

THE TERMS BELOW ARE ADDITIONALLY APPLICABLE TO ONLY THOSE MERCHANTS WHO PARTICIPATE IN AMERICAN EXPRESS. BANK IS NOT A PARTY TO THESE AMERICAN EXPRESS TERMS AND CONDITIONS.

1. **Merchant shall be bound by the American Express Merchant Operating Guide:** [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).
2. With respect to participation in an American Express acceptance program, in the event of a conflict between the terms below and other terms of this Agreement, the terms below shall control.
3. **General Terms.** Merchant authorizes Company and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express or Bank on behalf of Merchant.
4. **Marketing Message Opt-Out.** Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting Company. Note that Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.
5. **Conversion to American Express Direct Merchant.** Merchant acknowledges that it may be converted from American Express Card OptBlue program to a direct relationship with American Express if and when its Transaction volumes exceed the eligibility thresholds for the OptBlue program. If this occurs, upon such conversion, (i) Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.
6. **American Express as Third-Party Beneficiary.** Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card acceptance to enforce such terms against Merchant.
7. **American Express Opt-Out.** Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept Cards bearing Marks of other Card Brands.
8. **Refund Policies.** Merchant's refund policies for American Express purchases must be at least as favorable as its refund policy for purchase on any other Card Brand, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Law. Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.
9. **Establishment Closing.** If Merchant closes any of its Establishments, Merchant must follow these guidelines: (i) notify Company immediately; (ii) policies must be conveyed to the Cardholder prior to completion of the Transaction and printed on the copy of a receipt or Transaction record the Cardholder signs; (iii) if not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction record and on websites and catalogs); (iv) return and cancellation policies must be clearly disclosed at the time of sale; and (v) for Advance Payment Charges or Delayed Delivery Charges, Merchant must either deliver the goods or services for which Merchant has already charged the Cardholder or issue Credit for any portion of the Transaction for which Merchant has not delivered the goods or services.

#### American Express OPTBLUE Program Agreement

**[Important Note: Bank is not a party to the American Express OptBlue Program Agreement and has no responsibility under it. Merchant acknowledges and agrees that Bank and their affiliates have no obligation or liability whatsoever for: (1) American Express transactions whether under the American Express OptBlue Program Agreement, the Merchant Transaction Processing Agreement or otherwise; or (2) any actions or omissions of Company or American Express. Merchant agrees that any claims or disputes arising out of the foregoing will be resolved without involving Bank and that Bank is entitled to rely on Merchant's agreements in this paragraph.]**

THIS Agreement ("AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT"), by and between Company and MERCHANT, shall become effective on the date executed or approved by a duly authorized representative of Company. Company and Merchant shall be collectively known hereafter as the "Parties."

WHEREAS, TSYS Acquiring Solutions, LLC ("TAS"), Company, and Merchant are PARTIES to a Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"); and

WHEREAS, TSYS Acquiring Solutions, LLC has a relationship with American Express Travel Related Services Company, Inc. ("AMERICAN EXPRESS"); and

WHEREAS, the PARTIES desire to enter into this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT under which Company will provide payment processing services as to AMERICAN EXPRESS transactions;

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

Terms set forth herein, which are typed in all capitalized letters and not defined herein, shall have the same meaning as set out in the AGREEMENT.

The terms of the AGREEMENT, including the Merchant Application, are hereby incorporated by reference into this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT, except that no references to BANK under the AGREEMENT shall apply herein.

MERCHANT agrees to pay Company the FEES related to AMERICAN EXPRESS as set out on the Merchant Application.

The following terms and conditions apply to Merchant's participation in the AMERICAN EXPRESS OptBlue<sup>SM</sup> Program ("AMERICAN EXPRESS CARD ACCEPTANCE"): Merchant's participation in AMERICAN EXPRESS CARD ACCEPTANCE is subject to the approval of AMERICAN EXPRESS. Merchant authorizes Company and/or its affiliates to submit AMERICAN EXPRESS SALES To, and receive settlement on such SALES from, AMERICAN EXPRESS on behalf of Merchant.

Merchant agrees that Company may disclose to AMERICAN EXPRESS information regarding Merchant and Merchant's SALES to AMERICAN EXPRESS, and that AMERICAN EXPRESS may use such information to perform its responsibilities in connection with AMERICAN EXPRESS CARD ACCEPTANCE, promote AMERICAN EXPRESS, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of AMERICAN EXPRESS CARD ACCEPTANCE, and important transactional or relationship communications from AMERICAN EXPRESS. AMERICAN EXPRESS may use the information about Merchant obtained in the AGREEMENT at the time of setup to screen and/or monitor Merchant in connection with AMERICAN EXPRESS marketing and administrative purposes. Merchant agrees it may receive messages from AMERICAN EXPRESS, including important information about AMERICAN

EXPRESS products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may be contacted at its wireless telephone number and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax communications.

**Merchant may opt-out of receiving future commercial marketing communications from AMERICAN EXPRESS by contacting Company. Note that Merchant may continue to receive marketing communications while AMERICAN EXPRESS updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from AMERICAN EXPRESS.**

Merchant acknowledges that it may be converted from AMERICAN EXPRESS CARD ACCEPTANCE to a direct relationship with AMERICAN EXPRESS if and when its SALES volumes exceed the eligibility thresholds for AMERICAN EXPRESS CARD ACCEPTANCE. If this occurs, upon such conversion, (i) Merchant will be bound by AMERICAN EXPRESS' then-current Card Acceptance Agreement; and (ii) AMERICAN EXPRESS will set pricing and other fees payable by Merchant.

Merchant shall not assign to any third party any payments due to it under AMERICAN EXPRESS CARD ACCEPTANCE, and all indebtedness arising from SALES will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that the Merchant may sell and assign future SALES receivables to Company, its affiliated entities and/or any other cash advance funding source that partners with Company or its affiliated entities, without consent of AMERICAN EXPRESS. Notwithstanding the foregoing, Company prohibits Merchant from selling or assigning future SALES receivables to any third party.

Notwithstanding anything in the AGREEMENT to the contrary, AMERICAN EXPRESS shall have third-party beneficiary rights, but not obligations, to the terms of the AGREEMENT applicable to AMERICAN EXPRESS CARD ACCEPTANCE to enforce such terms against Merchant.

Merchant may opt out of accepting AMERICAN EXPRESS at any time without directly or indirectly affecting its rights to accept other CARD BRANDS.

Company shall have the right to terminate Merchant's participation in AMERICAN EXPRESS CARD ACCEPTANCE immediately upon written notice to Merchant (i) if Merchant breaches any of the provisions of this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT or any other terms of the AGREEMENT applicable to AMERICAN EXPRESS CARD ACCEPTANCE, or (ii) for cause or fraudulent or other activity, or upon AMERICAN EXPRESS' request. In the event Merchant's participation in AMERICAN EXPRESS CARD ACCEPTANCE is terminated for any reason, Merchant must immediately remove all AMERICAN EXPRESS branding and marks from Merchant's website and wherever else they are displayed.

Merchant refund policies for AMERICAN EXPRESS SALES must be at least as favorable as its refund policy for purchase on any other CARD BRAND, and the refund policy must be disclosed to cardholders at the time of purchase and in compliance with LAWS. Merchant may not bill or attempt to collect from any cardholder for any AMERICAN EXPRESS SALE unless a CHARGEBACK has been exercised, Merchant has fully paid for such CHARGEBACK, and it otherwise has the right to do so.

Merchant must accept AMERICAN EXPRESS as payment for goods and services (other than those goods and services prohibited by this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT, the AGREEMENT, or the RULES) sold, or (if applicable) for charitable contributions made at all of its business locations and websites, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant's business locations and websites under the AGREEMENT.

In the event that Merchant or Company is not able to resolve a Claim against AMERICAN EXPRESS, or a Claim against Company or any other entity that AMERICAN EXPRESS has a right to join in resolving a Claim, this section explains how Claims can be resolved through arbitration. Merchant or AMERICAN EXPRESS may elect to resolve any Claim by individual, binding arbitration. Claims are decided by a neutral arbitrator.

**If arbitration is chosen by any party, neither Merchant nor Company nor AMERICAN EXPRESS will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, Merchant, Company, and AMERICAN EXPRESS will not have the right to participate in a representative capacity or as a member of any class pertaining or be a named party to a class-action with respect to any Claim for which any party elects arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights Merchant, Company, or AMERICAN EXPRESS would have in court may also not be available in arbitration.**

- i. Initiation of Arbitration. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with the AGREEMENT. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing that Merchant attends shall take place in New York, New York unless all parties agree to an alternate venue.
- ii. **Limitations on Arbitration. If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other merchants or other persons or entities similarly situated.** The arbitrator's authority is limited to Claims between Merchant, Company, and AMERICAN EXPRESS. Claims may not be joined or consolidated unless all parties to this agreement agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, Company or AMERICAN EXPRESS and cannot be used in any other case except to enforce the award as between Merchant, Company and AMERICAN EXPRESS. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization against AMERICAN EXPRESS. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.
- iii. Previously Filed Claims/No Waiver. Merchant, Company, or AMERICAN EXPRESS may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Merchant, Company, or AMERICAN EXPRESS may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against AMERICAN EXPRESS prior to the effective date of the AGREEMENT.
- iv. Arbitrator's Authority. The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the AGREEMENT or any of its separate provisions, including this section, nor to determine any matter or make any award except as provided in this section.
- v. Split Proceedings for Equitable Relief. Merchant, Company, or AMERICAN EXPRESS may seek equitable relief in aid of arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all reasonable attorneys' fees and costs, including legal fees, to be paid by the party against whom enforcement is ordered.
- vi. Small Claims. AMERICAN EXPRESS shall not elect to use arbitration under this section for any Claim Merchant properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.
- vii. Governing Law/Arbitration Procedures/Entry of Judgment. This arbitration section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator to expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen (15) days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty (20) days of any objecting party's submission. If a Claim is for \$10,000 or less, Merchant or AMERICAN EXPRESS may choose whether the arbitration will be conducted solely on the basis of documents submitted to

the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If a Claim is for \$100,000 or more, or includes a request for injunctive relief, (a) any party to this AGREEMENT shall be entitled to reasonable document and deposition discovery, including (x) reasonable discovery of electronically stored information, as approved by the arbitrator, who shall consider, *inter alia*, whether the discovery sought from one party is proportional to the discovery received by another party, and (y) no less than five depositions per party; and (b) within sixty (60) days of the initial award, either party can file a notice of appeal to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider *de novo* any aspect requested of that award and whose decision shall be final and binding. If more than sixty (60) days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where Merchant's headquarters or Merchant's assets are located.

- viii. Confidentiality. The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the Claim resolution process, including but not limited to any related negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non discoverable as a result of its use in the negotiation, mediation, or arbitration.
- ix. Costs of Arbitration Proceedings. Merchant will be responsible for paying Merchant's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees Merchant would have incurred if Merchant had brought a Claim in court. AMERICAN EXPRESS will be responsible for any additional arbitration fees. At Merchant's written request, AMERICAN EXPRESS will consider in good faith making a temporary advance of Merchant's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.
- x. Additional Arbitration Awards. If the arbitrator rules in Merchant's favor against AMERICAN EXPRESS for an amount greater than any final settlement offer AMERICAN EXPRESS made before any arbitration award, the arbitrator's award will include: (1) any money to which Merchant is entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by Merchant.
- xi. Definitions. For purposes of the above arbitration provisions only, (i) AMERICAN EXPRESS includes any of its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) Merchant includes any of Merchant's affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) Claim means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against AMERICAN EXPRESS or against Company or any other entity that AMERICAN EXPRESS has the right to join in resolving a Claim, including, a transaction using an AMERICAN EXPRESS product or network or regarding an AMERICAN EXPRESS policy or procedure.

Except as expressly permitted by LAWS, Merchant must not:

- indicate or imply that it prefers, directly or indirectly, any other CARD BRANDS over AMERICAN EXPRESS,
- try to dissuade cardholders from using AMERICAN EXPRESS,
- criticize or mischaracterize AMERICAN EXPRESS or any of its services or programs
- try to persuade or prompt cardholders to use any other CARD BRANDS or any other method of payment (e.g., payment by check),
- impose any restrictions, conditions, disadvantages or fees when AMERICAN EXPRESS is accepted that are not imposed equally on all other CARD BRANDS, except for electronic funds transfer, or cash and check,
- suggest or require cardholders to waive their right to dispute any SALE,
- engage in activities that harm the AMERICAN EXPRESS business or brand (or both),
- promote any other CARD BRAND (except MERCHANT's own private label card that Merchant issues for use solely at MERCHANT's business locations and websites) more actively than Merchant promotes AMERICAN EXPRESS, or
- convert the currency of the original SALE to another currency when
- requesting authorization of submitting SALES (or both).

Merchant may offer discounts or in-kind incentives from Merchant's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by LAWS): (i) Merchant clearly and conspicuously disclose the terms of the discount or in-kind incentive to Merchant's customers, (ii) the discount or in-kind incentive is offered to all of Merchant's prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above.

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of AMERICAN EXPRESS and display AMERICAN EXPRESS' marks (including any AMERICAN EXPRESS card application forms provided to Merchant) as prominently and in the same manner as any other CARD BRANDS. MERCHANT must not use the AMERICAN EXPRESS marks in any way that injures or diminishes the goodwill associated with the mark, nor (without prior written consent from Company) indicate that AMERICAN EXPRESS endorses Merchant's goods or services. Merchant shall only use the AMERICAN EXPRESS marks as permitted by the AGREEMENT and shall cease using AMERICAN EXPRESS' marks upon termination of the AGREEMENT. For additional guidelines on the use of the AMERICAN EXPRESS marks, contact Company.

Any and all cardholder information is confidential and the sole property of the applicable issuer, AMERICAN EXPRESS or its affiliates. Except as otherwise specified, Merchant must not disclose cardholder information, nor use nor store it, other than to facilitate SALES at Merchant's business locations and websites in accordance with the AGREEMENT.

Merchant must ensure that it and any third parties it enlists to facilitate SALES processing complies with the American Express Technical Specifications (available at [www.tsystransactionssummary.com](http://www.tsystransactionssummary.com)) (valid and accurate data must be provided for all data elements in accordance with the American Express Technical Specifications). Failure to comply with the American Express Technical Specifications may impact Merchant's ability to successfully process SALES. Merchant's may be assessed non-compliance fees if Merchant fails to comply with the Technical Specifications. To ensure compliance with the Technical Specifications, Merchants should work with Company. Merchant must comply with and assure that Merchant Providers comply with the American Express Data Security Operating Policy ("DSOP") (found at [www.americanexpress.com/datasecurity](http://www.americanexpress.com/datasecurity)), the American Express Program Merchant Data Security Requirements [www.shift4.com/terms/americanexpress](http://www.shift4.com/terms/americanexpress) and the American Express Information Protection Contract Requirements (IPCR) [www.shift4.com/terms/americanexpress](http://www.shift4.com/terms/americanexpress).