

Terms and Conditions for Swisscard AECS GmbH American Express® vPayment Accounts

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These “Terms and Conditions for Swisscard AECS GmbH American Express vPayment Accounts” (hereinafter: “vPayment T&Cs”) apply to all American Express vPayment Accounts (hereinafter: “vPayment Account”) issued by Swisscard AECS GmbH (hereinafter: “Issuer”).

To facilitate reading, only the masculine form is used in this document. All references to the male gender will be deemed and construed to include the female gender.

1 Opening of vPayment Account

- 1.1 Once the Issuer has accepted the application to open a vPayment Account, a personal, non-transferable vPayment basic account will be opened for the applicant company (hereinafter: “Company”) in the Company’s name. Applications may be rejected without any reasons being given.
- 1.2 The Company will provide the Issuer with the names of employees who will represent the Company in all of its rights and obligations associated with the use of the vPayment Account (hereinafter: “Administrators”).
- 1.3 The Issuer will activate the vPayment functionality and set up vPayment user accounts which will be managed by the Administrators using the means of identification (user ID, password, etc., hereinafter: “Login Data”) agreed upon with the Company.
- 1.4 Anyone utilizing the vPayment Account using the Login Data will be deemed authorized to use the vPayment Account.

2 Use of vPayment Account and transaction approval

- 2.1 The Company authorizes the Administrators
 - to generate virtual cards (consisting of virtual card number, expiry date and security code [CVC/CCV], hereinafter: “Virtual Account Number” or “VAN” or “Virtual Card”) within the relevant vPayment user account;
 - to use virtual cards themselves as a means of payment, or to provide third parties (hereinafter: “End Users”) with virtual cards to use;
 - to set up user accounts for third parties (hereinafter: “Sub-Administrators”) within vPayment Accounts who, in turn, may generate virtual cards which they may use as a means of payment themselves or provide to End Users. Sub-Administrators are not authorized to appoint Sub-Administrators themselves however.
- 2.2 The Issuer reserves the right to temporarily or permanently restrict or cease operation of the vPayment Account, or individual vPayment services, at any time, without advance notice, and without stating reasons, for all or individual Companies or groups of Companies in full or in part. The Issuer is also entitled to change the functional scope of the vPayment Account at any time (to expand or restrict it). In the event of such a change, any further use of the vPayment Account may be made dependent upon agreement with the new or modified vPayment Terms and Conditions.
- 2.3 If transactions are processed using virtual cards (using the virtual card number and indicating the expiry date and/or CVC/CCV), the transactions (including any fees and charges incurred and any resulting claims on the part of the Issuer) will be deemed to have been approved by the Company.
- 2.4 The Company hereby acknowledges all transactions approved pursuant to section 2.3, and any claims and receivables resulting therefrom, and hereby irrevocably instructs the Issuer to pay the sums in question to the re-

spective points of acceptance. This approval entitles, but does not oblige, the Issuer to authorize transactions.

- 2.5 The Company undertakes only to use the vPayment Account within the limits of its financial resources. In particular, the Company may not use the vPayment Account once it becomes clear that it is unable to meet its financial obligations, or if it becomes insolvent.
- 2.6 Using the vPayment Account for illegal purposes is prohibited.
- 2.7 The Company hereby acknowledges that using the vPayment Account or vPayment user accounts from abroad may violate provisions of foreign law under certain circumstances. The Company also acknowledges that there may be import and export restrictions for encryption algorithms which may be breached if the Company uses the vPayment user accounts outside Switzerland. The Company itself will be responsible for determining whether or not use of the vPayment user accounts from abroad is lawful and, if in doubt, will refrain from such use. The Issuer refuses any liability in this respect.

3 Spending limits

- 3.1 The Issuer may lower the spending limits on the vPayment basic account at any time, without prior notice and without stating reasons. Outstanding charges reduce the set spending limit accordingly. The Company may only use the vPayment Account within the stipulated spending limit. The Issuer may request immediate payment of the amounts owed if spending limits are exceeded.

4 Fees (including commission, interest, and costs)

- 4.1 Use of the vPayment Account, the virtual cards and the contractual relationship regarding the vPayment Account may be associated with fees (e.g. annual fee, fee for payment reminder), commission, interest and other (third-party) costs (hereinafter referred to as “Fees”). With the exception of any third-party costs incurred, the Company will be informed about the existence, nature and amount of any Fees upon, or in connection with, the application for the vPayment Account and/or in another appropriate manner. Details of such costs may be obtained from the Issuer’s customer service and via www.americanexpress.ch at any time.
- 4.2 The agreed interest will be owed on all charges (except accrued interest) from the respective statement date. If the statement amount is paid in full by the due date, then interest will not be applied to any new charges in this billing period. If the statement amount is not paid in full, or is only partly paid, by the specified due date, interest will be charged on all charges (except interest accrued) until receipt of a part payment, and then upon any remaining outstanding balance until payment thereof is received. Receipt of payment by the Issuer will be the determining factor here.

5 Billing and payment methods

- 5.1 If the vPayment basic account has a balance in the Issuer’s favor upon the reference date, then at the agreed point of billing, the Issuer will send the Company a collective statement showing the balance due and the transactions processed over the previous billing period, in a form determined by the Issuer. Balancing the account in the respective collective statement does not result in any alteration to the obligation. Unless agreed otherwise, the entire

statement amount must be received by the Issuer within twenty-eight (28) days following the statement date.

- 5.2 The Issuer reserves the right not to send a statement if no transactions occurred in the billing period or if the balance is zero.
- 5.3 The outstanding statement amount must be settled using one of the payment methods accepted by the Issuer.

6 Financial obligations

- 6.1 The Company undertakes to pay all outstanding amounts arising from transactions approved pursuant to section 2.3, Fees pursuant to section 4, and all other expenses, for example those incurred while recovering outstanding amounts due. The Company will be held liable without reservation for all obligations arising from use of the vPayment Account and the virtual cards, or under the contractual relationship regarding the vPayment Account, and for delayed charges on the collective statement.

7 General security advice and obligations to cooperate and exercise due care

- 7.1 The Company hereby acknowledges that unauthorized access to the vPayment Account enables misuse of the virtual cards. The Company must therefore take and maintain the necessary and appropriate measures to exclude the risk of unauthorized access to the vPayment Account and virtual cards, and any unauthorized use. This will include, in particular, compliance with all obligations to cooperate and exercise due care stipulated in these vPayment T&Cs.
- 7.2 The Company
 - a) will ensure that (Sub-)Administrators are selected, instructed and monitored carefully;
 - b) will ensure Login Data is stored with reasonable care and is only made accessible to (Sub-)Administrators;
 - c) must protect the virtual cards against unauthorized access and may only disclose the same to authorized End Users in a secure manner (via secured channels or within the vPayment Account using the “American Express Encrypted Email” function);
 - d) must take and maintain all necessary and appropriate measures to exclude the risk of unauthorized access to the vPayment Account and the virtual cards;
 - e) must know, at all times, who has access to the Login Data and virtual cards, must document who uses the virtual cards for which transactions, and must provide this documentation to the Issuer immediately upon the latter’s request;
 - f) will ensure that the (Sub-)Administrators and End Users are entitled to use the vPayment Account or virtual cards, that such individuals have been contractually obliged to comply with the vPayment T&Cs, and that such individuals comply with the vPayment T&Cs. The Issuer will not be answerable for the Company’s internal instructions;
 - g) will be responsible for the security of information on devices used in connection with the vPayment Account, and will only work with software from a trusted source;
 - h) will not leave the devices unattended and will protect them against third-party access through access protection by means of a strong password, which must be kept secret, or equivalent technology;

- i) will minimize the risk of unauthorized access to devices (within the meaning of section 8.1 a) through the use of suitable protective measures. In particular, it will keep the original operating system and browser up to date at all times and will take the relevant security precautions customary for electronic networks in accordance with the latest technological standards, in particular by using antivirus programs kept up to date and installing a firewall;
- j) undertakes to use the payment methods supported by the Issuer with increased security;
- k) will notify the Issuer immediately if transactions have been executed, or if a statement amount has not been paid in full, and yet no monthly statement has been received for more than six (6) weeks;
- l) will compare the collective statements upon receipt and will notify the Issuer of any discrepancies (in particular charges arising from unauthorized use of the vPayment Account) by phone immediately upon discovery, and in writing within thirty (30) days from the statement date (postmark date) at the latest. Otherwise, the statements will be assumed to be correct. If the Company is asked to submit a claim/disputed transaction form, this must be completed within ten (10) days following the request and must be returned signed to the Issuer (date of postmark). A direct debit that is declined or revoked, or which fails for any other reason, will not release the Company from the obligation to check the monthly statement and raise any objections;
- m) will notify the Issuer immediately, in writing or in any other manner accepted by the Issuer, of any changes to the details provided in the application, for example changes of name and address and any change of beneficial owner (form K or form A). Communications and statements sent by the Issuer to the last known delivery address are deemed duly delivered;
- n) will issue binding instructions to the (Sub-)Administrators and End Users to cease using the vPayment Account and virtual cards following their departure or after the internal authorization is revoked;
- o) will inform the Issuer immediately about the departure of Administrators or any revocation of their authorization, and will delete the vPayment user accounts and block the virtual cards within the vPayment Account;
- p) will monitor use of the vPayment Account and use of the virtual cards within the vPayment user accounts;
- q) will notify the Issuer immediately by phone (regardless of any time difference) in the case of loss, theft or misuse of the Login Data and/or virtual cards – even where this is only suspected – and will delete the virtual cards in question within the vPayment Account. If a loss is incurred, the Company must, to the best of its ability, cooperate in resolving the matter and in minimizing the loss. The local police must be notified in the case of suspected criminal offenses;
- r) where the vPayment Account is blocked/canceled, notify the acceptance points at which the vPayment Account has been specified as a means of payment for recurring services about the vPayment Account being blocked/canceled;
- s) will ensure that its employees and third parties are kept informed pursuant to section 11.10.

8 Responsibility and liability

- 8.1 Even with state-of-the-art security precautions, absolute security cannot be guaranteed on the part of either the Issuer or the Company. The Company hereby acknowledges that the Issuer will not be liable in particular for the following risks:
- a) Third parties gaining unnoticed access to computers, tablets, etc. on which the vPayment Account is used (hereinafter: "Device(s)") during use of the vPayment Account;

- b) Third parties gaining unauthorized access to the vPayment Account, or spying on information, including the Login Data, due to inadequate system knowledge on the part of the Company or the (Sub-)Administrators, and a lack of security precautions (e.g. not logging out after using the vPayment Account, Device loss, missing security software);
 - c) Network operators (e.g. mobile providers, Internet or SMS providers) creating a usage profile for the Company or the (Sub-)Administrators;
 - d) Data security measures being disabled or bypassed by bypassing the Device operating system's restrictions (unlocking, jailbreaking or rooting).
- 8.2 The Issuer offers no warranty as to the availability of the vPayment Account at any time. The Issuer will not accept any liability for network operators (e.g. Internet providers, mobile phone service providers), for the manufacturers of the Devices used by the Company, the Administrators and the End Users, or in connection with the software operated on the Devices or for other third parties. Furthermore, the Issuer offers no warranty as to the accuracy, correctness, reliability, completeness, confidentiality and transmission time of all data transmitted electronically.
- 8.3 The conduct of the (Sub-)Administrators and End Users will be attributed to the Company. In particular, the latter may also not claim that it exercised due care when selecting, instructing and monitoring the (Sub-)Administrators.
- 8.4 **Subject to the reservation of legal or contractual liability for damage caused deliberately or through gross negligence, the Issuer hereby excludes any and all liability for damages caused by use of the vPayment Account, and for damages arising as a result of the permanent or temporary unavailability of the vPayment Account. In particular, the Issuer hereby refuses any liability for:**
- a) Damages caused by misuse of the vPayment Account or the virtual cards;
 - b) Indirect damages and consequential damages of any kind;
 - c) Damages arising from violation of the obligations to cooperate and exercise due care, and other obligations under these vPayment T&Cs;
 - d) Damages that arise because the Company is unable to use the vPayment Account for payment, e.g. where a merchant does not accept the booking or payment through the vPayment Account or using a virtual card, where a transaction cannot be executed due to the vPayment Account or virtual cards being blocked, or for technical or other reasons, and damages that arise due to blocking or cancellation of the vPayment Account;
 - e) Damages in connection with any secondary or additional benefits of the vPayment Account;
 - f) Damages in connection with offers or benefits provided by third parties (e.g. events or partner offers);
 - g) Damages caused by the forwarding of Login Data or virtual cards to the Company or its auxiliaries, or at the Company's request, and by sending such data to an address specified by the Company at which the Company is unable to take receipt of the Login Data or virtual cards in person;
 - h) Damages caused when using certain electronic means of communication (see section 12), in particular due to lack of authorization, lack of system knowledge or security precautions or due to incorrect or delayed transmissions, technical faults, interruptions, malfunctions, unlawful intrusions or other flaws where these are not attributable to the Issuer;
 - i) Damages that are covered by insurance.
- 8.5 The Issuer declines all responsibility for the transactions executed using the vPayment Account. In particular, any discrepancies, disputes concerning services, or differences of opinion and associated claims (e.g. related to defective or late services, or services not provided) must be settled

by the Company directly and with the respective point of acceptance only. Collective statements must still be paid on time. In the case of cancellations, the Company must request written confirmation of the cancellation. Notices of cancellation for recurring services paid for using the vPayment Account must be dealt with via the point of acceptance or the provider in question.

9 Term, termination, and blocking of the vPayment Account

- 9.1 The contractual relationship regarding the vPayment Account will be valid for an indefinite period. The Company and the Issuer may both terminate this contractual relationship in writing at any time, without stating reasons, and with immediate effect.
- 9.2 Upon termination of the contractual relationship concerning the vPayment Account, all outstanding statement amounts and other receivables owed to the parties will become payable immediately. There will be no entitlement to the full or partial reimbursement of fees (see section 4). Charges must be paid by the Company in accordance with the vPayment T&Cs even after termination of the contractual relationship regarding the vPayment Account. In particular, the Company will be liable for all charges resulting from recurring services (see section 8.5).
- 9.3 The Company may not make any charges to the vPayment basic account after termination of the contract.
- 9.4 The Company and the Issuer may block the vPayment Account at any time and without stating reasons.

10 Credit balances

- 10.1 The Issuer will be entitled to transfer the Company's existing credit balances to the Company at any time, without prior notice and without stating reasons, in full or in part to the bank or post office account specified by the Company. If the Company has not provided the Issuer with valid account information, then the Issuer may send the credit balance to the Company in the form of a check, or by some other appropriate means, to the Company's last-known address with the effect of discharging its corresponding obligation. The Issuer is entitled to charge all expenses associated with issuing and cashing the check, or with reimbursement of any other kind, to the Company.
- 10.2 The Company's credit balances in the vPayment Account will not accrue interest.

11 Acquisition, processing, and disclosure of data; involvement of third parties

- 11.1 For the purposes of verifying the vPayment application and handling the contractual relationship, the Issuer is entitled to obtain **information (e.g. regarding address, creditworthiness) from public offices, the applicant's bank or post office, credit agencies and the Central Office for Credit Information ("ZEK") or from agencies designated by law for this purpose. The Company hereby authorizes the aforementioned public offices, persons and authorities to release the information in question to the Issuer.**
- 11.2 As part of usage of the vPayment Account, the Issuer will receive, in particular, transaction details (e.g. invoice number, first and last names of the traveler, destination or routing, and date of travel). The Company accepts that, even for transactions within Switzerland, the data may be routed through the Issuer's worldwide credit card network.
- 11.3 **The Issuer may report cases of blocking of the vPayment Account, serious payment arrears, or misuse of the vPayment Account by the Company to the ZEK as well as to the relevant offices in the instances provided for by law. The ZEK may make such data accessible to other members of the ZEK if these other members wish to conclude or process a contract with the Company** (e.g. in connection with a

- credit or leasing application). If payments are made by the Company to the Issuer by direct debit, the Issuer may provide the corresponding bank with the required data about the Company, the vPayment Account, and the cumulative amounts of any transactions.
- 11.4 **The Company authorizes the Issuer to exchange data with third parties (including their partners) both in Switzerland and abroad as necessary to process an insurance relationship or provide other necessary services associated with the vPayment Account, and hereby authorizes said third parties to issue the information in question to the Issuer.**
- 11.5 The Issuer processes the information about the Company in order to manage the contractual relationship and the secondary and additional benefits (e.g. insurance benefits) associated with the vPayment Account, and for risk management and security purposes (e.g. to combat fraud).
- 11.6 **The Issuer processes the information about the Company for marketing and market research purposes, in particular to develop products and services associated with the contractual relationship, use of the vPayment Account or with secondary/additional services, and to offer these, but also insurance and other financial services (including from third parties) to the Company.** The Company may opt out of receiving offers pursuant to section 11.6 at any time by means of a written declaration.
- 11.7 **For sections 11.5 and 11.6 above, the Issuer may, in particular, process information about the Company, the Administrators and End Users, the vPayment Account, and details of any charges processed through the vPayment Account, and any secondary or additional services, and may generate and analyze client and transaction profiles ("Client Profile").**
- 11.8 **The Issuer is entitled to engage the services of third parties, in Switzerland or abroad, to manage some or all of the services associated with the contractual relationship (e.g. application verification, contract processing and communication with the Company), to create client profiles, to perform tests and to send offers and information pursuant to section 11.6.**
- 11.9 **The Company authorizes the Issuer to forward data abroad worldwide for data processing pursuant to this section 11. The Company acknowledges and hereby consents to the fact that under certain circumstances, the data transmitted abroad may not be protected, or may not be protected in the same way as under Swiss law. The Issuer is also authorized to exchange data via electronic systems that are operated by third parties. During the electronic exchange of data, information is transmitted across national boundaries via a public network that is accessible to anyone. This also applies to a data transfer if both the sender and the receiver are located in Switzerland. Even if the data is transferred encrypted, the sender and receiver may remain unencrypted, meaning that third parties may draw conclusions regarding an existing business relationship with the Issuer.**
- 11.10 **The Company will inform its Administrators, Sub-Administrators, End Users, employees and any third parties for whom transactions are executed via the vPayment Account, about the data processing as detailed in sections 11 and 12.2, and will ensure that such parties have given their prior consent to such data processing.**
- 11.11 The Issuer is authorized to transfer, and/or offer to transfer, this contractual relationship, or individual rights and/or obligations arising hereunder, to third parties (e.g. financing companies in connection with securitization or payment collection companies), in Switzerland and abroad, and may give such third parties access to the data associated with the contractual relationship to the extent necessary (including due diligence). The right to transfer will include the right to transfer further within Switzerland and abroad.
- 11.12 The Company acknowledges that actions pursuant to sections 11.1 - 11.11 may result in third parties gaining knowledge of its business relationship with the Issuer, and hereby expressly releases the Issuer from any confidentiality obligation in this respect. The Company also releases the Issuer from any confidentiality obligation insofar as this is necessary to protect legitimate interests, in particular in the case of legal action taken by the Company against the Issuer, to secure the claims of the Issuer and the liquidation of collateral furnished by the Company or third parties, and in the case of accusations by the Company against the Issuer either in public or before government authorities in Switzerland and abroad.
- 11.13 The Company acknowledges that the Issuer is not a bank and that the business relationship and related information is therefore not subject to the provisions relating to banking secrecy.
- 11.14 The Issuer is entitled, although not obliged, to record and store conversations and other forms of communication with the Company as evidence and for quality assurance purposes.
- 12 Communication and customer service**
- 12.1 The Company and the Issuer may utilize electronic means of communication (e.g. email, SMS/MMS, Internet) where this is provided for by the Issuer. The Issuer reserves the right to make the use of electronic communication methods dependent on a separate authorization, in particular for changes to contract-relevant data (e.g. changes of address, cancellations or blocks) and online services.
- 12.2 The Company hereby expressly agrees that the Issuer may use electronic means of communication, including Internet, email and SMS, to communicate with it during the course of using the vPayment Account. The Company acknowledges that data sent via an open network such as the Internet or an email service, is essentially accessible to everyone. The Issuer cannot guarantee the confidentiality of messages or documents sent via the open network. Third parties may access this information and may consequently collect and use the data without the Company's consent. Under certain circumstances, third parties may therefore draw conclusions regarding existing or future contractual relationships with the Issuer or other business relationships (such as banking relationships). Even if the sender and recipient are located in the same country, the transmission of data via such networks frequently also takes place via third countries, in other words via countries that do not offer the same level of data protection as the Company's country of domicile. The Company's data may be lost during transmission or could be intercepted by unauthorized third parties.
- 12.3 For data transmitted pursuant to sections 12.1 and 12.2, the Issuer assumes no responsibility for the accuracy, currency, completeness, reliability and transmission time.
- 12.4 By accessing one of the Issuer's or of American Express companies' websites, the Company acknowledges that the terms of use and privacy policies applicable for the website in question are binding.
- 12.5 The Issuer's customer service team is available to the Company for all matters relating to the contractual relationship (in particular also in the case of accounts being blocked) on the number and address specified on the monthly statement.
- 13 Further provisions (incl. applicable law and place of jurisdiction)**
- 13.1 The contractual relationship under these vPayment T&Cs will be subject to Swiss law to the exclusion of conflict-of-laws provisions and international treaties.
- 13.2 The Issuer reserves the right to amend the vPayment T&Cs (including the Fees set out in section 4) and the possible uses of the vPayment Account (incl. related services) at any time. Changes will be brought to the attention of the Company in an appropriate manner (e.g. online), and will be deemed accepted – if not already accepted online – if the vPayment Account has not been canceled by a specific date before the amendment enters into force. Any use of the vPayment Account after the amendment enters into force will also be deemed acceptance. In the absence of a statement to the contrary by the Issuer, these vPayment T&Cs (including any amendments) will also govern future contractual relationships relating to the vPayment Account.
- 13.3 The exclusive place of jurisdiction for all proceedings will be the Issuer's relevant registered office. The place of performance and debt enforcement for Companies without a registered office in Switzerland will be the Issuer's relevant registered office. Nevertheless, the Issuer may assert its rights before any other competent authorities. Mandatory statutory provisions of Swiss law remain reserved.
- 13.4 Separate, written agreements between the Company (including companies of the same group) and the Issuer remain hereby reserved.

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