

Overview: The American Express OptBlue® Program is generally available for Merchants that process less than \$1 Million USD in American Express card payments. The below terms cover your acceptance of American Express card payments under the OptBlue® Program. This Overview is for convenience only and is not a contractual term.

AMERICAN EXPRESS OPTBLUE® PROGRAM TERMS ADDENDUM

The American Express OptBlue® Program Terms Addendum (the "OptBlue Addendum") governs Merchant participation in the American Express OptBlue® Program, in which Merchant may choose to participate in order to accept American Express Cards if Merchant meets certain eligibility requirements. If Merchant elects to enroll in the American Express OptBlue® Program ("OptBlue® Program"), the following additional terms and conditions of the OptBlue Addendum shall apply.

1. **Defined Terms.** Capitalized terms used in the OptBlue Addendum and not otherwise defined shall have the same meaning as in the Rainforest Processing Terms and Conditions ("Terms").
2. **Conflicts.** The OptBlue® Program is provided to Merchant by the Processor and not a Sponsor Bank. In the event of any inconsistency between the OptBlue Addendum and the Terms, the OptBlue Addendum will prevail.
3. **Eligibility.** Merchant understands that Merchant must meet certain eligibility requirements in order to participate in the OptBlue® Program, including that Merchant must be located in the fifty United States and have an estimated American Express charge volume of less than \$1 Million per year USD. Merchant further understands that if Merchant currently or at any point in the future does not meet these eligibility requirements, the Merchant will contact Rainforest who will assist Merchant in securing the appropriate arrangements with American Express. Merchant understands that continued acceptance of American Express Cards will at all times be subject to the discretion of Processor and American Express. Notwithstanding any other provision of the Terms, including this OptBlue Addendum, Sponsor Bank and Rainforest may terminate this OptBlue Addendum immediately upon Sponsor Bank's receipt of instructions from Processor or American Express to discontinue providing Services to Merchant or in connection with the OptBlue® Program.
4. **Card Acceptance.** Merchant may elect to accept other Payment Network cards without also accepting American Express cards.
5. **Arbitration Agreement for Claims Involving American Express.** In the event that Merchant, Sponsor Bank, and American Express are not able to resolve a Claim, this section explains how Claims may be resolved through arbitration. Merchant, Sponsor Bank, 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 to resolve a Claim, the parties understand and agree that no parties will have the right to litigate or have a jury trial on that Claim in court. Further, all parties understand and agree that the parties 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 Section 5. Arbitrator's decisions are final and binding, with very limited review by a court, and once confirmed by a court of competent jurisdiction, an arbitrator's final decision on a Claim is generally enforceable as a court order. Other rights the parties would have in court may also not be available in arbitration.

Initiation of Arbitration. Claims may be referred to either JAMS or the American Arbitration Association ("AAA"), as selected by the party electing arbitration. Claims will be resolved pursuant to this Section 5 and the selected arbitration organization's rules in effect when the Claim is filed, except where those rules conflict with the OptBlue Addendum. 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 or Sponsor Bank, on one hand, selects the organization and Merchant, on the other hand, 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 New York, NY.

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, Sponsor Bank, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by the parties and cannot be used in any other case except to enforce the award as between the parties. 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 Section 5, if any portion of these Limitations on Arbitration set forth in this Section 5 (ii) is found invalid or unenforceable, then the entire Section 5 (other than this sentence) will not apply, except that the parties do not waive the right to appeal that decision.

Previously Filed Claims/No Waiver. Each party 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. Each party may choose to delay enforcing or to not exercise rights under this Section 5, 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 5 applies to any class-action lawsuit relating to the "Honor All Cards," "nondiscrimination," 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 Terms to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

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 the Terms. The arbitrator has no power or authority to alter the Terms or any of its separate provisions, including this Section 5.

Split Proceedings for Equitable Relief. Each party 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 5 shall be enforced by any court of competent jurisdiction.

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.

Governing Law/ Arbitration Procedures/Entry of Judgment. This Section 5 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 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 Merchant's headquarters or your assets are located.

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.

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.

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 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.

6. Definitions.

"American Express" includes American Express and its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing.

"Claim" means any claim (including initial claims, counterclaims, cross-claims, and third party claims, and any allegation of an entitlement to relief), dispute, or controversy that American Express has a right to join (or against American Express) arising from or relating to the OptBlue® Program, or the relationship resulting from the OptBlue® Program, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), or statutes, regulations, or any other theory.

Updated January 1, 2023