liability.** We shall not be responsible for the operation of any third party terminal, including the quality of their operation, their ability to communicate properly with our computer systems, their maintenance, and any or all costs associated with them.
- c. **Terminating/Changing a Third Party Terminal.** You must give us at least 10 days prior written notice if you plan to cease submitting Card transaction data to us through an approved third party terminal (whether as a result of your desire to switch to terminals supplied by another third party or otherwise).

3. TOKEN SERVICE

- a. **Tokens.** We may give you access to receive Tokens from American Express to process Transactions instead of using a conventional PAN. In connection with your use of the Tokens, you must at all times with the Token Specifications and all business policies, operating procedures, technical manuals, implementation guides and bulletins issued by us relating to use and management of Tokens. You must not:

- (i) charge Card Members, Card issuers or any other third party fees in connection with the use of Tokens.
 - (ii) create Token vaults or enable or allow a Token to be associated or linked with a PAN in any way.
- b. **Token Authentication Keys.** You may only use the Token authentication keys ("Keys") as is strictly necessary under this Agreement. You:
- (i) must not disclose the Keys to any third party;
 - (ii) are responsible for all actions performed using the Keys;
 - (iii) must notify us immediately if you suspect any unauthorized access or use of the Keys.
- c. **Data Security Requirements for Tokens.** Token Data shall be deemed "Sensitive Authentication Data" for the purposes of the Data Security Operating Policy.
- d. **Terminating Token Access.** We may terminate your access to the Tokens at any time for any reason.



American Express International (NZ), Inc.
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Call your Merchant Services on: **0800-800-855**
or visit: www.americanexpress.co.nz/merchant

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