

BlueSnap American Express Terms v1.0

The following provisions shall apply to all American Express transactions and payments serviced by BlueSnap on behalf of the Merchant.

1. Merchant shall comply with all relevant requirements comprised in the American Express Merchant Regulations April 2015 (“the Regulations”) and all updates thereof including any regional variations. Details thereof may be obtained upon direct application to American Express or via email: program.oversight.management@aexp.com
2. Merchant shall maintain full compliance with the Regulations set out in Chapter 8 relating to protection of Card member information; Chapter 11 relating to inquiries and chargebacks; and as appropriate to Chapter 12 relating to special industries.
3. Merchant shall not bill or collect from any Card member for any purchase or payment made on the Card unless American Express has exercised a Chargeback for such Charge, or Merchant has fully paid American Express for such Charge, and Merchant otherwise has the right to do so.
4. Merchant is not a third-party beneficiary under any agreement between BlueSnap and American Express.
5. Merchant accepts and agrees that American Express may direct BlueSnap to terminate its services to Merchant at any time without notice and/or without specific cause.
6. **Card Acceptance.** Merchant must accept the American Express Card (hereinafter “Card”) as payment for goods and services (other than those goods and services prohibited under section 3.5 of the Regulations, (“Prohibited uses of the Card”) sold, or (if applicable) for charitable contributions made, at all of its Establishments, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant’s Establishments under the Agreement.
7. **Treatment of the American Express Brand.** Except as expressly permitted by Applicable Law, Merchant must not:
 - indicate or imply that it prefers, directly or indirectly, any Other Payment Products over the Card,
 - try to dissuade Card members from using the Card,
 - criticize or mischaracterize the Card or any of American Express services or programs,
 - try to persuade or prompt Card members to use any Other Payment Products or any other method of payment (e.g., payment by check),
 - impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check,
 - suggest or require Card members to waive their right to dispute any Transaction,
 - engage in activities that harm American Express’ business or the American Express Brand (or both),
 - promote any Other Payment Products (except Merchant’s own private label card that you issue for use solely at your Establishments) more actively than Merchant promotes the Card, or
 - convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).

8. Treatment of the American Express Brand (US). Merchant may offer discounts or in-kind incentives from Merchants regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by Applicable Law): (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 in this section 7, "Treatment of the American Express Brand".
9. Treatment of the American Express Marks. Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of the Card and display the American Express Marks (including any Card application forms American Express may provide to Merchant) as prominently and in the same manner as any Other Payment Products. Merchant must not use American Express Marks in any way that injures or diminishes the goodwill associated with the Mark, nor in any way (without American Express' prior written consent) indicate that American Express endorses Merchant's goods or services. Merchant shall only use American Express Marks as permitted by the Agreement and shall cease using American Express Marks upon termination of the Agreement.
10. Treatment of American Express Card Member Information. Any and all Card member Information is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose Card member Information, nor use nor store it, other than to facilitate Transactions at Merchant's Establishments in accordance with the Agreement.
11. Merchant Web Site Display Requirements. The Merchant's web site(s) must display the following:
 - An accurate description of the goods/services offered, including the currency type for the Transaction (e.g., U.S. Dollars). Note: Transaction currency must be in U.S. Dollars in USA.
 - Merchant's physical address in the U.S.
 - An email address or telephone number for customer service disputes.
 - Return/refund policy.
 - A description of the Merchant's delivery policy (e.g., no overnight delivery).
 - A description of the Merchant's security practices (e.g., information highlighting security practices the Merchant uses to secure Transactions on its systems, including Transactions conducted on the Internet).
 - A statement of known export restrictions, tariffs, and any other regulations.
 - A privacy statement regarding the type of personal information collected and how the information is used. Additionally, Merchant must provide to customers the option to decline being included in marketing campaigns or having their personal information included on lists sold to third parties.
12. **Arbitration Agreement (as to Claims involving American Express) (U.S.)**

In the event that Merchant or BlueSnap is not able to resolve a Claim against American Express, or a claim against BlueSnap or any other entity that American Express has a right to

join, this section explains how Claims may be resolved through arbitration. Merchant or American Express may elect to resolve any Claim by binding individual arbitration.

Claims will be decided by a neutral arbitrator. If arbitration is elected by any party, neither Merchant nor BlueSnap nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, Merchant, BlueSnap, and American Express will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this Agreement. Arbitration procedures are generally simpler than the rules in court. An arbitrator's decisions are final and binding, and the arbitrator's final decision on a Claim generally is enforceable as a court order with very limited review by a court. Other rights Merchant, BlueSnap, or American Express would have in court may also not be available in arbitration.

i. **Initiation of Arbitration.** Claims may 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 this 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, if American Express selects the organization and Merchant selects the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in the federal judicial district where Program Merchant's headquarters is located or New York, NY, at Program Merchant's election.

ii. **Limitations on Arbitration.** If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between Merchant, BlueSnap, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, BlueSnap or American Express and cannot be used in any other case except to enforce the award as between Merchant, BlueSnap 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 in this Agreement, if any portion of these Limitations on Arbitration is found invalid or unenforceable, then the entire Arbitration Agreement (other than this sentence) will not apply, except that Merchant, BlueSnap, and American Express do not waive the right to appeal that decision.

iii. **Previously Filed Claims/No Waiver.** Merchant, BlueSnap, 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, BlueSnap, or American Express may choose to delay enforcing or to not exercise rights under this Arbitration Agreement, 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 to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

iv. Arbitrator's Authority. The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under this Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this arbitration agreement.

v. Split Proceedings for Equitable Relief. Merchant, BlueSnap, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement is entitled to seek an award of reasonable attorneys' fees and costs to be paid by the party against whom enforcement is ordered.

vi. Small Claims. American Express will not elect arbitration 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 Agreement 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 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 federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If Program Merchant's Claim is for \$10,000 or less, Merchant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where Program Merchant's headquarters or Pro-program Merchant's assets are located.

viii. Confidentiality. The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, 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; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.

ix. Costs of Arbitration Proceedings. Merchant will be responsible for paying Program 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 Program Merchant's written request, American Express will consider in good faith making a temporary advance of Program 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 Program Merchant's favor against American Express for an amount greater than any final settlement offer American Express made before arbitration, 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 this section 12, "Arbitration Agreement (as to Claims involving American Express) (U.S.)" only, (i) American Express includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, (ii) Merchant includes Program 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 BlueSnap or any other entity that American Express has the right to join, including, a transaction using an American Express product or network or regarding an American Express policy or procedure.