

SAFEKEY PROGRAM ENROLLMENT TERMS AND CONDITIONS (“Enrollment Terms”)

Last Modified: October 2013

Welcome to SafeKey, an American Express program enabling Acquirers, Issuers, Vendors and Merchants (each as defined below) to better verify Cardmembers during the on-line authentication process in order to reduce the likelihood of American Express Card fraud in a Card-not-present environment (the “Program”).

The Program is made available by American Express Travel Related Services Company, Inc. and its affiliates and service providers ("American Express", "we" or "us") only to Eligible Participants. An “Eligible Participant” is any of the following: (i) an Acquirer, meaning an entity authorized by American Express or an American Express affiliate to enter into a contract with a merchant pursuant to which such merchant (“Merchant”, “you” or “your”) can accept American Express cards (“Cards”) as a means of payment for goods and services; (ii) an “Issuer”, meaning an entity which issues Cards to Cardmembers pursuant to a license from American Express or an affiliate of American Express; (iii) a “Vendor”, meaning an entity that has been certified by American Express to perform Card processing services on behalf of an Acquirer or an Issuer; or (iv) a Merchant.

All Program enrollees are required to be fully Certified in order to participate in the Program. Being “Certified” or receiving “Certification” means the determination that you are in full compliance with the required Specifications, (which may include: 3D Secure Protocol Specification, Acquirer Authorisation and Settlement Specifications).

Certification consists of two technical phases, both of which must be successfully completed to participate in the Program: Phase 1: Enrollment and Phase 2: Set-up.

Enrollment consists of the determination by American Express that your systems are ready and capable of undergoing testing in support of Set-up. Upon such determination, American Express will inform you, or as applicable your Acquirer or Vendor (your “Administrator”) that you have been Enrolled, and therefore are eligible to engage in Set-up testing. If your Administrator has not been approved by American Express to implement the Program, then you will not be eligible to Enroll in the Program.

These Terms govern Enrollment only. You understand and agree that American Express is under no obligation to Enroll you.

Following Set-up evaluation and testing, your Administrator may, based on the results of such evaluation and testing, declare you to be Final Certified. Final Certification shall be subject to the agreement between you and your Administrator governing your participation in the Program.

ENROLLMENT REQUIREMENTS

Upon receiving an Enrollment request from a registered Merchant, American Express will review the request, and Enroll, at its discretion, each Merchant that meets American Express’ requirements. American Express will notify each Enrollee via the contact information specified in the Enrollment application that such Enrollment has been approved.

Authority and Capacity.

You represent and warrant that:

1. you have the power, authority and capacity to agree to these Enrollment Terms, and provide all information requested;
2. any information you provide to American Express will be true, accurate, current and complete; and
3. you will update your information as necessary so that it remains true, accurate, current and complete

The SafeKey Program.

American Express does not make any warranties concerning Enrollment, either express or implied, and is not responsible for fulfillment of any applicable warranties or representations made by any Eligible Participant, including your Administrator.

These Enrollment Terms do not amend, supplement, change or replace any terms of any other agreement that may be effective between you and American Express or you and your Administrator (“Other Agreement”). In the event of a conflict between these Enrollment Terms and any Other Agreement, these Enrollment Terms shall govern with respect to Enrollment only.

Modification of Program & Enrollment Terms.

American Express reserves the right to revise these Enrollment Terms at any time in its sole discretion and will indicate that changes to these Enrollment Terms have been made by updating the date indicated after "Last Modified" at the beginning of the document. Any modifications to these Enrollment Terms will only affect your and our respective rights and obligations from the effective date of the change(s) and thereafter. If you do not agree with the modified or current Enrollment Terms you must cease participating in the Program, surrender Certification status, and return or destroy all confidential information provided to you pursuant to the Program. WE SHALL NOT BE LIABLE AND SHALL HAVE NO OBLIGATION TO YOU IN THE EVENT WE EXERCISE OUR RIGHTS TO MODIFY, SUSPEND OR TERMINATE THESE ENROLLMENT TERMS.

Privacy.

Any information provided to American Express by you in connection with these Enrollment Terms (e.g., information submitted during Enrollment testing) shall be subject to our Online Privacy Statement.

Unauthorized Access or Usage; Fraud Investigations; Violations.

ANY ATTEMPT BY YOU TO DELIBERATELY DAMAGE, DISRUPT OR UNLAWFULLY MANIPULATE THE ENROLLMENT PROCESS OR THE CHANNELS UPON WHICH IT OPERATES, AND/OR OTHERWISE UNDERMINE THE LEGITIMATE OPERATION OF THE ENROLLMENT PROCESS IS STRICTLY PROHIBITED. AMERICAN EXPRESS RESERVES THE RIGHT TO SEEK DAMAGES AND COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) ARISING FROM SUCH ACTIVITY FROM ANY SUCH PERSON TO THE FULLEST EXTENT PERMITTED BY LAW.

Hardware, Equipment & Service Requirements.

You must have access to the Internet to Enroll, and you (and not American Express) are solely responsible for, without limitation, obtaining and maintaining all telecommunications, broadband, and computer hardware, equipment, and services needed for Enrollment, and for paying all charges related thereto.

Disclaimers.

ENROLLMENT IS PROVIDED ON AN "AS IS" AND AN "AS AVAILABLE" BASIS. AMERICAN EXPRESS SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING ANY GOODS AND SERVICES ADVERTISED IN CONJUNCTION WITH ENROLLMENT, AND DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

AMERICAN EXPRESS, ITS AFFILIATES AND ITS AGENCIES AND SERVICE PROVIDERS ENGAGED TO FACILITATE OR ADMINISTER ENROLLMENT ("Service Providers"), SPECIFICALLY DISCLAIM RESPONSIBILITY FOR: (1) ANY INCORRECT OR INACCURATE INFORMATION, WHETHER CAUSED BY PRINTING, TYPOGRAPHICAL OR OTHER ERRORS OR BY ANY OF THE EQUIPMENT OR PROGRAMMING ASSOCIATED WITH OR UTILIZED IN THE ENROLLMENT PROCESS; (2) ANY TRANSMISSION DELAYS, INTERRUPTIONS, OMISSIONS, DELETIONS, DEFECTS, DELAYS OR FAILURES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, SYSTEM MALFUNCTIONS, PERFORMANCE DEGRADATION, SERVICE INTERRUPTIONS, OR DISCONNECTIONS OR DISRUPTION IN PHONE LINES, NETWORK HARDWARE OR SOFTWARE OR INTERNET CONNECTIVITY; (3) UNAUTHORIZED HUMAN INTERVENTION IN ANY PART OF ENROLLMENT; (4) COMPUTER, MECHANICAL, TECHNICAL, PRINTING, TYPOGRAPHICAL, TECHNICAL OR NON-TECHNICAL, OR HUMAN OR OTHER ERRORS OR OMISSIONS WHICH MAY OCCUR IN CONNECTION WITH ENROLLMENT; (5) ANY INJURY OR DAMAGE TO PERSONS OR PROPERTY WHICH MAY BE CAUSED, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, FROM ENROLLMENT.

YOU ACKNOWLEDGE AMERICAN EXPRESS, ITS AFFILIATES AND ITS SERVICE PROVIDERS SHALL NOT BE LIABLE TO YOU IF ENROLLMENT TESTING IS UNAVAILABLE, INTERRUPTED OR SUSPENDED FOR ANY REASON, IN WHICH CASE YOU AGREE THAT YOUR SOLE REMEDY SHALL BE TO CEASE THE ENROLLMENT PROCESS. YOU AGREE THAT YOUR PARTICIPATION IN AND ACCESS TO ENROLLMENT IS AT YOUR SOLE RISK AND EXPENSE.

Indemnification.

You shall indemnify and hold American Express, its licensors, sponsors, agencies and their parents, subsidiaries, affiliates, officers and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Enrollment, including, without limitation, infringement by you, or others using your account information, of any intellectual property rights or other rights of any person or entity. You must use your best efforts to cooperate with us in the defense of any such claim. We reserve the right, at our own expense, to employ separate counsel and assume the exclusive defense and control of any such matter subject to indemnification by you.

Limitation of Liability.

You agree, on your own behalf and on behalf of your respective representatives, successors and assigns (the "Releasing Parties") to release, defend and hold harmless American Express and its affiliates and Service Providers, as well as the employees, officers, directors and agents of each (the "Released Parties"), from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, lost profits, indirect or direct damages, consequential damages, incidental damages, punitive or exemplary damages, judgments, extent, executions, claims and demands whatsoever, in law, admiralty or equity, which in any way arise out of or result from Enrollment, including Enrollment testing. You assume all liability for any damages or injury caused or claimed to be caused, by Enrollment, including Enrollment testing.

Governing Law.

These Enrollment Terms shall be governed by and interpreted under the laws of the State of New York, U.S.A. without regard to its conflicts of laws provisions.

Alternative Dispute Resolution.

If any Claim shall arise between you and American Express, such Claim shall be resolved through binding arbitration administered by the American Arbitration Association at its offices in New York, New York, in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. "**Claim**" means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between the parties arising from or relating to these Enrollment Terms, or the relationship resulting from these Enrollment Terms, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), or statutes, regulations, or any other theory.

Each party shall bear its own costs and expenses and an equal share of the arbitrator and administrative fees of arbitration. Notwithstanding the foregoing, the negotiation and mediation procedures set out in this section shall not apply to disputes involving only issues of law, but not of fact (such Claims to include situations where one of the parties challenges the existence and/or validity of the binding agreement created by these Terms or any part thereof).

With respect to the arbitration of any Claim, you and American Express shall not have the right to participate in a representative capacity or as a member of any class of claimants pertaining to any claim. Notwithstanding any other provision in these Terms and without waiving either party's right to appeal such decision, should any portion of this section be deemed invalid or unenforceable, then this section (other than this sentence) shall not apply.

Claims shall be arbitrated on an individual basis. There shall be no right or authority for any Claims to be arbitrated on a class action basis or in a purported representative capacity on behalf of the general public or other persons or entities similarly situated. The arbitrator's authority to resolve Claims and to make awards is limited to Claims between the parties to these Enrollment Terms alone, and is subject to the Limitations of Liability set forth in these Enrollment Terms. Furthermore, Claims brought by either party to these Enrollment Terms against the other may not be joined or consolidated in arbitration with Claims brought by or against any third party, unless agreed to in writing by all parties. No arbitration award or decision on any Claims shall be given preclusive effect as to issues or claims in any dispute with anyone who is not a party to the arbitration. Should any portion of this section be stricken from these Enrollment Terms or deemed otherwise unenforceable, then this entire section shall be stricken from these Enrollment Terms.

All negotiations pursuant to this section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. The parties and arbitrators utilized shall maintain the confidentiality of the proceedings, except to the extent otherwise required under applicable law. It shall be a condition to the engagement of any arbitrator that such arbitrator shall agree to maintain the confidentiality of the proceeding and the decision and any award.

Confidential Information

You shall regard and preserve as confidential all information disclosed or made available to you pursuant to Enrollment (collectively and individually, Confidential Information). You shall hold all such Confidential Information in confidence, and, except as set out herein, shall not release Confidential Information to any third party without the prior written consent of American Express and may use such Confidential Information solely in connection with Certification. You shall not resell, redistribute or otherwise transfer Confidential Information to any other person or entity, nor allow any other party to use Confidential Information or any information contained therein for any reason unless otherwise permitted hereunder. You shall limit access to Confidential Information to those of your employees, third party service providers or consultants (collectively, "Representatives") who require access to such Confidential Information to enable Enrollment. You shall inform such Representatives of your and their obligations under this section, and shall require all Representatives to treat Confidential Information in accordance with the requirements of these Terms and all applicable laws, but in any event you shall remain responsible for the compliance of such Representatives with this section and shall remain liable for their breach.

These confidentiality obligations shall not apply to information that: (a) is already known to you prior to disclosure by American Express; (b) is or becomes available to the public through no breach of this section by you; (c) is rightfully received by you from a third party without a duty of confidentiality; (d) is independently developed by you; or (e) is required to be disclosed by law, regulation, or court order, provided that you shall use reasonable efforts to notify American Express prior to such disclosure.

Assignability.

We may assign or delegate all or part of American Express' rights or duties under these Enrollment Terms without such assignment or delegation being considered a change to these Enrollment Terms, and without notice to you. You may not assign these Enrollment Terms, or delegate any of your duties hereunder, without American Express's prior written consent, and any assignment or delegation by you in breach of the provisions hereof shall be null and void ab initio.

Severability and Waiver.

These Enrollment Terms represent the entire understanding between you and American Express with respect to Enrollment, and may only be amended as described in these Enrollment Terms. No waiver by us of any breach of any provision of these Enrollment Terms will constitute a waiver of, or consent to, any subsequent breach of the same or any other provision of these Enrollment Terms. If any part of these Enrollment Terms is found to be void and unenforceable, it will not affect the validity of the balance of these Enrollment Terms, which shall remain valid and enforceable according to the terms herein. The failure to enforce any provision of these Enrollment Terms on one occasion shall not prevent enforcement on any other occasion or the enforcement of any other term.

Headings.

Headings and captions shall not be considered included for purposes of interpretation or application hereof, but are for convenience only.