



# Terms and Conditions for American Express® Card Acceptance

This Agreement is by and between **Amex Bank of Canada**, a Canadian Bank, and **you, the Merchant**.

## General Provisions

### **1. SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS**

**a. Scope of the Agreement.** The Agreement constitutes your agreement to accept American Express® Cards in Canada. By accepting our Cards you agree to be bound by this Agreement. You must notify us if you have any Establishments outside of Canada and cause them to comply with the terms of an agreement with our Affiliate governing Card acceptance there.

**b. Other Parts of the Agreement.**

**i. Merchant Operating Manual.** The Merchant Operating Manual sets forth the policies and procedures governing your acceptance of the American Express Cards. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Operating Manual. The Merchant Operating Manual is a part of, and is hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Operating Manual (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Operating Manual in scheduled changes and at any time in unscheduled changes as set forth in Section 8.k of the General Provisions. The Merchant Operating Manual and releases of scheduled changes therein are provided in electronic form, existing at the website specified below in the definition of "Merchant Operating Manual" or its successor website. However, we shall provide you a paper copy of, or a CD-ROM containing, the Merchant Operating Manual or releases of scheduled changes therein upon your request. To order a copy, please call our Merchant Services Centre (telephone: 1.800.268.9877). We may charge you a fee for each copy that you request.

**c. Definitions.**

Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Operating Manual. Some definitions are repeated here for ease of reference.

*Affiliate* means any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute "control" of the Entity.

*Agreement* means the General Provisions, the Merchant Operating Manual and any accompanying schedules and exhibits, collectively (also referred to as the Card Acceptance Agreement).

*American Express Card or Card* mean (i) any card, account access device, or payment device or service bearing our or our Affiliates' Marks and issued by an Issuer or (ii) a Card Number. Card also includes any card or other account access device or service issued by a Third Party Issuer and bearing such Third Party Issuer's name or Marks, but not the Marks of American Express, such as JCB cards.

*Cardmember* means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.

*Charge* means a payment or purchase made on the Card.

*Chargeback*, 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. (Chargeback is sometimes called "full recourse" or "Full Recourse" in our materials.)

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

*Discount* and *Discount Rate* mean an amount that we charge you for accepting the Card, which amount is: (i) a percentage (Discount Rate) of the face amount of the Charge that you submit; or a flat per-Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).

*Entity* means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

*Establishments* means any or all of your and your Affiliates' locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that you adopt in the future.

*General Provisions* means the provisions set out in the Agreement, other than the provisions in the Merchant Operating Manual or any accompanying schedules or exhibits hereto.

*Marks* mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

*Merchant Number* means a unique number we assign to your Establishment.

*Merchant Operating Manual* means the American Express Merchant Operating Manual which is available online and can be accessed by entering your Merchant Number. Access the Merchant Operating Manual at the American Express Merchant homepage at: [americanexpress.ca/merchant](http://americanexpress.ca/merchant).

*Other Agreement* means any agreement, other than the Agreement, between (i) you or any of your Affiliates and (ii) us or any of our Affiliates.

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

*Prepaid Card* means a Card marked "prepaid" or bearing such other identifier used by American Express from time to time.

*Reserve* means a fund established and/or collateral held by us as security for your or any of your Affiliates' obligations to us or any of our Affiliates under the Agreement or any Other Agreement.

*Third Party Issuer* means a third party Card Issuer whose Cards are accepted by the Merchant under the Agreement.

*We, our, and us* mean Amex Bank of Canada.

*You and your* mean the Entity accepting the Card under the Agreement, and (as applicable) its Affiliates conducting business in the same industry. (Sometimes called the "Merchant", "Service Establishment", or "SE" in our materials).

**d. List of Affiliates, Notification of Establishments.** You must provide to us a complete list of your Affiliates conducting business in your industry and notify us promptly of any subsequent changes in the list. You must notify us promptly if you have any Establishments in the United States (the U.S.), Puerto Rico, the U.S. Virgin Islands, or in any other U.S. territory or if you

have any Establishments in another area where the U.S. dollar is the local currency (together the U.S. and U.S. Dollar Territories), as our Discount, fees, and payment terms for Card acceptance may be different there. We shall notify you of those terms and you will cause your Establishments in the U.S. and U.S. Territories to comply with the terms of an agreement with our Affiliate governing Card acceptance there.

**e. For Your Use Only.** This Agreement covers only you. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party except as otherwise expressly permitted in the Merchant Operating Manual.

## 2. ACCEPTING THE CARD

**a. Acceptance.** You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Operating Manual. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Operating Manual are reasonable and necessary to protect the Cardmember's choice of which Card to use and that charge and credit Cards, including corporate Cards, are interchangeable. You are responsible and jointly and severally liable for performance by your Establishments of all provisions of the Agreement and all obligations of your Establishments under the Agreement.

**b. Transaction Processing and Payments.** Our Card acceptance, processing, and payment requirements are set forth in the Merchant Operating Manual. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Operating Manual.

**i. Format.** You must create a Charge Record for every Charge and a Credit Record for every Credit that comply with our Technical Specifications, as described in the Merchant Operating Manual. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.

**ii. Authorization.** For every Charge, you must obtain from and submit to us an Authorization Approval code. An Authorization Approval does not guarantee that (i) the person making the Charge is the Cardmember, (ii) the Charge is in fact valid or bona fide, (iii) you will be paid for the Charge, or (iv) you will not be subject to Chargeback.

**iii. Submitting Charges and Credits.** Your Establishments in Canada must submit Charges and Credits to us in Canadian dollars. You must submit all Charges to us within seven days of the date they are incurred. You must not issue a credit when there is no corresponding Charge. You must issue Credits to the Card used to make the original purchase, except as otherwise expressly specified in the Merchant Operating Manual.

**iv. Payment for Charges.** We will pay you according to your payment plan in Canadian dollars for the face amount of Charges submitted from your Establishments in Canada less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Your initial Discount is indicated in this Agreement or otherwise provided to you by us. In addition to the Discount, we may charge you additional fees and assessments for accepting Cards as listed in the Merchant Operating Manual or as otherwise provided to you in writing by us. We may adjust any of these amounts and may charge you new fees and other amounts for accepting the Card. We will provide you with at least 90 days notice of any increase to your current fees and assessments or if we add a new fee or assessment unless the increase is made in accordance with a pre-determined fee schedule as part of this Agreement.

**v. Chargeback.** We have Chargeback rights, as described in the Merchant Operating Manual. We may Chargeback by (i) deducting, withholding, recouping from, or offsetting against our payments to you or debiting your Bank Account, or we may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our failure to demand payment does not waive our Chargeback rights.

**vi. Protecting Cardmember Information.** You must protect Cardmember Information as described in the Merchant Operating Manual. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI DSS.

## 3. PROTECTIVE ACTIONS

**a. Creating a Reserve.** Regardless of any contrary provision in this Agreement, we have the right in our sole discretion to take security for your or any of your Affiliates' obligations to us or any of our Affiliates, under this Agreement or any Other Agreement. In addition to the foregoing, we may at any time in our sole discretion establish or increase a reserve to be held by us in our account (the "Reserve"). In order to fund or replenish the Reserve, we may at any time in our sole discretion: (i) withhold amounts that would otherwise be owing to you under this Agreement or under any Other Agreement; or (ii) require you to provide funds to us.

**b. Trigger Events for Reserve.** Without derogating from our right to establish a Reserve at any time, some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties currently owning 25% or more of such interests), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business or a material adverse change occurring in your industry; (iv) your breach of Section 3.d of the General Provisions; (v) your becoming insolvent; (vi) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; (vii) our reasonable belief that you will not be able to perform your obligations under the Agreement, under any Other Agreement, or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to you, (B) requires you to make a direct payment into a reserve account or similar device, or (C) requires you to provide such Entity with a letter of credit or other third-party guarantee of payment.

**c. Setting-Up a Reserve.** If we need to create a Reserve, then we may immediately establish a Reserve or terminate this Agreement. We will inform you if we establish a Reserve. We may increase the amount of the Reserve at any time as long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under this Agreement (including from Charges submitted by you for goods or services not yet received by Cardmembers) or to us or our Affiliates under any Other Agreement, or to Cardmembers.

**d. Providing Information.** You must provide to us promptly, upon request, information about your finances, creditworthiness and operations, including your most recent certified financial statements.

**e. Set-Off.** We may at any time and from time to time, without notice to you, without demand for payment and without any other formality, set-off, appropriate and apply any and all Charges, deposits, and other amounts (including without limitation the Reserve) held by us or any other indebtedness and liability owed by us to you, against and in reduction of any debts, obligations or amounts owing by you to us including, without limitation, pursuant to this Agreement or any Other Agreement, and in such order of application as we may from time to time determine. Without limiting the generality of the foregoing, we may at any time and from time

to time without notice to you, without demand for payment and without any other formality, set off and apply any and all indebtedness at any time owing by us to or for the credit of or the account of you or your Affiliates (including the Reserve held by us) against and on account of: (i) any amounts you or any of your Affiliates owe to us or any of our Affiliates under this Agreement or any Other Agreement; (ii) any costs incurred by us in connection with the administration of the Reserve, including legal fees; or (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including legal fees.

We may take other reasonable actions to protect our rights or those of any of our Affiliates, including changing the speed or method of payment for Charges, exercising immediate Chargeback under any of our Chargeback programs, offsetting any amounts due to you under the Agreement against amounts that you owe us or our Affiliates under the Agreement or any Other Agreement, or charging you fees for Disputed Charges.

**f. Security Interest.** As general and continuing security for the payment and performance of any and all obligations owing by you or your Affiliates to us of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising whether under this Agreement, any Other Agreement or otherwise (collectively, the "Obligations") and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, you hereby grant and assign to us, and agree that we shall have, a continuing, specific and fixed first priority security interest in all of your present and after acquired property, assets, rights and interests whether now owned or existing or hereafter acquired or arising and wherever situate (the "Secured Property"). The parties agree that the security interest created hereunder shall operate as a present, attached, fixed and specific assignment, charge of and security interest in any and all of the Secured Property now owned or hereafter acquired by you, upon the execution by you of this Agreement. The security hereby constituted shall become enforceable upon the occurrence of any of the events described in Section 6 below.

#### 4. NOTICES

**a. Delivery and Receipt.** Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand delivery; or by first class mail, postage prepaid; or by expedited mail courier service or by electronic mail (email); or by facsimile transmission, to the addresses set out below. Notices will be deemed received and effective according to the following: a) upon delivery, if hand-delivered; b) upon the earlier of (i) the next business day after being sent or (ii) upon receipt, if sent by email or facsimile transmission; or c) upon the earlier of (i) three days after mailing or (ii) receipt, if mailed. 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. If the addressee provided for below rejects or otherwise refuses notice or if notice cannot be delivered because the address for notice has changed but to which delivery of notice was attempted, then notice is effective upon the rejection, refusal or attempt to deliver.

**b. Our Notice Address.** Unless we notify you otherwise, you will send notices to us at:

Amex Bank of Canada  
Merchant Services  
2225 Sheppard Avenue East, Suite 100  
Toronto, Ontario M2J 5C2  
Attention: Vice President, Client Management  
Fax: 1.800.909.4511  
Email: [MerchantServicesOnline@aexp.com](mailto:MerchantServicesOnline@aexp.com)

**c. Your Notice Address.** We will send notices to you at the address, email address, or facsimile number you indicated on your application to accept the Card. You must notify us immediately of any change in your notice address.

#### 5. INDEMNIFICATION AND LIMITATION OF LIABILITY

**a. Indemnity.** You shall indemnify, defend, and hold harmless us, any Third Party Issuer, and our Affiliates, successors, assigns and third party licensees from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from your breach, negligent or wrongful act or omission, failure to perform under the Agreement, or failure in the provision of your goods or services.

**b. Limitation of Liability.** In no event shall we (including a Third Party Issuer), or our Affiliates, successors or assigns be liable to you 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 theory) arising out of or in connection with the Agreement, even if advised of such potential damages. 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, except that our rights to create Reserves and exercise Chargebacks will not be impaired by such events.

#### 6. TERM AND TERMINATION

**a. Effective Date/Termination Date.** The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement, or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in Section 4.a of the General Provisions.

**b. Grounds for Termination.** In addition to our rights in Sections 3.c and 6.a of the General Provisions, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve (12) month period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

**c. Post-Termination.** If the Agreement terminates, without waiving our other rights and remedies, we may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty (30) days of our request. You must also remove all displays of our Marks and any Third Party Issuer Marks, return our materials and equipment immediately, and submit to us any Charges and Credits incurred prior to termination.

**d. Surviving Provisions.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of Sections 1, 3, 5, 6, 7, and 8 of the General Provisions, our Chargeback rights, and your duties set forth in the Merchant Operating Manual to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our right of direct access to the Bank Account 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.

**e. Events That May Cause Termination.** In addition, we reserve our right to terminate the Agreement immediately without notice to you, and all obligations or debts owed by you under the Agreement shall be due and payable in full, upon the occurrence of any of the following events: (i) You default in your obligations under this Agreement or on payment when due of any of the debts or obligations hereunder; (ii) If we have reason to believe, in our sole discretion, that you are involved in any way in fraudulent or illegal business transactions or activities; (iii) If you are wound up, dissolved



or liquidated or if any trustee in bankruptcy, receiver, monitor or liquidator or any other officer with similar powers is appointed in respect of you, or you become insolvent or bankrupt or make or agree to any filing 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 realize upon any of your property; or (v) We in good faith believe the prospect of payment or performance of the obligations under the Agreement is impaired. You agree to notify us within 24 hours if any of the events described in subsections (iii) or (iv), above, occur.

**f. Discontinuance of Accepting Third Party Issuer Products.** Notwithstanding anything in the Agreement, we may require you to discontinue acceptance at your Establishment(s) of any Third Party Issuer product that bears that Third Party Issuer's name or Marks and that does not bear our Marks.

## **7. DISPUTE RESOLUTION**

**a. Asserting a Claim.** The parties agree to use commercially reasonable efforts to settle any Claim within 30 days following the time that a Claim is raised or shorter time period as either party may determine. All Claims will be resolved exclusively by arbitration pursuant to this Section 7, except as otherwise provided for herein. Solely in this section, *Claim* means any claim, dispute, or controversy between you and us whether contractual, extra-contractual, tortious or statutory arising from or relating to the Agreement or the relationship resulting from the Agreement, including the validity or enforceability or scope of this Arbitration provision. Claim also includes any claim, dispute, or controversy that may arise from or relates to: (i) our ordinary business practices, policies and procedures including our rights to Chargeback, create reserves and debit your Bank Account; or (ii) the Discount.

**b. Arbitration.** A Claim that is not resolved directly between the parties will be resolved pursuant to this Section 7 and the National Arbitration Rules (*Rules*) of ADR Institute of Canada, Inc. (*Administrator*) or its successors or replacement Administrator. For a copy of the Rules, to file a Claim or for other information about the Administrator contact: ADR Institute, 234 Eglinton Avenue East, Suite 500, Toronto, Ontario M4P 1K5; email [admin@adrCanada.ca](mailto:admin@adrCanada.ca). Prior to the initiation of any Claim we have the right to change or replace the Administrator or the Rules in our sole discretion.

**c. Small Claims Court Proceedings and Complaint Procedures.** Notwithstanding anything to the contrary in this section, you may pursue any Claim without resort to arbitration in a small claims court of the province or territory of your main business office in Canada, so long as the Claim is individual, within the jurisdiction of and pending only in that court. You may also access our complaint escalation procedures set forth in subsection 8.s of the General Provisions and acknowledge that our Bank Ombudsman and the Ombudsman for Banking Services and Investments do not deal with complaints that are the subject of arbitration or small claims court proceedings.

**d. Consolidation.** The parties agree that individual arbitration provides a more efficient and cost effective method of resolving Claims than court litigation. All Claims will be arbitrated on an individual basis. Claims brought by you against us or by us against you may be joined, heard one after the other or consolidated as the arbitrator may direct in arbitration with Claims brought by or against someone other than you, if agreed to in writing by all party establishments. The parties further agree that the arbitrator will have no jurisdiction or authority to consider any Claim brought on a class action or representative party basis.

**e. Arbitration Procedures and Appeal.** The arbitrator will take reasonable steps to preserve the privacy of individuals and of business matters. Where the Claim being arbitrated is for an amount less than \$50,000, there will be no oral discoveries or oral hearing subject to the discretion of the arbitrator to direct otherwise. The arbitrator's decision will be final and binding. However, where an appeal is not prohibited by statute, any party can appeal the award to an appeal panel administered by the Administrator, which will consider anew any aspect of the initial award objected to by the appealing

party. Where the award under appeal is for \$50,000 or less, the appeal will be to a single appeal arbitrator and where the award under appeal is for more than \$50,000, the appeal will be to a three-member appeal panel. The appealing party will have 30 days from the date of entry of the written arbitration award to notify the Administrator that it is exercising the right of appeal. The Administrator will then notify the other party that the award has been appealed. The Administrator will appoint the appeal panel that will conduct arbitration pursuant to the Rules and issue its decision within 120 days of the date of the appealing party's written notice. The decision of the three-member appeal panel will be by majority vote. The appeal decision will be final and binding and there will be no further appeal. The appeal decision will be considered as a final award.

**f. Location of Arbitrations/Payment of Fees.** Any arbitration hearing that you attend will take place in the province or territory of your main business office in Canada. If you do not have a business office in Canada, then the arbitration hearing will take place in Toronto, Ontario. The arbitrator and, where applicable, the appeal panel shall be entitled to fix the costs and expenses of the arbitration, including reasonable legal fees, the costs and expenses of the arbitration and appeal, and the fees of the arbitrator, appeal panel and Administrator.

## **8. MISCELLANEOUS**

**a. Confidentiality.** You must keep confidential and not disclose to any third party the terms of the provisions of the Agreement and any information that you receive from us that is not publicly available.

**b. Proprietary Rights and Permitted Uses.** Neither party has any rights in the other party's Marks except as expressly specified in the Merchant Operating Manual, nor shall one party use the other party's Marks without its prior written consent, except that we, our Affiliate or a Third Party Issuer, if applicable, may use your name, address, (including your website addresses or URLs), and customer service telephone numbers in any media or program, including any materials that we or our Affiliate or such Third Party Issuer may issue.

**c. Your 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 authorized to enter into the Agreement on behalf of your Establishments and Affiliates, including those indicated in the Agreement, and the individual who signs the Agreement or otherwise enters into it has authority to bind you and them to it; (v) you are not a person or entity listed on the List of Names made subject to the Regulations Establishing a List of Entities pursuant to subsection 83.05(1) of the Criminal Code of Canada or the United Nations Suppression of Terrorism Regulations, or any other such list or regulation that may exist now or in the future (*Prohibited Lists*). The Prohibited Lists under this section may be subject to change from time to time, with or without notice to you; (vi) you have not assigned to any third party any payments due to you under this Agreement; (vii) all information that you provided in connection with this Agreement is true, accurate, and complete; and (viii) you have read the Agreement and kept a copy for your file. If any of your representations or warranties in the Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

**d. Compliance with Laws.** You agree to comply with Applicable Law.

**e. Governing Law.** This Agreement and the rights of the parties herein will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.

**f. Interpretation.** In construing the 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 the 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) unless otherwise noted, all amounts are in Canadian Dollars; (viii) any reference to a website or URL (or both) refers to its successor website or URL; and (ix) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of the Merchant Operating Manual, and the provisions of any accompanying schedules or exhibits shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: any accompanying schedules or exhibits shall control over these General Provisions or the Merchant Operating Manual (or both) and the Merchant Operating Manual shall control over these General Provisions.

**g. Assignment.** You shall not assign the Agreement, or any of your rights, interests, or obligations hereunder, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement or any of our rights, interests, or obligations hereunder, without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

**h. Change of Control and Material Changes.** You agree to advise us immediately of a change of control or any other material change in the way you carry on business which could impact the way we provide services to you under this Agreement.

**i. Waiver; Cumulative Rights.** Either party's failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

**j. Savings Clause.** If any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.

**k. Amendments.** We reserve the right to change the Agreement at any time (including by amending any of its provisions, adding new provisions, or deleting or modifying existing provisions) on at least thirty days' prior notice to you, provided that we shall change the Merchant Operating Manual pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Operating Manual) as a condition of your agreement to accept the Card. We are not bound by any changes that you propose in the Agreement, unless we expressly agree in a writing signed by our authorized representative. An email does not constitute such a signed writing.

(1) **Scheduled Changes.** The Merchant Operating Manual is scheduled to be published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Operating Manual in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:

- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Operating Manual or during the period between two editions of the Merchant Operating Manual, and

- a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Operating Manual or during the period between two editions of the Merchant Operating Manual.

Where a change is to take effect during the period between two editions of the Merchant Operating Manual, we shall also include the change in the edition of the Merchant Operating Manual covering the period during which the change shall take effect, noting the effective date of the change therein.

(2) **Unscheduled Changes.** We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Operating Manual in separate unscheduled releases, which generally shall take effect thirty days after notice to you (unless another effective date is specified in the notice).

**l. Entire Agreement.** The Agreement is the complete and exclusive expression of the agreement between you and us regarding the subject matter hereof and supersedes any prior or contemporaneous agreements, understandings, or courses of dealing regarding the subject matter hereof.

**m. Excusable Delay/Force Majeure.** In no event shall either party be liable to the other for any delay in or failure to perform due to causes beyond the control and without the fault or negligence of the party claiming excusable delay or force majeure, including without limitation, any act of God or any act or omission of another party.

**n. Consent to Use Personal Information.** In Sections n, o, p, q and r the words "we", "our" and "us" mean Amex Bank of Canada, its Affiliates (including Amex Canada Inc., a provider of travel related services), and their agents and service providers (acting on their behalf). "You" and "your" mean:

- (i) the sole proprietor, where an Entity accepting the Card under the Agreement is a sole proprietorship;
- (ii) the partners, where an Entity accepting the Card under the Agreement is a partnership;
- (iii) the person that signed the Agreement and persons that are authorized by such person to communicate with us for the purposes of performing the obligations under this Agreement, where an Entity accepting the Card under the Agreement is a corporation; or
- (iv) the signing officers of the Entity accepting the Card under the Agreement whose Information we collect for the purpose of providing the services under the Agreement, where an Entity accepting the Card under the Agreement is any other business entity.

*Information* is any information about you and includes *Personal Information* which is any information which relates to an individual and allows that individual to be identified. We collect, disclose, use and process Information: (1) to consider initiating and to initiate, maintain and develop our relationship with you and the Entity accepting the Card under the Agreement in connection with our offering products and services generally, including helping us to understand the current and future needs of our customers and to otherwise analyze and manage our business and risk; (2) to administer billing and accounting services and related security measures in relation to the Entity accepting the Card under the Agreement; (3) to monitor the Merchant Account, Transactions and any related activity; (4) to evaluate the credit standing of the Entity accepting the Card under the Agreement; (5) to share and exchange reports and Information with any person, corporation, firm or enterprise with whom the Entity accepting the Card under the Agreement has or proposes to have a financial relationship and to use other third party databases (including registries and licensing authorities) or references provided by the Entity accepting the Card under the Agreement to obtain or verify Information about the financial circumstances, background or identity of the Entity accepting the Card under the Agreement; (6) as

permitted by or to comply with Applicable Law and/or any other legal or regulatory requirements; (7) to promote and to market products and services offered by us or other well established companies, including by means of direct marketing through ordinary mail, email, telephone or other available communication channels; and (8) where the provision of services or benefits provided to you in relation to you or in relation to the Entity accepting the Card under the Agreement are offered by or include the participation of third party suppliers, to our sharing and exchanging with such third party suppliers and their agents and service providers any Information reasonably required for the provision of the services.

If you provide us with your email address we will use it in accordance with the terms disclosed on the application page and section 8.r below. You agree that we, or reputable organizations selected by and acting for us, may from time to time monitor or record any of your telephone calls with us for the purposes of servicing accuracy, quality assurance and training. We may use Information in our records for as long as it is needed for the purposes described above even after our relationship with you or the Entity accepting the Card under the Agreement has ceased. You consent to our collection, disclosure, use and processing of Information about you for the purposes described above. You authorize third parties to give us the Information for these purposes. If you provide us with Information about any other individual, you confirm that the individual: (i) has consented to our collection, disclosure, use and processing of that Information for these purposes as reasonably required; and (ii) authorizes third parties to give us the Information for these purposes. **You may refuse or withdraw your consent under (7) completely or you may select from any partial consent options that we may make available by calling 1.800.268.9877. Your request will be processed promptly but may not be captured for communications already in progress. This will not limit Information we may provide for you when you contact us.**

**o. Consent to Use Business Information.** You in your individual capacity and on behalf of the Entity accepting the Card under the Agreement consent to the sharing and exchange of credit and any other Information relating to the Entity by us with any person or corporate entity with whom the Entity accepting the Card under the Agreement has or proposes to have a financial relationship and to the use of other third party databases or references provided on behalf of the Entity accepting the Card under the Agreement to obtain or verify information about the Entity accepting the Card under the Agreement and its financial circumstances.

**p. Nature of Information Collected.** The Information we collect from time to time may include: (1) Information to identify you such as name and contact information; (2) Information about the Entity's financial circumstances and behaviour, such as income, assets, payment history and creditworthiness; (3) Information for the provision of products and services (for example, language and other preferences); (4) Information relating to Transactions arising from your and the Entity accepting the Card under the Agreement's relationship with or through us. We collect Information from various sources including from you directly from applications, correspondence or other communications, through the products and services you or the Entity accepting the Card under the Agreement use, from others with your consent, or from other permitted sources. We will review and analyze Information in various ways. For example, when we monitor Transactions we use proprietary techniques to help identify Transactions that may be of risk from a credit, fraud or money laundering and terrorist financing perspective. This involves our understanding of the ordinary use of our products and services in order to identify unusual activity. It also includes assessing Information in relation to information from other sources including our own records to detect suspicious patterns or connections. When we promote and market products and services offered by us or other well-established companies (*Promotions*), each Promotion is carefully developed to ensure that it meets our standards. We try to make sure these Promotions reach only those customers most likely to take advantage of them. To do this, we

develop lists for use by us based on Information you have provided us on your applications, in surveys and other communications. We may also use that Information, along with non-credit information from external sources, to develop lists that are used by us. The lists used to send Promotions are developed under strict conditions designed to safeguard the privacy of Information. Except in the limited circumstances where our use of Information is permitted or required by law, before using your Information for any new purposes we will explain them to you and seek your consent. Subject to legal and contractual restrictions, you can withdraw your consent to our use of your Information at any time with reasonable notice. For example, as described above you may choose not to receive marketing offers or other promotional materials. If you refuse or withdraw your consent for any purpose that is necessary for us to fulfill our product or service contract with you, we will not be able to provide you, or continue to provide you, with the product or service. In some cases, certain consents are mandatory and cannot be withdrawn. Similarly, you cannot withdraw your consent on matters that are essential to the management of our businesses, including the disclosure of Information when we assign our rights to others such as for the sale or collection of debts or to enable compliance with Applicable Law or any other legal or regulatory requirement. To obtain more information about our policies and procedures in protecting your privacy, including how to request access to and correction of your Information that we hold, please visit our website at [www.americanexpress.ca/privacy](http://www.americanexpress.ca/privacy) or call us at 1.888.301.5312 to request a copy of our Privacy Code.

**q. Consent to Collect, Use, and Disclose Information (including Personal Information) for Compliance Purposes.** You acknowledge and agree that our ultimate parent company is headquartered in the United States of America and we are bound by laws, regulations, and/or rules of that jurisdiction. You hereby expressly 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 and our Affiliates to collect, use, and disclose information to comply, and maintain compliance, with all applicable laws, regulations, and/or rules of the United States of America and any other jurisdictions that are applicable to them, including, without limitation, U.S. tax laws, regulations and/or rules. 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 such laws, regulations, and/or rules.

**r. Electronic Communications.** By providing an email address to us, you confirm that it is an appropriate method and point of contact for communicating with you and that your acceptance of the Card will be deemed to represent your consent and agreement that we may provide communications to you for any purposes associated with the administration of this and any Other Agreement between us by any lawfully permitted electronic means, including email, posting communications on an American Express website, making communications available to you through links provided on a statement or other notice, or any combination of these or other means and you hereby designate the email addresses and information systems to which all such communications may be provided by us to you as the email addresses and information systems through which you agree to receive such communications. This means that we can provide statements, notices, changes to this agreement and other communications to you electronically. You agree that it is your responsibility to access and retain copies of all electronic communications that we may provide to you. You agree not to dispute any electronic communication on the basis that it was not in writing or was not signed. Your agreement that we may provide communications by electronic means will survive termination of this agreement. However, it is your choice whether to apply for a product or service that we offer electronically and/or with electronic legal disclosures. You may revert to paper statements and other disclosures sent by mail by changing your selection in Online Merchant Services on the American Express website or by calling our Merchant Services Centre at 1.800.268.9877. All electronic communications that we provide to you



will be deemed to be received by you once the electronic communication enters the information system designated for the receipt of electronic communications even if you do not access the electronic communication for any reason. **You must inform us immediately if there is a change to the contact information (such as postal or email address) you have provided to us.**

**s. Complaint Handling Procedures.** We process many customer account transactions each day and we try very hard to ensure that your business is handled in an efficient and courteous manner. We have set up procedures for customers that wish to bring a concern to our attention and encourage you to follow the complaint procedures outlined below.

**The following are the Amex Bank of Canada - Complaint Handling Procedures not related to the Code of Conduct for the Credit and Debit Card Industry. If your complaint is related to the Code of Conduct those procedures are detailed separately below.**

We strive to be the world's most respected service brand and try very hard to ensure that your business is handled in an efficient and courteous manner. If, however, we have not met your expectations and you have a complaint that you wish to bring to our attention, we encourage you to follow the procedures outlined here to help us address your concern.

Step One: We can help, tell us about your concern

If you have a complaint, please contact our Amex Bank of Canada Merchant Services Staff at 1.800.268.9877.

- 1.866.549.6426 (TTY)

Step Two: Elevate your concern

If your concern is not resolved to your satisfaction by our Merchant Services Staff you should write to our Manager of Customer Care Support at the address that follows. Please see the [Timelines](#) section.

Amex Bank of Canada  
P.O. Box 3204, Station "F"  
Toronto, Ontario  
M1W 3W7

**Attention: Manager Customer Care Support**

Step Three: Contact the Amex Bank of Canada Ombudsman

If the issue remains unresolved, you may contact the internal Amex Bank of Canada Ombudsman at the contact information below. Please see the [Timelines](#) section.

Amex Bank of Canada  
P.O. Box 3204, Station "F"  
Toronto, Ontario  
M1W 3W7

**Attention: Amex Bank of Canada Ombudsman**

- 1.888.301.5312 (toll-free)
- 437.836.7400 (outside Canada/U.S., please call collect)
- 1.866.529.1344 (TTY)
- 1.855.683.3769 (fax)
- 1.647.259.8770 (fax outside Canada/U.S.)

Timelines:

We work hard to ensure that your complaint is acknowledged and investigated in a timely manner. If you have not followed the complaint escalation steps as outlined, we may forward your concern to the appropriate complaint handling level for investigation and response. Once your complaint reaches Step Two we will do our best to provide a response detailing your concern and the appropriate resolution or explanation within 90 days. In the event that we are unable to respond within that time period, a notice will be provided to you estimating the completion date of the investigation.

We encourage you to use our internal complaint handling process first. However, 90 days after reaching Step Two, you have the right to contact the Ombudsman for Banking Services and Investments (OBSI). OBSI may contact the Amex Bank of Canada Ombudsman's Office to facilitate the earliest possible resolution of your complaint.

Obtaining A Status Update On Your Complaint

At any time during the complaint handling process, you can obtain an up-to-date status of your complaint, including which step in the process your complaint is in and what the next step is by calling our Amex Bank of Canada Merchant Services Staff at 1.800.268.9877 or if applicable by contacting your Client Manager.

Elevating Your Complaint Outside Of Amex Bank Of Canada

- The Ombudsman for Banking Services and Investments (OBSI)

Once the Amex Bank of Canada Ombudsman's Office has provided a decision on your concern, and in the event you are still not satisfied, the OBSI can provide you with the information and a further review of your complaint. Please note that you may contact OBSI earlier as set out in the [Timelines](#) section.

The OBSI can be reached toll-free at 1.888.451.4519, 416.287.2877 (locally), 1.855.889.6274 (TTY) or by fax at 1.888.422.2865 or 416.225.4722 (locally).

You can also email [ombudsman@obsi.ca](mailto:ombudsman@obsi.ca) or visit [www.obsi.ca](http://www.obsi.ca).

Ombudsman for Banking Services and Investments  
401 Bay Street  
Suite 1505, P.O. Box 5  
Toronto, Ontario  
M5H 2Y4

- Privacy Commissioner of Canada

For privacy matters, the Office of the Privacy Commissioner of Canada investigates complaints concerning the Personal Information Protection and Electronic Documents Act (PIPEDA). Complaints to the Office of the Privacy Commissioner can be submitted in writing to the address that follows. For general privacy inquiries and additional information about personal information handling practices, you can contact the Office of the Privacy Commissioner of Canada at 1.800.282.1376, 819.994.6591 (TTY) from anywhere in Canada/U.S. or 819.994.5444 from outside of Canada/U.S. (please call collect) or 819.994.5424 (fax).

You can also email [info@privcom.gc.ca](mailto:info@privcom.gc.ca) or visit [www.privcom.gc.ca](http://www.privcom.gc.ca)

Office of the Privacy Commissioner of Canada  
30 Victoria Street  
Gatineau, Quebec  
K1A 1H3

- Financial Consumer Agency of Canada (FCAC)

If you have a complaint in respect of the Code of Conduct for the Credit and Debit Card Industry in Canada or any concern related to the *Payment Card Networks Act* ("the Act"), you may contact the Financial Consumer Agency of Canada (FCAC) by writing to the address that follows. The FCAC supervises payment card network operators (PCNOs) to ensure they comply with the provisions of "the Act", they are also responsible for promoting public awareness of the Code and "the Act". You can reach the FCAC at 1.866.461.3222 (English toll-free), 1.866.461.2232 (French toll-free) from anywhere in Canada/U.S. or 613.941.1436 (fax).

You can also email [info@fcac-acfc.gc.ca](mailto:info@fcac-acfc.gc.ca) or visit [www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca)

Financial Consumer Agency of Canada  
6th Floor, Enterprise Building  
427 Laurier Ave. West  
Ottawa, Ontario  
K1R 1B9

The FCAC will determine whether the payment card network operator is in compliance. It will not, however, resolve individual merchant complaints.

#### Voluntary Commitments and Codes of Conduct

For a complete listing of the Voluntary Commitments and Codes of Conduct to which Amex Bank of Canada subscribes, please visit our website at [www.americanexpress.ca/codes](http://www.americanexpress.ca/codes) or write to the Manager of Customer Care Support for a copy.

#### **The following are the Amex Bank of Canada - Merchant Complaint Handling Procedures for complaints related to the Code of Conduct for the Credit and Debit Card Industry.**

We strive to be the world's most respected service brand and try very hard to ensure that your business is handled in an efficient and courteous manner. If, however, we have not met your expectations and you have a merchant complaint related to the **Code of Conduct for the Credit and Debit Card Industry**, we encourage you to follow the procedures outlined here to help us address your concern.

#### Step One: We can help, tell us about your concern related to the Code of Conduct

If you are a merchant and have a complaint pertaining to the Code of Conduct for the Credit and Debit Card industry, please contact our Amex Bank of Canada Merchant Services Staff at 1.800.268.9877. Upon contacting American Express, our staff will open an investigation by asking you for details related to your complaint.

The questions our staff will ask you are also reflected within our Complaint Handling Form; if you prefer to mail in your complaint, you can download that Complaint Handling Form from our website ([www.americanexpress.com/canada/merchantcomplaint](http://www.americanexpress.com/canada/merchantcomplaint)), insert the requested information and send your completed template along with any supporting documentation (i.e. agreements, statements) to the following address. Please see the Timelines section.

Amex Bank of Canada  
P.O. Box 3204, Station "F"  
Toronto, Ontario  
M1W 3W7

#### **Attention: Manager Merchant Customer Care Support**

Please note that the information being submitted may be shared with your PCNO, acquirer, processor or financial institution in order to assist us in answering your concerns.

#### Step Two: Contact the Amex Bank of Canada Ombudsman

If the issue remains unresolved, you may contact the internal Amex Bank of Canada Ombudsman at the contact information below. Please see the Timelines section.

Amex Bank of Canada  
P.O. Box 3204, Station "F"  
Toronto, Ontario  
M1W 3W7

#### **Attention: Amex Bank of Canada Ombudsman**

- 1.888.301.5312 (toll-free)
- 437.836.7400 (outside Canada/U.S., please call collect)
- 1.866.529.1344 (TTY)
- 1.855.683.3769 (fax)
- 1.647.259.8770 (fax outside Canada/U.S.)

#### Timelines:

We work hard to ensure that your complaint is acknowledged and investigated in a timely manner. If you have not followed the complaint escalation steps as outlined, we may forward your concern to the appropriate complaint handling level for investigation and response.

Following receipt of your complaint we will:

- Acknowledge receipt of your complaint within five business days.
- Provide our final decision within 90 days (*step 1*) and 45 days (*step 2*) of receiving your complaint, along with:
  - A summary of the complaint;
  - The final result of the investigation;
  - Explanation of the final decision; and
  - Information on how to further escalate your complaint in the event of an unsatisfactory outcome in step 1, along with the Complaint Handling Form.

If we cannot provide a response within 90 days (*step 1*) and 45 days (*step 2*) you will be informed of the delay, the reason for the delay, and the expected response time.

#### Obtaining A Status Update On Your Complaint

At any time during the complaint handling process, you can obtain an up-to-date status of your complaint, including which step in the process your complaint is in and what the next step is, by calling our Amex Bank of Canada Merchant Services Staff at 1.800.268.9877, or if applicable by contacting your Client Manager.

#### Elevating Your Complaint Outside Of Amex Bank Of Canada

- The Ombudsman for Banking Services and Investments (OBSI)

Once the Amex Bank of Canada Ombudsman's Office has provided a decision on your concern, and if you are still not satisfied, the OBSI can provide you with information and a further review of your complaint. Please note that you may contact OBSI earlier as set out in the Timelines section. The OBSI can be reached toll-free at 1.888.451.4519, 416.287.2877 (locally), 1.855.889.6274 (TTY) or by fax at 1.888.422.2865 or 416.225.4722 (locally).

You can also email [ombudsman@obsi.ca](mailto:ombudsman@obsi.ca) or visit [www.obsi.ca](http://www.obsi.ca).

Ombudsman for Banking Services and Investments  
401 Bay Street  
Suite 1505, P.O. Box 5  
Toronto, Ontario  
M5H 2Y4

**t. Language.** The parties have agreed that the Agreement and the documents related thereto be drawn up in the English language. LES PARTIES EXIGENT QUE LA PRÉSENTE CONVENTION AINSI QUE LES DOCUMENTS QUI S'Y RATTACHENT SOIENT RÉDIGÉS EN ANGLAIS.

**u. Your Third Party Service Providers.** Some Merchants choose to deal directly with us for aspects of the Transaction process; others enlist the assistance of various third parties to provide them with services. These third parties may include: service providers/Processors, Terminal Providers, vendors, and Covered Parties and other agents contracted to operate on your behalf. You may retain, at your expense, such third parties; however, you remain financially and otherwise liable for all obligations (including confidentiality obligations and compliance with the Technical Specifications), services, and functions they perform under the Agreement on your behalf, such as the technical requirements of authorizing and submitting Transactions to us, as if you performed such obligations, services, and functions. You must ensure that these third parties cooperate with us to enable your Card acceptance. We may bill you for any fees or deduct them from our payments to you. Upon our request, you must provide us with all relevant information about your third party Processors. Any omission or failure to perform by your third party does not relieve you of your obligations under the Agreement. We need not alter our conduct of business in respect of your third parties' performance and may rely upon that performance as if done by you.



**v. No Third Party Beneficiaries.** Unless otherwise provided for herein, the Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto, and none of the provisions of the Agreement will be enforceable by any other person other than the parties hereto, their successors and permitted assigns.

**w. Press Releases.** You shall not issue any press release or make any public announcement (or both) in respect of the Agreement or us without our prior written consent.

**x. Independent Contractors.** You and we are independent contractors. No agency, partnership, joint-venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

By: AMEX BANK OF CANADA

By:

A handwritten signature in black ink, appearing to read "K. Santaguida", written in a cursive style.

Kerri-Ann Santaguida  
Vice President and General Manager  
Merchant Services, Canada  
Amex Bank of Canada