

Contract Number: TR229

EXECUTION COPY



AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE

The Agreement, effective as of the later date of signature below (“Effective Date”), is by and between **American Express Travel Related Services Company, Inc.**, a New York corporation, (hereinafter, “American Express,” “Contractor,” “we,” “us,” or “our”), and **State of Florida, Department of Financial Services** (hereinafter, “the Department,” “you,” or “your”).

WHEREAS, the Department is an agency of the State of Florida (“State”) authorized pursuant to section 215.322(4), Florida Statutes (F.S.), to enter into contracts for the processing of electronic payments for state agencies, units of local government, and the judicial branch of the State;

WHEREAS, section 287.057(3)(c), F.S., provides that contractual services available only from a single source may be excepted from the competitive-solicitation requirements, and American Express is the single source provider for the acceptance of American Express® Cards;

WHEREAS, the Department seeks to facilitate payment to governmental entities in the State through acceptance of widely-used credit, charge, and debit cards; and

WHEREAS, the Department and Participating State of Florida Entities, as defined in Schedule A, wish to participate in the Card Service, as defined in Schedule A, and American Express shall provide the Department and Participating State of Florida Entities the Card Service services set forth in this Agreement.

THEREFORE, the parties agree as follows:

General Provisions

1. SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS

a. Scope of the Agreement. The Agreement governs your acceptance of American Express Cards in the United States. The Agreement covers you *alone* and those Participating State of Florida Entities who execute the Agency Participation Agreement for American Express® Card Acceptance. You shall distribute all notices, statements, amendments, and other communications related to this Agreement that you receive from us to Participating

Contract Number: TR229

State of Florida Entities and any other Entities accepting the Card hereunder. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

b. Other Parts of the Agreement.

- i. Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We have the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 8.m of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of “Merchant Regulations” or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our Merchant Services representatives (telephone: 1-800-528-5200). We may charge you a fee for each copy that you request;
- ii. The following Schedule, Exhibit, and Addendum are incorporated herein by reference and constitute part of this Agreement:

Schedule A	Other Important Provisions for Card Acceptance
Exhibit 1	Agency Participation Agreement
Addendum A	Public Records Requirements

c. Definitions. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated in section 1.a of Schedule A for ease of reference. Some definitions that appear in the Merchant Regulations are amended in section 1.b of Schedule A.

d. Participating State of Florida Entities. Notwithstanding any other provision of this Agreement, we may upon any reasonable business basis, including a legal/compliance risk or a risk of credit or fraud loss, immediately without prior notice to a Participating State of Florida Entity (i) refuse to allow any Participating State of Florida Entity to accept or continue to accept the Card or (ii) suspend any Participating State of Florida Entity’s Card acceptance privileges.

Contract Number: TR229**2. ACCEPTING THE CARD**

a. Acceptance. You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember's choice of which Card to use. You are responsible and jointly and severally liable for the performance by your Establishments of all provisions of the Agreement and all obligations of your Establishments under the Agreement.

b. Transaction Processing and Payments. Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.

- i. Format. You must create a Charge Record for every Charge and a Credit Record for every Credit that complies with our Technical Specifications, as described in the Merchant Regulations. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.
- ii. Authorization. For every Charge, you must obtain from and submit to us an Authorization Approval code. An Authorization Approval does not guarantee that (i) the person making the Charge is the Cardmember, (ii) the Charge is in fact valid or bona fide, (iii) you will be paid for the Charge, or (iv) you will not be subject to Chargeback.
- iii. Submitting Charges and Credits. Your Establishments must submit Charges and Credits only in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.
- iv. Payment for Charges. We will pay you according to the one-day payment plan set forth in the Merchant Regulations in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any amounts for which you have submitted Credits. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. **In addition to your Discount the only other fee we may charge you are processing/gateway fees.**

Contract Number: TR229

- v. Chargeback. We have Chargeback rights, as described in the Merchant Regulations. We may Chargeback by (i) deducting, withholding, recouping from, or otherwise offsetting against our payments to you or debiting your Bank Account, or we may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our failure to demand payment does not waive our Chargeback rights.
 - vi. Protecting Cardmember Information. You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the Payment Card Industry Data Security Standard.
- c. Standard of Care. At a minimum, American Express shall perform the services in connection with Card Service required under the Agreement in accordance with the practices and high professional standards used in a well-managed operation performing similar services. American Express shall use qualified individuals with suitable training, education, experience, and skills to perform the Card Services.

3. PROTECTIVE ACTIONS

a. Creating a Reserve. Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to establish a Reserve. If we believe that we need to create a Reserve, we may establish a Reserve upon ten (10) days' notice or terminate the Agreement. We shall inform you if we establish a Reserve or terminate the Agreement. We may establish a Reserve by (i) withholding amounts from payment we otherwise would make to you under the Agreement or (ii) requiring you to deposit funds or other collateral with us. Any collateral provided pursuant to this section 3 of the General Provisions is subject to our prior written approval. We may increase the amount of the Reserve at any time so long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement (including Charges submitted by you for goods or services not yet received by Cardmembers and our costs of handling Disputed Charges) or to Cardmembers. Upon the occurrence of an event described in section 3.b.viii of the General Provisions, and during any continuation of such event, we may take immediate action to establish or increase the amount of any Reserve to an amount, in our reasonable judgment, proportional to the risk to us and our Affiliates arising from such event. No Reserve shall be applied in contravention of State law.

b. Trigger Events for Reserve. Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties owning 25% or more of such interests as of the Effective Date of the Agreement), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering

Contract Number: TR229

a material adverse change in your business or a material adverse change occurs in your industry; (iv) your breach of section 3.e of the General Provisions; (v) your becoming insolvent; (vi) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; (vii) our reasonable belief that you will not be able to perform your obligations under the Agreement or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to you, (B) requires you to make a direct payment into a reserve account or similar device, or (C) requires you to provide such Entity with a letter of credit or other third-party guaranty of payment.

c. Application of Reserve. We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts you or any of your Participating State of Florida Entities owe us or any of our Affiliates under the Agreement; (ii) any costs incurred by us in connection with the administration of the Reserve, including attorneys' fees; and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including attorneys' fees and our costs of handling Disputed Charges.

d. Other Protections. We may take other reasonable actions to protect our rights and the rights of any of our Affiliates, including changing the speed or method of payment for Charges, exercising Chargeback under any of our Chargeback programs, offsetting any amounts due to you under the Agreement against amounts that you owe us or our Affiliates under the Agreement, or charging you fees for Disputed Charges. However, the accounts of one Participating State of Florida Entity shall not be subjected to a chargeback to satisfy the deficiency of another Participating State of Florida Entity.

e. Providing Information. You must provide to us promptly, upon request, information about your and your Participating State of Florida Entities' finances, creditworthiness, and operations, including the most recent certified financial statements, to the extent and in the form that such information exists for the governmental entities subject to this Agreement. You must notify us immediately of the occurrence of any event described in section 3.b.viii of the General Provisions.

4. AGREEMENT ADMINISTRATION AND NOTICES**a. Agreement Administrators.**

- i. The Department's contract manager is Trisha Williams whose email is: Trisha.Williams@myfloridacfo.com; located at 1801 Hermitage Blvd., 4th Floor, Tallahassee, FL 32399-0344.
- ii. American Express's Vice President, Curtis Wilson whose email is curtis.wilson@aexp.com; located at 200 Vesey Street, New York, NY 10285; and whose telephone number is: 212-640-3913 and senior contract manager is Reuben

Contract Number: TR229

Garduce whose email is: reuben.garduce@aexp.com; located at 200 Vesey Street, New York, NY 10285; and whose telephone number is: 212-640-3603.

- iii. All written and verbal approvals referenced in this Agreement must be obtained from the parties' contract managers and Agreement Administrators designated in this section or their designees in writing, it being understood that any notice must also be sent to the addressees indicated in sub-section 4.d. and 4.e. below.
- iv. In the event that different representatives are designated by either party after execution of this Agreement, notice of the name and address of the new representatives will be rendered in writing to the other party and said notification attached to originals of this Agreement. No amendment to the Agreement will be required for this.

b. Delivery and Receipt. Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand delivery; or by U.S. postal service, such as first-class mail or third-class mail, postage prepaid; or by expedited mail courier service; or by electronic mail (*e-mail*); or by facsimile transmission. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third-class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in a postal or electronic address for which no notice was appropriately given, then the notice is effective upon the rejection, refusal or inability to deliver.

c. Electronic Communications. We may provide any notice, including any notice under section 4.b., as well as any statement, or other communication related to this Agreement to you by any lawfully permitted electronic means, including by (i) transmission to an electronic address (e.g., email), (ii) posting it on an American Express website, or (iii) making it available to you on an American Express website through a link provided on a statement, other notice or communication. Notices, statements and other communications sent to you electronically will be effective the earlier of when (i) we send it to you, or (ii) we send or otherwise provide you with notice that the notice, statement or communication has been posted on an American Express website. You agree that we may use any electronic address you, or any of your authorized representatives, provide to us in the course of our relationship with you. You will provide us with your current electronic address and notify us promptly with any updates to that address so we may continuously and effectively communicate with you. It is your responsibility to access and retain copies of all electronic notices, statements or communications that we provide you. If you ask us for a paper copy of an electronically delivered notice, statement or communication, we may charge you a fee for providing the copy. The provisions of this paragraph will survive termination of this Agreement.

d. Our Notice Address. Unless we notify you otherwise, you shall send notices under sections 4.b and 4.c to us at:

Contract Number: TR229

American Express Travel Related Services Company, Inc.
P.O. Box 299051
Fort Lauderdale, FL 33329 Attn: Department 87
E-mail: American.Express.Contract.Keying@aexp.com
Fax: (602) 744-8413
Tel: (800) 528-5200

With a copy to:

American Express Travel Related Services Company, Inc.
3 World Financial Center
200 Vesey Street, 49th Floor
New York, NY 10285
Attn: General Counsel's Office / Merchant Services Practice Group

e. Your Notice Address. Unless you notify us otherwise, we shall send notices to you at:

Department of Financial Services
Division of Treasury
1801 Hermitage Blvd., 4th Floor
Tallahassee, FL 32399-0344
Attn: Financial Administrator, Cash Management
E-mail: Trisha.Williams@myfloridacfo.com

f. Your Contact Information. We may send notices, statements or other communications to you at any postal or electronic address you or any of your authorized representatives provide to us in the course of our relationship with you, either as part of your application or otherwise. You must notify us immediately of any change to your contact information, including without limitation the contact information and address described in sections 4.b and 4.c above. Your failure to provide such updated contact information may result in a delay of the delivery of notices, statements and communications herein referenced; however, it will not impact our ability to give proper legal notice under this provision or the legal effectiveness of same.

5. LIMITATION OF LIABILITY

a. IN NO EVENT SHALL A PARTY OR ITS RESPECTIVE AFFILIATES (IN OUR CASE), PARTICIPATING STATE OF FLORIDA ENTITIES (IN YOUR CASE), SUCCESSORS, OR PERMITTED ASSIGNS BE LIABLE TO THE OTHER 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 ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NEITHER YOU

Contract Number: TR229

NOR WE WILL BE RESPONSIBLE TO THE OTHER FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS, INTERNET SERVICE PROVIDERS, OTHER COMMUNICATION NETWORKS OR THE BANKING SYSTEM, EXCEPT THAT OUR RIGHTS TO CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

b. Indemnification. The Department and American Express agree that neither party will indemnify the other for a party's breach, negligent or wrongful act or omission, or failure to perform under the Agreement. Notwithstanding anything to the contrary herein, the Department assumes no liability for the actions of any Participating State of Florida Entity.

c. Employment Restrictions. During the term of this Agreement, American Express shall not knowingly employ any person (including any non-governmental entity in which such person has any employment or other material interest as defined in section 112.312 (15), F. S.), in connection with this Agreement, who has participated in the performance or procurement of this Agreement except as provided in section 112.3185, F. S.

d. Contingency. If the terms of this Agreement extend beyond the current fiscal year, the State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the legislature of the State.

6. TERM AND TERMINATION

a. Effective Date/Termination Date. The Agreement begins on the Effective Date and continues for a period of five (5) years (the "Term"). The Department shall have the right to unilaterally terminate or suspend the Agreement by providing American Express thirty (30) calendar days' prior written notice.

b. Grounds for Termination.

i. In addition to the termination rights in sections 3.a and 6.a of the General Provisions, if you engage in any activities that harm our business or the American Express Brand, without waiving our other rights and remedies, we may terminate the Agreement immediately upon notice to you. If we determine or have reason to believe, in our sole discretion, that you are involved (or knowingly participate or have participated) in a fraudulent or illegal business activity, we may terminate the Agreement immediately without prior notice to you.

ii. Pursuant to section 287.058, F.S., the Department may terminate the Agreement immediately in the event that American Express refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of chapter 119, F.S., related to the Department's and any Participating State of Florida Entity's American Express Card Transaction records, which are made or received by American Express in connection with the performance of the Card Service services under this Agreement. However, nothing herein is intended to expand the scope or

Contract Number: TR229

applicability of chapter 119, F.S., to American Express. American Express shall not be required to disclose to the public any proprietary, copyrighted, trade secret or other materials protected by law pursuant to section 119.07, F.S.

- iii. Pursuant to section 287.135, F. S., if the services provided by American Express are for \$1 million or more, the Department may, at its option, terminate the Agreement immediately in the event American Express (as a company as defined in such State statute) is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or, to the extent that it is not preempted by Federal law, been engaged in business operations in Cuba or Syria, or, regardless of the dollar amount of the services provided by American Express, the Department may, at its option, terminate the Agreement immediately in the event American Express (as a company as defined in such State statute) is found to have placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.
- iv. The Department may, at its option, terminate the Agreement immediately in the event American Express employs an unauthorized alien in the performance of the Card Service services in connection with this Agreement.
- v. The Department may, at its option, terminate the Agreement immediately if an entry of an order revoking the certificate of authority granted to American Express by the State or other licensing authority;
- vi. Force Majeure. Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. Either party may terminate this Agreement upon notice to the other party after determining such delay will reasonably prevent successful performance of this Agreement.

c. Termination for Breach. If a party commits a material breach of the Agreement (other than as specified in the preceding subsection), without waiving its other rights and remedies, the other party has the right to send the breaching party a notice specifying the breach and providing the breaching party an opportunity to cure the breach within a period of time no less than thirty (30) days (*Cure Period*). If the breach is not cured within the Cure Period, then the non-breaching party has the right to terminate the Agreement by notice to the breaching party, with termination to be effective not less than ten (10) days following the end of the Cure Period.

d. Post-Termination. If the Agreement terminates, without waiving our other rights and remedies, we may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates for performance under this Agreement. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove

Contract Number: TR229

all displays of our Marks, return our materials and equipment immediately, and submit to us any Charges and Credits incurred prior to termination.

e. Effect of Termination. Termination of the 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, 3, 5, 6, 7, and 8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our right of direct access to the Bank Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

f. Events of Default. Provided such failure is not the result of an act or inaction by the Department or outside the reasonable control of American Express, the following events, acts, or omissions, shall include but are not limited to, events of default:

- i. Failure to pay the Department or any Participating State of Florida Entity (individually herein called, an "Applicable Entity") as required herein in connection with the Agreement; provided, however, the Department agrees that it will not be considered a default of American Express if such failure to pay any Applicable Entity is a result of the act or inaction of: an Applicable Entity, an Applicable Entity's bank, an Applicable Entity's Processor, a Force Majeure event or a lack of availability to the Federal Reserve System via the automated clearing house.
- ii. If American Express fails to process an Authorized Card Transaction, American Express shall, as its sole financial consequence in compliance with section 287.058(1)(h.), F.S., forfeit Discount or Prepaid Card Discount associated with such Card Transaction not processed.
- iii. One or more of the following circumstances, remaining uncorrected for more than thirty (30) calendar days unless within the specified thirty (30) day period, American Express (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:

- A. Entry of an order for relief under Title 11 of the United States Code;
- B. The making by American Express of a general assignment for the benefit of creditors;
- C. The appointment of a general receiver or trustee in bankruptcy of American Express's business or property; and
- D. An action by American Express under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

- iv. The Contractor makes or has made an intentional material misrepresentation or omission in any services provided to the Department.
- v. If the Department determines that the services furnished do not meet the specified requirements, or that the qualifications, financial standing, or facilities are not

Contract Number: TR229

satisfactory, or that performance is untimely, the Department may terminate the Agreement.

7. DISPUTE RESOLUTION

This section explains how Claims can be resolved through mediation, arbitration or litigation. It includes an arbitration provision.

a. Notice of Claim. Before filing a lawsuit or beginning a mediation or 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 Merchant name, address, and Merchant Number and be sent to our notice address set forth in section 4.b of the General Provisions. If the Claim proceeds to arbitration, the amount of any relief demanded by you or us in a Claim notice shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled on the Claim.

b. Mediation. In mediation, a neutral mediator helps parties resolve a claim. The mediator does not decide the claim but helps parties reach agreement.

- i. **Initiation of Mediation.** Before beginning a mediation, 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 sixty (60) days of receiving the Claim notice, you or we will then have ninety (90) 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 mediation, or to an alternative mediator mutually agreed upon in writing by you and us.
- ii. **Conduct of Mediation.** You and we agree to cooperate in selecting a mediator from a panel of neutrals and in scheduling the mediation proceedings. Both parties will share equally the costs of any mediation proceedings but otherwise will be responsible for their own legal costs and expenses.
- iii. **Confidentiality/Tolling.** Except as otherwise required by law, all communications made for the purpose of, in the course of, or pursuant to the mediation shall be confidential, and no evidence of any such communication shall be admissible for any purpose or subject to discovery. When legally permissible, all applicable statutes of limitation and defenses based upon the passage of time shall be tolled from thirty (30) days following the sending of the Claim notice for sixty (60) days or until termination of the mediation, whichever is earlier.

Contract Number: TR229

- iv. Effect. If neither party elects mediation within ninety (90) days after the completion of the sixty (60) day informal negotiation period, or we do not reach a resolution within a period of ninety (90) days from the first meeting of the parties in mediation, then the parties will settle the Claim through binding arbitration as set forth in section (c) below.

c. Arbitration. You or we 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 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. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. Other rights you or we would have in court may also not be available in arbitration. 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.

- i. Initiation of Arbitration. Before beginning an arbitration, you or we must first provide the Claim notice described above. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. 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. If we choose the organization, you may select the other within thirty (30) days after receiving notice of our selection. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if you and we 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 requires the physical presence of the parties shall take place in Leon County, Florida unless the parties agree in writing to an alternate venue.
- ii. Limitations on Arbitration. **If either 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 similarly situated.** 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. This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against us. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid

Contract Number: TR229

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. Either you or we 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 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 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. 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.
- vi. Small Claims Court; Injunctive Relief. We shall not elect to use arbitration under this section for any Claim you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court. Injunctive relief sought to enforce the provisions of sections 8.a and 8.b of the General Provisions is not subject to the requirements of this section. This section is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.
- vii. Governing Law/Arbitration Procedures/Entry of Judgment. This 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; however, Florida law shall govern the power to act undertaken by any Florida governmental entity fulfilling its obligations under this Agreement. 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,

Contract Number: TR229

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. If a Claim is for \$10,000 or less, you or we 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. If a Claim is for more than \$10,000 or less than \$100,000, you and we shall be entitled to limited discovery, which shall include no more than (A) reasonable discovery of hard-copy and electronically-stored information, including not more than four custodians, 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 (B) two depositions per party. 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, including (1) 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 the other party, and (2) 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 (or award (if no written decision is timely requested)) shall be final and binding. At the timely request of a party, the arbitrator(s) 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 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 the other party's headquarters or assets are located.

- viii. Confidential Proceedings. Except as required by law, 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.

Contract Number: TR229

ix. Costs of Arbitration Proceedings. Both parties will share equally the costs of any arbitration proceedings.

d. Definitions. For purposes of section 7 of the General Provisions 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 Participating State of Florida Entities, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing.

e. 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, the Agreement or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

8. MISCELLANEOUS

a. Confidentiality. You and we, respectively, must keep confidential and not disclose to any non-Affiliated third party any information that it receives from the other under the Agreement that is not publicly available, except: (i) if such information is subject to disclosure pursuant to the requirements of chapter 119, F.S., or an order, decree, subpoena, or other validly issued judicial or governmental agency process (including through requests for information or by oral questions); or (ii) if such information is requested from us or any of our Affiliates' regulators. To the extent not prohibited by Applicable Law or regulators, we will use commercially reasonable efforts to promptly notify you of such request or requirement so that you may seek to avoid or minimize the required disclosure or obtain an appropriate protective order or other appropriate relief to ensure that any information so disclosed is maintained in confidence to the maximum extent possible.

b. Proprietary Rights and Permitted Uses. Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent, except that we may use of your name, address, (including your website addresses or URLs), and customer service telephone numbers for purposes of Cardmember servicing, including on Cardmembers' monthly statements, Chargeback documentation, and routine customer service communications, but in no event for marketing purposes.

c. Representations and Warranties. You and we, respectively, represent and warrant to the other that: (i) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized; (ii) it is duly qualified and licensed to do business in all jurisdictions in which it conducts business; (iii) it has full authority to enter

Contract Number: TR229

into the Agreement and all necessary assets and liquidity to perform its obligations and pay its debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on its business or its ability to perform its obligations or pay its debts hereunder; (v) the individual who signs the Agreement on behalf of a party has the authority to bind that party to the Agreement; and (vi) it is a sophisticated business, has negotiated individually each of the material provisions of the Agreement on an arm's length basis with the advice of competent counsel, in order to meet the respective needs of each party, and that no ambiguity in the drafting of the Agreement shall be construed against the drafter. American Express Company warrants that it is not on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List; that it is not participating in a boycott of Israel; and, to the extent that it is not preempted by Federal law, that it is not engaged in business operations in Cuba or Syria. You further represent and warrant to us that: (vii) you are authorized to enter into the Agreement on behalf of your Establishments and Participating State of Florida Entities, including those indicated in the Agreement; (viii) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at www.treas.gov/ofac), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at www.state.gov), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (ix) you have not assigned to any third party any payments due to you under the Agreement and all indebtedness arising from Charges are for bona fide sales of goods or services (or both) at your Establishments and free of any liens, claims, and encumbrances other than ordinary sales taxes or with respect to liens or other security interests that you grant pursuant to credit facilities obtained in the ordinary course of business from your commercial banks or other financial institutions; (x) all information that you provided in connection with the Agreement is true, accurate, and complete; and (xi) you have read the Agreement and kept a copy for your file. If any of your representations or warranties in the Agreement become untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

d. Compliance with Laws. You and we, respectively, shall comply with all Applicable Laws and governmental regulations and rules but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. American Express shall retain records relating to the Agreement and its performance for the longer of five (5) years after the expiration of the Agreement or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <https://dos.myflorida.com/media/703328/gsl-sl-2020.pdf>). If applicable, with respect to the Card Services American Express provides to the Department, American Express shall ensure the electronic and information technology accessibility requirements of the Rehabilitation Act Amendments, 29 USC section 794, are met and provide a website where

Contract Number: TR229

the compliance information on Card Services is available. The Electronic and Information Technology standard can be found at: <http://www.section508.gov/>. Notwithstanding the foregoing, the Department acknowledges that American Express only retains its data security files for a period of three (3) years.

American Express shall comply with all federal, state, and local regulations, including, maintenance and disclosure of records of American Express, which shall be governed by the requirements of chapter 119, F.S., Chapter 1B-24, Florida Administrative Code, and Rule 1B-26.003, Florida Administrative Code.

e. Employment Eligibility Verification and Background.

- i. The Department shall consider the employment by any contractor of unauthorized aliens in violation of section 274A(e) of the Immigration and Nationality Act, 8 USC section 1324a. Such violation shall be cause for unilateral cancellation of this Agreement. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a proposal on a contract to provide any goods or services to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under 287.133(1) and 287.134(1), F.S.
- ii. Employment eligibility verification. American Express, verifies the identity and employment authorization for all hires (hired after November 6, 1986) to work in the United States by retaining the completed Form I-9, Employment Eligibility Verification and by registering with and using the E-Verify system as defined in section 448.095, F.S. American Express agrees to provide to the Department proof of its enrollment in the E-Verify System within 5 days of the Department's request for such proof.
- iii. American Express shall be responsible for the retention of any records relating to employment eligibility verification. Those records are exempt from the inspection and copying requirements of chapter 119, F.S.
- iii. Pursuant to section 448.095(2)(c)1., F.S., if the Department has a good faith belief that American Express has knowingly violated section 448.09(1), F.S., the Department shall terminate the Agreement.

f. Lobbying. American Express agrees that funds received by it under this Agreement will not be expended for the purpose of lobbying the Legislature, the judicial branch, or a State agency in violation of sections 11.062 or 216.347, F. S. Pursuant to the requirements of section 287.058(6), F. S., during the term of the Agreement between American Express and the Department, American Express may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Agreement.

g. Governing Law; Jurisdiction; Venue. The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. However, Florida law shall govern the

Contract Number: TR229

power to act undertaken by any Florida governmental entity fulfilling its obligations under this Agreement. Subject to section 7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the Leon County, Florida. Each party consents to the exclusive jurisdiction of such court and waives any Claim of lack of jurisdiction or forum non conveniens.

h. Scrutinized Companies.

- i. The following paragraph applies regardless of the dollar value of the goods or services provided:

By entering into this Agreement, in accordance with the requirements of section 287.135(5), F.S., American Express certifies that it is not participating in a boycott of Israel. At the Department's option, the Agreement may be terminated if American Express is placed on the Quarterly List of Scrutinized Companies that Boycott Israel (referred to in statute as the "Scrutinized Companies that Boycott Israel List") or becomes engaged in a boycott of Israel.

The State Board of Administration maintains the "Quarterly List of Scrutinized Companies that Boycott Israel" at the following link:

<https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx>.

- ii. The following paragraph applies only when the goods or services to be provided are \$1 million or more:

By entering into this Agreement, in accordance with the requirements of section 287.135, F.S., the Contractor certifies that it is not on the Scrutinized List of Prohibited Companies (referred to in statute as the "Scrutinized Companies with Activities in Sudan List" and the "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List") and, to the extent that it is not preempted by Federal law, that it has not been engaged in business operations in Cuba or Syria. At the Department's option, the Agreement may be terminated if such certification (or the certification regarding a boycott of Israel) is false, if the Contractor is placed on the Scrutinized List of Prohibited Companies, or, to the extent not preempted by Federal law, if the Contractor engages in business operations in Cuba or Syria.

The State Board of Administration maintains the "Scrutinized List of Prohibited Companies" under the quarterly reports section at the following link:

<https://www.sbafla.com/fsb/PerformanceReports.aspx>.

- i. Interpretation. In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to;" (iv) the term "day" means "calendar day;" (v) all amounts are stated in U.S. dollars; (vi) references to a "party" means us, on

Contract Number: TR229

the one hand, and you, on the other hand; (vii) the term “may” (unless followed by “not”) means “has the right, but not the obligation, to”; (viii) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (ix) any reference to a website or a URL (or both) refers to its successor website or URL; (x) all captions, headings, and similar terms are for reference only; and (xi) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of the Merchant Regulations and the provisions of any accompanying schedules or exhibits shall be interpreted to give each their full effect. To the extent possible, these General Provisions, the provisions of Schedule A, Addendum A, and the provisions of the Merchant Regulations shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: Schedule A and Addendum A shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions except Sections 1.a, 1.b.i, 2.a, 2.b.iii, 2.b.iv, 3, 4, 5, 6, 7, 8.a through 8.d, 8.g, 8.i, 8.j, 8.k, 8.l, 8.m. (only with respect to the first two sentences thereof), and 8.n through 8.r of these General Provisions, which shall control over the Merchant Regulations.

j. Assignment. We may assign the Agreement, or any of our rights, interests, or obligations hereunder, without your consent. The Department may assign the Agreement, or any of its rights, interests, or obligations hereunder to any other department/unit within the State of Florida, upon prior written notice to American Express. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

k. Waiver; Cumulative Rights. Either party’s failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

l. Savings Clause. Other than as set forth in the last sentence of section 7.c.ii of the General Provisions, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties’ intentions, with the balance of the Agreement remaining unaffected. If the provision that was previously held to be illegal or unenforceable is subsequently found to not be illegal or unenforceable as a result of a legislative, regulatory or judicial mandate or agreement of an authority with competent jurisdiction, such provision shall be reinstated in the Agreement and shall supersede the replacement provision. If any such legislative, regulatory or judicial mandate that caused

Contract Number: TR229

a provision to be held illegal or unenforceable is subsequently modified in any manner, the provision shall be replaced by an enforceable provision that most closely reflects the parties' intentions as shown by the original contract provision.

m. Amendments. Subject to the provisions of chapter 287, F.S., except as specifically indicated herein, any amendment to the Agreement must be in writing and duly signed by both parties (except that an e-mail or other electronic communication does not constitute such a signed writing), provided that we shall change the Merchant Regulations pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card, except where Applicable Law takes precedence.

1. **Scheduled Changes.** The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:
 - i) a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
 - ii) a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.

Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.

2. **Unscheduled Changes.** We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to you (unless another effective date is specified in the notice).

Objections to Unscheduled Changes to the Merchant Regulations. In the event you determine in your reasonable business judgment that any such change referenced in sub-section 8.m.2. above ("Unscheduled Changes") results in a operational hardship, or is inefficient or unfeasible, then you shall notify American Express of your objection and the reasons for such objection by sending notice (the "Objection Notice") within seven (7) days from the date of American Express's notification. If an Objection Notice is sent within the time period outlined in the preceding sentence, the parties agree to negotiate in good faith, during a period of thirty (30) days (or longer, if mutually agreed upon), to resolve any issues and to explore

Contract Number: TR229

mutually acceptable alternatives to accommodate the Department's concerns. If after such negotiation period has ended and the parties have not reached an agreement on the Changes to which you have objected, the Department shall have the right, within ten (10) days after the end of the negotiation period to: (i) decide to accept the subject Change(s), or (ii) decide not to accept the subject Change(s). If the Department decides not to accept the Change(s) as described in (ii) in this subsection, then the Department shall have the right, to terminate this Agreement by providing American Express with thirty (30) days written notice. The foregoing rights of objection and termination shall be inapplicable with respect to Unscheduled Changes that are required by Applicable Law, Payment Card Industry Data Security Standard, or security of the American Express Network.

n. Entire Agreement. The Agreement is the complete and exclusive expression of the agreement between you and us regarding the subject matter hereof and supersedes any prior or contemporaneous agreements, understandings, or courses of dealing regarding the subject matter hereof.

o. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.c OF THE GENERAL PROVISIONS, WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF TITLE OR NON-INFRINGEMENT.

p. No Third-Party Beneficiaries. The Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto and none of the provisions of the Agreement shall be enforceable by any person other than the parties hereto, and the Participating State of Florida Entities, their successors and permitted assigns.

q. Press Releases. Neither party shall issue any press release or make any public announcement (or both) in respect of the Agreement or the other party without the other party's prior written consent.

r. Independent Contractors. You and we are independent contractors. No agency, partnership, joint-venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

s. Counterparts and Facsimile/E-mail Versions. The parties may execute the Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by

Contract Number: TR229

facsimile or by attaching to an e-mail is as effective as executing and delivering the Agreement in the presence of the other party.

t. Integrity. American Express shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department's Inspector General, or other authorized State official, American Express shall cooperate, to the best of its ability and consistent with its fiduciary and legal obligations, to provide, without a subpoena, information the Inspector General deems relevant to the Contractor's business or financial records and documents or files of any type or form that refer to or relate to the Contract.

Subject to Addendum A, American Express shall comply with section 119, F.S., where applicable, and any records containing State Data which are in the possession of American Express at the end of its then applicable document retention period shall be returned by American Express to the Department upon the Department's request. American Express and the Department shall discuss the disposition of any State Data in the possession of American Express at least once every two years to ensure the Department is on notice prior to the destruction of any State Data under American Express's retention schedule. American Express agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of American Express's compliance with the terms of this or any other agreement between American Express and the State which results in the suspension or debarment of American Express. Such reasonable costs will include, but they shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. To the extent such reasonable costs are applicable, they shall be determined by a neutral arbitrator. American Express shall not be responsible for any costs of investigations that do not result in American Express's suspension or debarment. "State Data" shall mean "Any information provided by the Department other than Cardmember Information".

u. Advertising. Subject to chapter 119, F.S., and sub-section 8.b. above, American Express shall not publicly disseminate any information concerning the Agreement without prior written approval from the Department, including, but not limited to mentioning the Agreement in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking American Express's name and either a description of the Agreement or the name of the State or the Department in any material published, either in print or electronically, to any entity that is not a party to the Agreement, except a potential or actual authorized service representative.

Contract Number: TR229

Notwithstanding the aforementioned, the Department consents to the use of its name by American Express in order to identify:

- i) Charges and respond to Cardmember inquiries; and
- ii) The Department and Participating State of Florida Entities as American Express Card accepting merchants.

v. Annual Appropriations. The State’s performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the legislature. If the State does not receive such appropriations, then American Express shall be permitted to terminate this Agreement upon notice to the Department.

w. Inspector General Audit Cooperation. American Express understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing in connection with Contractor’s obligations under the Agreement. American Express will comply with this duty. In addition, to the extent Contractor has utilized subcontractors to perform any obligation hereunder, the Contractor shall require such subcontractor to maintain information consistent with the standards set forth in this provision. The Contractor shall make all reasonable efforts to promptly address and cause its subcontractors (and Contractor’s and subcontractor’s respective representatives) to address any alleged deficiencies raised with respect to compliance with Applicable Laws and the Agreement as a result of an audit by the inspector general.

x. Requirements of Section 501.171, F.S. If the Department shares data that is covered by section 501.171, F.S. with American Express in connection with this Agreement, American Express is responsible for fulfilling the requirements placed on the Department by section 501.171, F.S., at American Express’s expense, if American Express is responsible for a breach of this data. For clarity any data that is covered by section 501.171, F.S. does not include Cardmember Information which is American Express’s sole property. The parties hereby agree that, as of the Effective Date, American Express does not have access to data that is covered by section 501.171, F.S. and does not create, have access to, or receive from or on behalf of the Department any data that is covered by section 501.171, F.S.

**AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY,
INC.**

**STATE OF FLORIDA, DEPARTMENT
OF FINANCIAL SERVICES**

DocuSigned by:
Colleen Taylor
By: _____
Colleen J. Taylor
President, Global Merchant & Network Services

DocuSigned by:
Scott Fennell
By: _____
Scott Fennell
Deputy Chief Financial Officer
Florida Department of Financial Services

Date: March 4, 2021

Date: March 4, 2021

Contract Number: TR229



Schedule A
Other Important Provisions for Card Acceptance

1. DEFINITIONS

a. Notwithstanding anything to the contrary in the Agreement, the following definitions appear in the Merchant Regulations and are repeated in this section 1.a of Schedule A for ease of reference only and do not supersede the definitions in the Merchant Regulations:

Agreement, Contract mean the General Provisions, the Merchant Regulations, Schedule A, and any other accompanying schedules, exhibits, and addenda collectively (sometimes referred to as the Card Acceptance Agreement in our materials).

American Express Card or Card mean (i) any card, account access device, or payment device or service in each case bearing our or our Affiliates' Marks and issued by an Issuer or (ii) a Card Number.

Cardmember means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card. (Cardmember is sometimes referred to as "Card Member" in our materials.)

Card Service means the service American Express and its Affiliates and the licensees of each of them provide for businesses to accept the Card for the purchase by Cardmembers of goods and services.

Charge means a payment or purchase made on the Card.

Chargeback when used as a verb, means (i) our reimbursement from you for the amount of a Charge subject to such right or (ii) our reversal of a Charge for which we have not paid you; when used as a noun, means the amount of a Charge subject to reimbursement from you or reversal (sometimes called "full recourse" or "Full Recourse" in our materials).

Claim means any claim (including initial claims, counterclaims, cross-claims, and third-party claims), dispute, or controversy between you and us arising from or relating to the Agreement or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement, except for the validity, enforceability, or scope of section 7.c of the General Provisions.

Credit means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.

Contract Number: TR229

Discount means an amount that we charge you for accepting the Card, which amount is: a percentage (*Discount Rate*) of the face amount of the Charge that you submit; or a flat per-Transaction fee, or a combination of both.

Disputed Charge means a Charge about which a claim, complaint, or question has been brought.

Entity means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

General Provisions means the provisions set out in the Agreement other than the provisions in the Merchant Regulations or any accompanying schedule or exhibit hereto.

Marks mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

Merchant Number means a unique number we assign to your Establishment.

Merchant Regulations means the American Express Merchant Regulations – U.S., which are available at www.americanexpress.com/merchantpolicy and can be accessed by entering your online Merchant Account user ID and password.

Other Payment Products mean any charge, credit, debit, stored value, prepaid, or smart cards, account access devices, or other payment cards, services, or products other than the Card.

We, our, and us mean American Express Travel Related Services Company, Inc., a New York Corporation.

b. The definitions in the Merchant Regulations are hereby amended as follows:

(i) The definition of *you* and *your* is hereby deleted in its entirety and replaced with the following:

You and *your* means the governmental Entity indicated on the signature page hereof, and the Participating State of Florida Entities (sometimes called the “Merchant,” “Establishment,” “Service Establishment,” or “SE” in our materials).

(ii) The following definitions are added:

Participating State of Florida Entities means the State of Florida Entities that sign an agency participation agreement substantially in the form attached hereto as Exhibit 1.

Contract Number: TR229

State of Florida Entities means your departments, agencies, institutions, offices, colleges, universities, school districts, counties, cities, and other State agencies or units of local government, as defined in sections 216.011 and 215.322, F.S., that perform sovereign functions.

(iii) Any and all references in the Merchant Regulations to Affiliate(s), as it applies to you, are hereby deleted and replaced with references to Participating State of Florida Entity(ies).

2. PAYMENT FOR CHARGES

You shall advise us which of the below mentioned payment options you select or if you change from one option to another:

OPTION 1 (Gross Pay / ACH Debit):

You shall submit all Charges electronically. We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less any Credits you submit. We may debit your Bank Account for all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit that we are unable to deduct from our payments to you. If we cannot debit your Bank Account, we may invoice you for such amounts. You shall pay us within thirty (30) days of your receipt of our invoice. Notwithstanding the foregoing, if you do not pay us within thirty (30) days of your receipt of our invoice(s), we may offset such amounts from future payments we would otherwise make to you.

OPTION 2 (Gross Pay / Invoice WITHOUT a debit exclusion):

You shall submit all Charges electronically. We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less any Credits you submit. We may debit your Bank Account for all applicable deductions, rejections, and withholdings, which include: (i) any amounts you owe us or our Affiliates, (ii) any amounts for which we have Chargebacks, and (iii) any Credits you submit that we are unable to deduct from our payments to you. We may invoice you for (A) the Discount, and (B) any amounts described in subsections (i) through (iii) of this section 2 that we are unable to debit your Bank Account for. You shall pay us within thirty (30) days of your receipt of our invoice. Notwithstanding the foregoing, if you do not pay us within thirty (30) days of your receipt of our invoice, we may offset such invoiced amounts from future payments we would otherwise make to you.

OPTION 3 (Gross Pay / Invoice WITH a debit exclusion):

You shall submit all Charges electronically. We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less any Credits you submit. We may invoice you for all applicable deductions, rejections,

Contract Number: TR229

and withholdings, which include: (i) the Discount; (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit that we are unable to deduct from our payments to you. You shall pay us within thirty (30) days of your receipt of our invoice. Notwithstanding the foregoing, if you do not pay us within thirty (30) days of your receipt of our invoice, we may offset such invoiced amounts from future payments we would otherwise make to you, unless such practice conflicts with the State's payment obligations of section 215.422, F.S.

3. SETTLEMENT

a. Discount. Your Discount set forth in sub-section b below is locked for the first two (2) calendar years of the Term (*calendar year* meaning January 1st through and including December 31st). Thereafter, upon thirty (30) days prior written notice to you we may adjust your Discount. **In addition to your Discount the only other fees we may charge you are processing/gateway fees.** .

b. Payment Terms.

Discount Rate	2.15 %
Discount Rate (CPC*)	2.15%
Prepaid Card Rate:	1.15 %

*The Discount Rate (CPC) is available for Transactions in which you capture additional or reformatted Transaction Data on the Charge Record, and Transmission Data on the Transmissions, pursuant to the Technical Specifications set forth in the Merchant Regulations.

c. Third-Party Providers. You acknowledge that you and the State of Florida Entities may have the option to contract for American Express Card acceptance through third parties, and that the rates through such third-party service providers may differ from the rates under this Agreement.

d. State of Florida Entity Participation. Notwithstanding anything to the contrary in the Agreement, you acknowledge that a State of Florida Entity will not be covered by this Agreement if it enters into a separate Card Acceptance Agreement with us.

e. Fees: The parties acknowledge that American Express is exempted from paying any fees to "My Florida Marketplace." The Department shall not charge American Express any fees for the services covered by this Agreement.

Contract Number: TR229

4. ADDITIONAL REQUIREMENTS

You must also comply with the following special provisions. All General Provisions and requirements of the Agreement apply to you as well.

a. Intentionally Omitted.

b. The Department's Limitation of Liability. The Department is only liable for tort claims arising from this Agreement to the extent such tort claims are compensable under an action brought pursuant to section 768.28, F.S., which sets forth the State's limited waiver of sovereign immunity. For the avoidance of doubt, claims for breach of contract or indemnity claims under our Data Security Operating Policy shall not be subject to the limitation of liability specified in the immediately preceding sentence.

c. Waiver of Prohibition against Card Acceptance for Fines and Fees. Subject to, and conditioned upon compliance with the Agreement, and solely in connection with fines and fees assessed on customers of the Department and any Participating State of Florida Entity, we hereby waive our prohibition against Card acceptance for fines and fees. The Department and Participating State of Florida Entities may therefore accept the Card for fines and fees. For clarity, other than fines and fees, the prohibitions set forth in Section 3.3 of the Merchant Regulations remain in full force and effect.

Contract Number: TR229



EXHIBIT 1

**AGENCY PARTICIPATION AGREEMENT
FOR AMERICAN EXPRESS® CARD ACCEPTANCE
[CITY/COUNTY/STATE/PUBLIC EDUCATION ENTITY]**

This agreement and any attachments hereto (*Agency Participation Agreement*) is between **AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.** (*we, us or our*), and the **[CITY/COUNTY/STATE/PUBLIC EDUCATION ENTITY]** (*you and your*).

For good and valuable consideration, receipt of which is hereby acknowledged, both parties agree as follows:

1. The terms and conditions of the Agreement for American Express® Card Acceptance between the State of Florida and us (*Card Acceptance Agreement*) are incorporated herein by this reference as if fully set forth herein and all references therein to “you” and “your” apply to you. Capitalized terms used but not defined herein have the same meaning as in the Card Acceptance Agreement, unless specified to the contrary.
2. You agree to accept the Card under the terms of the Card Acceptance Agreement. You represent that you have received all the necessary approvals required to allow you to enter into this Agency Participation Agreement.
3. Notwithstanding anything to the contrary contained herein, all terms and conditions of the Card Acceptance Agreement shall remain unchanged and in full force and effect, and this Agency Participation Agreement shall continue in effect for so long as the Card Acceptance Agreement is in full force and effect. If the Card Acceptance Agreement terminates for any reason, this Agency Participation Agreement shall also immediately terminate without further notice.
4. You shall have the right to unilaterally terminate or suspend the Agreement by providing American Express thirty (30) calendar days’ prior written notice.

IN WITNESS WHEREOF, the parties have caused this Agency Participation Agreement to be executed effective as of the date last signed below.

[CITY/COUNTY/STATE/PUBLIC EDUCATION ENTITY]

By: _____

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

DocuSigned by:
By: Colleen Taylor
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Contract Number: TR229

Name: _____

Title: _____

Date: _____

Name: Colleen Taylor _____

Title: President, GMNS - MSUS _____

Date: March 4, 2021 _____

Contract Number: TR229**Addendum A -Public Records Requirements.**

- A. Public Records Access Requirements.**
- i. If the Contractor is acting on behalf of the Department in its performance of services under the Agreement, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Agreement (Public Records), as required by law unless the Public Records are exempt from public access pursuant to section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
 - ii. The Department may unilaterally terminate the Agreement if the Contractor refuses to allow public access to Public Records as required by law.
- B. Public Records Requirements Applicable to All Contractors.**
- i. For purposes of the Agreement, the Contractor is responsible for becoming familiar with Florida's Public Records law, consisting of chapter 119, F.S., section 24(a) of Article I of the Florida Constitution, or other applicable state or federal law (Public Records Law).
 - ii. All requests to inspect or copy Public Records relating to the Agreement must be made directly to the Department. Notwithstanding any provisions to the contrary, disclosure of any Public Records made or received by the Department in conjunction with the Agreement is governed by Public Records Law. The Department acknowledges and agrees that Cardmember Information, Sensitive Authentication Data, and Cardholder Data do not constitute Public Records and are Contractor's confidential and proprietary information.
 - iii. If the Contractor has a reasonable, legal basis to assert that any portion of any record submitted to the Department is confidential, proprietary, trade secret, or otherwise not subject to disclosure ("Confidential" or "Trade Secret") under Public Records Law or other legal authority, the Contractor must simultaneously provide the Department with a separate redacted copy of the record the Contractor claims as Confidential or Trade Secret and briefly describe in writing the grounds for claiming exemption from the Public Records Law, including the specific statutory citation for such exemption. The un-redacted copy of the record must contain the Agreement name and number and must be clearly labeled "Confidential" or "Trade Secret." The redacted copy of the record should only redact those portions of the record that the Contractor claims are Confidential or Trade Secret. If the Contractor fails to submit a redacted copy of the record it claims are Confidential or Trade Secret, such action may constitute a waiver of any claim of confidentiality.
 - iv. If the Department receives a Public Records request, and if record(s) that have been marked as "Confidential" or "Trade Secret" are responsive to such request, the Department will provide the Contractor-redacted copies to the requester. If a requester asserts a right to the portions of record(s) claimed as Confidential or Trade Secret, the Department will notify the Contractor that such an assertion has been made. It is the Contractor's responsibility to assert that the portions of

Contract Number: TR229

record(s) in question are exempt from disclosure under Public Records Law or other legal authority. If the Department becomes subject to a demand for discovery or disclosure of the portions of the record(s) the Contractor claims as Confidential or Trade Secret in a legal proceeding, the Department will give the Contractor prompt notice of the demand, when possible, prior to releasing the portions of the record(s) the Contractor claims as Confidential or Trade Secret (unless disclosure is otherwise prohibited by applicable law). The Contractor shall be responsible for defending its determination that the redacted portions of its record(s) are Confidential or Trade Secret. No right or remedy for damages against the Department arises from any disclosure made by the Department based on the Contractor's failure to promptly legally protect its claim of exemption and commence such protective actions within ten days of receipt of such notice from the Department.

- v. If the Contractor claims that the record(s) provided is/are "Trade Secret" pursuant to section 624.4213, F.S., and all the requirements of section 624.4213(1), F.S., are met, the Department will respond to the Public Records Request in accordance with the provisions specified in that statute.
- vi. The Contractor shall ensure that exempt or confidential and exempt Public Records are not disclosed except as permitted by the Agreement or by Public Records Law.

C. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

If the Contractor is a "contractor" as defined in section 119.0701(1)(a), F.S., the Contractor shall:

- i. Keep and maintain Public Records required by the Department to perform the service in connection with the Agreement.
- ii. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, F.S., or as otherwise provided by law.
- iii. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the Public Records to the Department.
- iv. Upon completion of the Agreement, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Agreement, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records,

Contract Number: TR229

in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Agreement or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT PUBLIC RECORDS AT:

Telephone: (850) 413-3149

Email: PublicRecordsInquiry@myfloridacfo.com

**Mailing Address: The Department of Financial Services
Office of the General Counsel, Public Records
200 E. Gaines Street, Larson Building
Tallahassee, Florida 32399-0311**

A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.