



**American Express® Buyer Initiated Payments Simple
Terms and Conditions**

July 29, 2020

These terms (the “Agreement”) govern your use of the buyer initiated payments service (the “Service”) offered by American Express Travel Related Services Company, Inc. (“American Express”, “we”, “our” or “us”). The individual accepting this Agreement represents that he or she has the authority to execute this Agreement on your behalf and that the company name and other information provided to us is accurate.

You may use the Service to receive electronic payments from your Buyers. “Buyer” means any of your customers who are located in the United States (“U.S.”), Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions and who have registered to use the Service.

1. PAYMENTS

a. How We Pay You. Provided that the payment instruction file meets our requirements, we will pay you in U.S. Dollars via automated clearing house (“ACH”) for the face amount of each transaction in the payment instruction file that your Buyer sends to us, minus the Deductions. “Deductions” means the (i) total aggregated fees described in Section 1(b), and (ii) and any other amounts you owe us or our affiliates under this Agreement or any other agreement between you or any of your affiliates and us or any of our affiliates.

b. What We Charge You. Your initial “BIP Processing Fee” will be provided to you during the enrollment process. We may also charge you fees for (i) checks that we issue or create for you (currently \$1.50 per check), and (ii) paper statements that you choose to receive (currently \$7.95 per statement). We may adjust our existing fees or add new fees for use of the Service at any time. The BIP Processing Fee may vary for you and your affiliates because of different industries, locations or different Buyers.

c. Your Bank Account. You must maintain a demand deposit account at a bank in the U.S. (a “Bank Account”) that has access to the Federal Reserve System in order to receive our payments to you. You must provide us with accurate Bank Account numbers and routing information and immediately notify us of any changes to them by contacting your American Express representative or Supplier/Merchant Services at 1-800-528-5200 or American.Express.Contract.Keying@aexp.com. If your Bank Account does not meet our requirements or if we cannot verify that the Bank Account information you provided is complete and accurate, we may suspend payments until the issues are resolved. We will not pay interest on suspended payments

d. When We Pay You. We will use commercially reasonable efforts to initiate ACH payments to your Bank Account pursuant to the one-day or three-day payment plan, based on your eligibility, as follows:

One-day plan

Receipt of Payment Instruction File	Time to Initiate ACH Payment
Before 1:00 p.m. EST on a Banking Day	1 Banking Day
After 1:00 p.m. EST on a Banking Day	2 Banking Days
On a day other than a Banking Day or a day we are not open for processing payments	1 Banking Day after the next day we are open for processing payments

Three-day plan

Receipt of Payment Instruction File	Time to Initiate ACH Payment
Before 1:00 p.m. EST on a Banking Day	3 Banking Days
After 1:00 p.m. EST on a Banking Day	4 Banking Days
On a day other than a Banking Day or a day we are not open for processing payments	3 Banking Days after the next day we are open for processing payments

Your bank’s policy determines when funds will be available in your Bank Account. If your bank does not honor payments or improperly applies a debit, credit or adjustment, we are not responsible for amounts in excess of

the applicable debit, credit or adjustment that we originally made. “Banking Day” means a day our bank is open and processing ACH payments.

2. PAYMENT REVERSALS AND PAYMENT ERRORS

- a. **Payment Reversal.** You and your Buyer may decide together that a payment needs to be reversed (“Payment Reversal”). Upon your approval, we will deduct the amount of the Payment Reversal from other payments owed to you or debit it from your Bank Account.
- b. **Payment Errors.** You must regularly review the statements we provide describing your fees and payments and notify us of any errors or omissions within 90 days of the statement date. We will not be responsible for investigating or correcting any errors or omissions after this 90-day period. If you receive any payment from us not owed to you, you must immediately notify our BIP General Support Department at (866) 735-9402 or PAYVEservicing@aexp.com.
- c. **Credits and Debits.** If we make any credit or debit to your Bank Account in error (not including Payment Reversals, which are determined by you and your Buyer), you authorize us to have the improperly applied credit or debit reversed. If your bank rejects a credit we make to your Bank Account, we will provide you with an additional credit after we receive notice of the rejection. If your bank rejects a debit we make to your Bank Account, we may offset the debited amount against future payments to you under this Agreement or initiate another debit from your Bank Account. If we are unable to recover an amount owed through an offset or debit, we will invoice you and you will immediately pay the outstanding amount via wire transfer.

3. YOUR AFFILIATES

You may permit your affiliates to use the Service with our prior consent. If any of your affiliates use the Service, (i) you represent that you have the authority to bind them to the terms of this Agreement; and (ii) you and your affiliates agree to be jointly and severally liable for your and your affiliates’ acts and omissions under this Agreement.

4. NOTICES

- a. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c) the day of sending by email.
- b. **Our Contact Information.** Unless we notify you otherwise, you will send notices to us at:
American Express Travel Related Services Company, Inc.
P.O. Box 299051
Fort Lauderdale, FL 33329
Attn: Department 87
Email: American.Express.Contract.Keying@aexp.com
Fax: (602) 744-8413
- c. **Your Contact Information.** We will send notices to you at the address, e-mail address, or facsimile number you provide to us at enrollment, in your application and set up pages or otherwise. You must notify us immediately of any change to your notice address.

5. INDEMNIFICATION AND LIMITATION OF LIABILITY

- a. **Indemnity.** You shall indemnify, defend, and hold harmless us and our affiliates, successors, and permitted assigns 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 this Agreement or failure in the provision of your goods or services.
- b. **Limitation of Liability.** IN NO EVENT SHALL WE OR OUR AFFILIATES, SUCCESSORS, OR PERMITTED ASSIGNS BE LIABLE TO YOU OR ANY THIRD PARTY 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 THIS AGREEMENT, OR ARISING OUT OF THE USE OF OR INABILITY TO ACCESS OR USE THE SERVICES OR THE BIP TECHNOLOGY, INCLUDING

WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOSS OF GOODWILL, LOST BUSINESS, LOST DATA, LOST CUSTOMER DATA, LOST EMPLOYEE PERSONAL DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DAMAGES OR LOSSES THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETIONS OF FILES, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATIONS FAILURE, ACTIONS OF THIRD PARTIES, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS.

6. TERM AND TERMINATION

a. Effective Date/Termination Date. This Agreement is effective as of the date you indicate your agreement online or otherwise access or use any portion of the Services. Either party can terminate this Agreement for any reason by notifying the other party. We may suspend your access to all or a portion of the Services in our sole discretion.

b. Effect of Termination. If any amounts remain unpaid after this Agreement terminates, you must pay them to us within 30 days of our request. Termination of this 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, 2, 5, 6, 8 and 9.

7. DISCLAIMERS.

WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED OR PROBLEM OR ERROR FREE AND EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

8. DISPUTE RESOLUTION

This section explains how Claims can be resolved through arbitration or litigation. It includes an arbitration provision. "Claim" means any claim, dispute, or controversy between (i) you and (ii) us arising from or relating to this Agreement or prior Agreement, or the relationship resulting therefrom, whether based in contract, tort, statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of this Agreement or prior Agreement.

a. Notice of Claim. Before filing a lawsuit or beginning an arbitration regarding a Claim, you and we agree to send a written notice (Claim notice) to each party against whom the Claim is asserted. This provides the parties an opportunity to resolve the Claim informally. The Claim notice must describe the nature and basis of the Claim and state the specific amount or other relief demanded. Notice to us must include your name, your Supplier name, address, and Supplier/Merchant Number and be sent to our notice address set forth in section 4.

b. Arbitration. You or we may elect to resolve any Claim by individual, binding arbitration. If arbitration is chosen by any party, neither you nor we will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, you and we will not have the right to participate in a representative capacity or as a member of any class pertaining to any Claim subject to arbitration. Except as set forth below, the arbitrator's decision will be final and binding.

i. Initiation of Arbitration. Before beginning arbitration, you or we must first provide the Claim notice described above and attempt to resolve the Claim in good faith through informal negotiations. If parties are unable to resolve the Claim through informal negotiations within thirty (30) days of receiving the Claim notice, you or we will then have sixty (60) days to submit the Claim to JAMS (1-800-352-5267, jamsadr.com) or the American Arbitration Association ("AAA") (1-800-778-7879, adr.org) for arbitration, or to an alternative arbitral body mutually agreed upon in writing by you and us. Claims will be resolved pursuant to this Arbitration provision and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. Any arbitration hearing that requires the physical presence of the parties shall take place in New York, New York.

The arbitrator's authority is limited to Claims between you and us alone. Claims may not be joined or consolidated unless you and we agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case and cannot be used in any other case except to enforce the award. 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. You or we 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. Without limiting its scope, this section applies to any class-action lawsuit relating to the “Honor All Cards,” “non-discrimination,” or “no steering” provisions of the Merchant Regulations, or any similar provisions of any prior Card acceptance agreement, that was filed against us prior to the effective date of this Agreement.

iv. Arbitrator’s Authority. The arbitrator shall have the power and authority to award any relief that would have been available in court and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter this 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. Either you or we 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 costs, including legal fees, to be paid by the party against whom enforcement is ordered.

vii. Governing Law/Arbitration Procedures/Entry of Judgment. 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, , provided that any party may request that the arbitrator expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty days of any objecting party’s submission. 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) you and we shall be entitled to reasonable document and deposition discovery, as approved by the arbitrator, who shall consider, inter alia, whether the discovery sought from one party is proportional to the discovery received by the other party, and shall permit no less than five depositions per party; and (B) within sixty 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. The prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where your headquarters or assets are located after the passage of more than sixty (60) days from the issuance of the final arbitral decision from which no appeal can be taken

viii. Confidential Proceedings. 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, negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by the mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential, privileged, 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. Subject to subsection (Split Proceedings for Equitable Relief), both parties will share equally the costs of any arbitration proceedings.

c. Definitions. For purposes of this section 8 only, (i) we, our, and us include any of our affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) you and your include any of your affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing.

d. Continuation. This section will survive termination of this Agreement, any legal proceeding to collect a debt, any bankruptcy and any sale of you or your assets (in the case of a sale, its terms will apply to the buyer). If any portion of this Dispute Resolution section, except as otherwise provided in the Limitations on Arbitration

subsection, is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Dispute Resolution section, this Agreement or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

9. MISCELLANEOUS

- a. Amendments. We have the right to modify the Services and this Agreement at any time. Upon modification of this Agreement, we will update the date indicated after “Last Modified” at the beginning of this document.–Notwithstanding section 4, we may post modifications to this Agreement to a designated website or otherwise make such updates available to you. You may contact Supplier/ Merchant Services at tel: 1-800-528-5200 or by e-mail: American.Express.Contract.Keying@aexp.com to request a digital copy of your Agreement. If you do not agree with the modified terms, you must immediately cease using the Services. Your continued use of the Services constitutes your continued agreement to the terms and conditions herein.
- b. Proprietary Rights and Permitted Uses. Neither party has any rights in, or rights to use without prior written consent, the other party’s trademarks, logos and service marks, except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time.
- c. Compliance with Laws. You will comply with all applicable laws and governmental regulations and rules relating to the Service.
- d. Governing Law; Venue. This Agreement and all Claims are governed by and will be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Subject to section 8, any action by either party hereunder will be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.
- e. Confidentiality. You must keep confidential and not disclose to any third party the provisions of this Agreement or any information that you receive from us in connection with this Agreement that is not publicly available.
- f. Assignment. You may not assign any of your rights under this Agreement 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 this Agreement or subcontract the performance of Services without your consent. This Agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns.
- g. No Third-Party Beneficiaries. This Agreement is between American Express and you only. This Agreement does not confer any rights or benefits on any third parties.
- h. Independent Contractors. The parties are independent contractors. Nothing in this Agreement or in the activities contemplated under this Agreement will create an agency, partnership, employment, or joint-venture relationship between the parties.
- i. Savings Clause. Other than as set forth in the last sentence of section 8.b.i, if any provision is held by a court of competent jurisdiction to be illegal or unenforceable, that provision will be replaced by an enforceable provision most closely reflecting the parties’ intentions, with the balance of this Agreement remaining unaffected.
- j. Electronic Signatures. Each party consents to the use of electronic records and signatures in the execution and performance of this Agreement.
- k. Entire Agreement. This Agreement is the entire agreement between the parties regarding the Service and supersedes any previous agreements, understandings, or courses of dealing regarding the Service.