



## **AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE**

The Agreement, effective as of January 1, 2022 (*Effective Date*), is by and between **American Express Travel Related Services Company, Inc.**, a New York corporation, and the **State of North Carolina**, as represented by the State Controller (the *State*). 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 and is made pursuant to negotiations with us on behalf of the State and Participating State Entities by the State Controller and incorporates the terms and conditions specified herein, including those of the accompanying Schedules, Exhibits and the Merchant Regulations, which are identified in sub-section 2.b. below. The Agreement covers you *alone*. You shall distribute all notices, statements, amendments, and other communications related to this Agreement that you receive from us to your Participating State 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.j of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. We will 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. Schedules/Exhibits.** The following Schedules/Exhibits are incorporated herein by reference and constitute part of this Agreement:

Schedule A	Other Important Provisions for Card Acceptance
Exhibit 1	Participating State Entities
Exhibit 2	Agency Participation Agreement
Schedule B	Exceptions to the Merchant Regulations
Schedule C	State of North Carolina Provisions

**c. Definitions.** Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations, as well as those applicable definitions in 01 NCAC 05A.0112 and 09 NCAC 06A.0102, which are incorporated herein and set forth on Schedule A. 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 Entities.** Exhibit 1 contains a list of certain Participating State Entities, and you must promptly notify us in writing of any changes to that list. You and we acknowledge that we may notify the Participating State Entities listed in Exhibit 1 that this Agreement has been entered into between you and us, and that the terms of this Agreement shall govern their continued acceptance of the Card as of the Effective Date. You and we further acknowledge that we may refer any request for a copy of this Agreement made by a Participating State Entity to you.

## **2. ACCEPTING THE CARD**

**a. Acceptance.** You must accept the Card as payment for all goods and services sold at all of your Establishments consistent with the policies issued by the State Controller, 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. Each Participating State Entity which has signed an Agency Participation Agreement is liable for all its Establishments under this Agreement and is responsible for complying with the terms of this Agreement as it has been incorporated into a separate Agency Participation 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 your payment plan 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 Discount for the Initial Term is set forth on Schedule A. Following the Initial Term, we may adjust the Discount upon sixty (60) days prior written notice to you. **In addition to your Discount the only other fee we may charge you are processing/Gateway Fees.** A Gateway Fee is a fee applied if you or your Covered Parties route Authorization requests to us through the Visa or MasterCard processing gateways, Visa and MasterCard charge us fees for these Authorizations. We will pass Visa or MasterCard fees (i.e., a pass through fee with no mark-up from us), which may vary depending on Authorization volume and other factors, on to you for all of your Authorizations that are routed through their gateways in a given month.

**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 PCI DSS.

### **3. PROTECTIVE ACTIONS**

**a. Suspension.** We may suspend Card acceptance by a Participating State Entity, upon three (3) business days written notice to you, if we determine, in our sole discretion, that: (i) such Participating State Entity will not be able to perform any of its obligations under the Agreement, or (ii) we have, or will have, financial exposure or risk with respect to such Participating State Entity under the Agreement. Any such suspended Participating State Entity shall remain liable for all amounts due to

us under the Agreement prior to the effective date of any such suspension or arising from Charges submitted prior to the effective date of any such suspension.

**b. 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 any Other Agreement, or charging you fees for Disputed Charges.

**c. Providing Information.** You must provide to us promptly, upon request, information about your and your Participating State Entities' finances, creditworthiness, and operations, including the most recent certified financial statements.

#### **4. NOTICES**

**a. 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 email or 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 receipt.

**b. Electronic Communications.** We may provide any notice, including any notice under section 4.a., as well as any statement, or other communication related to this Agreement to you by transmission to the electronic address (e.g., email) provided in provided in section 4d. 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 you notice that the notice, statement or communication has been posted on an American Express website. 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.

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

American Express Travel Related Services Company, Inc.  
P.O. Box 299051  
Fort Lauderdale, Florida 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, 49<sup>th</sup> Floor  
New York, New York 10285

Attention: General Counsel's Office / Merchant Services Practice Group

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

**STATE OF NORTH CAROLINA**

Office of the State Controller  
1410 Mail Service Center  
Raleigh, North Carolina 27699-1410  
Attention: Courtney Michelle, Financial Specialist  
E-mail: OSC.secp.info@osc.nc.gov  
Facsimile: 919 981-5553  
and

Alisha Moore, Financial Manager  
E-mail: OSC.secp.info@osc.nc.gov  
Facsimile: 919 981-5553

**e. Your Contact Information.** You must notify us immediately of any change to your contact information, including without limitation the contact information and address described in sections 4.a and 4.b 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**

IN NO EVENT SHALL A PARTY OR ITS RESPECTIVE AFFILIATES (IN OUR CASE), PARTICIPATING STATE 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 STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NEITHER YOU 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. ANY TORT CLAIM(S) ARISING WITH THIS AGREEMENT AGAINST THE STATE OR ANY PARTICIPATING STATE AGENCY SHALL BE SUBJECT TO THE PROVISIONS OF THE NC TORT CLAIMS ACT, G.S. 143-291, *ET SEQ.*, AS INTERPRETED BY APPLICABLE LAW.

## 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 (*Initial Term*). Ninety (90) days prior to the end of the Initial Term, you shall have the option to renew the Agreement for two (2) successive one (1) year periods (each a *Renewal Term*) upon written notice to us.

**b. Grounds for Termination.** If you engage in any activities that harm our business or the American Express Brand, without waiving our other rights and remedies, we shall send you a notice specifying the breach and provide you the opportunity to cure the breach within a period of time no less than thirty (30) days. If the breach is not cured following the end of the Cure Period, we have the right to 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.

**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. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty (30) days of our request. You must also remove 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 (i) protect Cardmember Information, (ii) retain documents evidencing Transactions, and (iii) 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. Termination for Convenience Without Cause:** Each party may terminate this Agreement for convenience by giving sixty (60) days prior written notice to the other party. Upon termination of the Agreement, 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. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty (30) days of our request.

## 7. DISPUTE RESOLUTION

The parties agree that it is in their mutual interest to resolve disputes informally. All Claims arising out of or in connection with this Agreement will be resolved pursuant to this section. In the event of any Claim, you or a Participating State Entity (as applicable) and we will use commercially reasonable efforts to settle the Claim. To this effect, the party asserting the Claim will provide notice thereof to the other party, and they will meet and negotiate with each other and, recognizing their mutual interests, attempt, in good faith, to reach a solution satisfactory to both parties. A Claim by American Express shall be submitted in writing to the Agency Contract Administrator for decision. A Claim by the State of North Carolina or a Participating State Entity (as applicable) shall be submitted in writing to American Express - General Counsel's Office / Merchant Services Practice Group for decision. During the time the parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Agreement. If they do not reach a solution within a period of sixty (60) days from the first meeting of the parties in negotiation, then the parties may proceed with such actions, rights and remedies as may be provided to them at law and in equity. Attempts to resolve disputes informally under this section of the Agreement shall not be construed as a waiver of objections to limitations of liability on incidental, indirect, speculative, consequential, special, punitive or exemplary damages of any kind for actions sounding in tort or personal injury as the law may provide. Notwithstanding any other provision in this Agreement, the State does not agree to enter into Arbitration.

## 8. MISCELLANEOUS

**a. Confidentiality.** You and we, respectively, must keep confidential and not disclose to any non-affiliated third party the provisions of the Agreement and any information that it receives from the other under the Agreement that is not publicly available and that comports with the exceptions to the North Carolina public records statute, N.C. Gen. Stat. §132-1 *et seq.* Each party agrees to advise its employees, agents, officers, directors, principals and employees and any subcontractors having access to confidential information under this Agreement of the obligation to keep such information confidential. Each party shall ensure to safeguard and protect any confidential information it receives under this Agreement from loss, destruction, or erasure.

**b. Proprietary Rights and Permitted Uses.** Except as otherwise expressly specified in the Merchant Regulations, neither party has any rights in the other party's Marks nor shall one party use the other party's Marks without its prior written consent, except that we may list the State and Participating State Entity's name, address, (including the website addresses or URLs), and customer service telephone numbers where we communicate where the Card is accepted and for purposes of Cardmember servicing, including on Cardmembers' monthly statements, Chargeback documentation, and routine customer service communications. Except as set forth in the prior sentence, we shall not use the existence of the Agreement or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516.

**c. Representations and Warranties.** We represent and warrant that: (i) we are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which we are organized; (ii) we are duly qualified and licensed to do business in all jurisdictions in which we conduct business. You and we, respectively, represent and warrant to the other that: (i) it has full authority to enter into the Agreement and all necessary assets and liquidity to perform its obligations and pay its debts hereunder as they become due; (ii) 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; (iii) the individual who signs the Agreement on behalf of a party has the authority to bind that party to the Agreement; and (iv) it is a sophisticated entity, 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. 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 Entities, including those indicated in the Agreement; (viii) you are not (A) 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](http://www.treas.gov/ofac)), (B) listed on the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or (C) 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.

**e. 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 North Carolina without regard to internal principles of conflicts of law. The place of this Agreement, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation, and enforcement shall be determined. Each party agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina and stipulates that Wake County shall be the proper venue for all matters. Each party consents to the exclusive jurisdiction of such court and waives any Claim of lack of jurisdiction or forum non conveniens.



**f. Interpretation and Order of Precedence.** 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 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. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: any accompanying schedules or exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions. Conflicts among the terms of this Agreement shall be subject to the Dispute Resolution process.

**g. Assignment.** Subject to legislative restructuring, you shall not assign the Agreement or any of your rights, interests, or obligations hereunder, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. We may not assign the Agreement, or any of our rights, interests, or obligations hereunder, except as permitted by 01 NCAC 05B .1507. Any purported assignment or delegation made in violation of this provision shall be void and a material breach of the Contract G.S. 143-58. Notwithstanding anything to the contrary, we may assign the Agreement to an Affiliate, provided such Affiliate is capable and willing to provide the same or substantially similar services to you or Participating State Entities under the same terms and conditions as agreed upon herein without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

**h. 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 constitutes a waiver thereof. No waiver of any provision of the Agreement is 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.

**i. Savings Clause.** 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 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.

**j. Amendments.** 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 provisions set forth below. 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.

**(i) 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:

- 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
- 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.

**(ii) 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).

**k. 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.

**l. 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.

**m. 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, their successors and permitted assigns.

**n. 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.

**o. 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.

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

IN WITNESS WHEREOF, the parties have caused their respective authorized representatives to execute this Amendment as of the Effective Date.”

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

**STATE OF NORTH CAROLINA**

DocuSigned by:  
By: Curtis Wilson  
B94E575ED40B496...

DocuSigned by:  
By: Dr. Linda Combs  
7EAA8B6731BC44A...

Curtis Wilson  
Vice President, Global Merchant  
and Network Services  
American Express Travel Related  
Services Company, Inc.

Name: Linda Combs

Title: State Controller

Date: December 6, 2021

Date: December 7, 2021



## 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:

*Agency* means all departments, institutions, boards, commissions, universities, community colleges or other units of the State, unless specifically exempted by statute, or any entity enumerated in G.S. 147-33.81(6).

*Agreement* or *Contract* means the General Provisions, the Merchant Regulations, Schedule A and any other accompanying schedules and exhibits, 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 entities 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. Chargeback is 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 prior Card acceptance agreements, 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 or prior Card acceptance agreements or the relationship resulting therefrom.

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

*Debit Card* means a Card that accesses a demand deposit, current, savings, or similar account. A Transaction is settled from the accessed account. A Debit Card is not a Prepaid Card.

*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.

*Electronic* means electrical, digital, magnetic, optical, electromagnetic or any other similar technology.

*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 and 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](http://www.americanexpress.com/merchantpolicy) and can be accessed by entering your online Merchant Account user ID and password.

*One-day payment plan* means that we initiate payment one (1) day after our cutoff time for receiving and processing Charges.

*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.

*Procurement* means the process of acquiring Goods or Services.

*Services* means the tasks and duties undertaken by a Vendor in a Service Contract to fulfill the requirements and Specifications of the Contract.

*Signature* means a manual autograph, an Electronic identifier or an Electronic authentication technique, that is intended by the person using it to have the same force and effect as a manual signature.

*Specification* means any description of the physical or functional characteristics of, or the nature of, the Goods or Services to be procured.

*Vendor* means a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, individual or other entity contracting with the State to provide Goods or Services.

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

*Written or Writing* means a communication recorded in a medium of expression that can be preserved, read, retrieved, and reproduced for an indefinite period of time, including information in a form that is electronically transmitted and stored.

b. The definition of *you* and *your* in the Merchant Regulations are hereby deleted and replaced with the following:

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

(iii) The following definitions are added:

*Participating State Entities* means (i) the State Entities listed in Exhibit 1, attached hereto, as may be amended from time to time; and (ii) the State Entities that sign an agency participation agreement substantially in the form attached hereto as Exhibit 2.

*State Entities* means your departments, agencies, institutions, offices, and other state agencies or units of state government that perform sovereign functions.

(iv) 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 Entity(ies).

## 2. PAYMENT FOR CHARGES

Your payment plan is the *One-day payment plan*. The following table illustrates the one-day payment plan:

Receipt Date (Day 0)	Settlement Day (Day 1)
Sunday	Monday
Monday	Tuesday
Tuesday	Wednesday
Wednesday	Thursday
Thursday	Friday
Friday	Monday*
Saturday	Monday*

For purposes of this section 2 of Schedule A, *initiate* means to place in the mail or put in process with instructions that the payment be credited to the Participating State Entity's Bank Account on such date that is in compliance with the applicable Payment Plan or some other form of payment is made available by us and agreed by the parties. You understand that if Charges are submitted or transmitted to us on a Sunday or holiday or after the Close of Business on any business day, such Charges shall be deemed to be received on the next business day.

\*ACH network does not operate on Saturdays, Sundays, and Federal Reserve holidays.

## 3. SETTLEMENT

**a. Discount and Fees.** The initial Discount and payment terms are set forth below and shall be effective within thirty (30) days of the date of last signature to this Agreement. **In addition to the Discount, we may charge Participating State Entities Gateway Fees for processing.**

**b.** Except as set forth in sub-section 3.c. below, in the United States (excluding Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions), the Discount for electronic Submissions is as follows:

Discount Rate (Non-CPC):	2.15%
Discount Rate (CPC):*	2.15%
Prepaid Card Rate:	1.80%
Payment Plan:	One-day payment plan

\*The Discount Rate (CPC) is available for Transactions in which Authorized Users 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.** Debit Card Transactions (excluding Puerto Rico, the U.S. Virgin Islands and any other U.S. territories): The Discount Rate for Debit Card Transactions shall be according to the table below.

Discount Rate - Unregulated:	1.20%
Utilities-Unregulated:	<b>N/A</b>
Payment Plan:	One-day payment plan

**d.** Third Party Providers. You acknowledge that you and the State 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.

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

#### **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.

Within thirty (30) days of the Effective Date, you must provide us, in an electronic format, a list of State Entities that accept Other Payment Products (*List*) containing at least the following information: (a) name and telephone number of the State Entity and decision maker, (b) address of the State Entity, including street, city, state, and zip code, and (c) an indication whether the State Entity accepts Other Payment Products. If a State Entity accepts Other Payment Products, you must cause it to accept the Card should you have authority to do so. You must provide us with a current and accurate List at least annually. We may use the List for the purposes of working with you to contact such State Entities to encourage Card acceptance, including the use of mailings and letters of endorsement from you, and preparing internal tracking reports showing which State Entities accept the Card. You must provide us with a mutually acceptable letter of endorsement and any assistance as reasonably required. We will only use the List for internal purposes and will not share the List with any third party sales agents.





## EXHIBIT 1

### PARTICIPATING STATE ENTITIES

The Participating State Entities, as of the Effective Date, are set forth below.

<b>Merchant Number</b>	<b>Merchant DBA Name</b>	<b>Merchant Legal Name</b>
1320993496	NCDMV VEH REG POS	NORTH CAROLINA DEPARTMENT
4321201402	N.C. SECRETARY OF STATE	N.C DEPARTMENT OF THE SEC
4322084948	NORTH CAROLINA DEPT OF TR	STATE OF NORTH CAROLINA
4326623733	NC ST UNIVERSITY	North Carolina State Univ
4321209199	UNIV OF NC AT CHARLOTTE	UNIV OF NC AT CHARLOTTE
4321589335	CITY OF CHARLOTTE	CITY OF CHARLOTTE
4321531030	CITY OF RALEIGH	CITY OF RALEIGH
4321209124	UNC CHAPEL HILL	UNIVERSITY OF NORTH CAROL
4320074115	GREENSBORO COLISEUM	CITY OF GREENSBORO
4321488298	EAST CAROLINA UNIVERSITY	EAST CAROLINA UNIVERSITY
4321487910	APPALACHIAN STATE UNIV	APPALACHIAN STATE UNIV
1323361790	TOWN OF CARY	TOWN OF CARY
1320651011	CENTRAL PIEDMONT COMMUNIT	CENTRAL PIEDMONT COMMUNIT
4321529620	NCSU	NC ST UNIVERSITY
4328092564	NC NATURAL RESOURCES	NC DEPARTMENT OF NATURAL
1320993553	NCDMV DL POS	NORTH CAROLINA DEPARTMENT
4321085029	PIEDMONT TRIAD AIRPT AUTH	PIEDMONT TRIAD AIRPT AUTH
1320987613	NC DEPARTMENT OF ENVIRONM	NC DEPARTMENT OF ENVIRONM
1323846923	NORTH CAROLINA A&T REAL E	NORTH CAROLINA A&T REAL E
4321469322	WESTERN CAROLINA UNV	WESTERN CAROLINA UNV
4321855090	CRVA	CITY OF CHARLOTTE
4327850079	NORTH CAROLINA A&T STATE	NORTH CAROLINA A&T STATE
4321095580	ST OF NORTH CAROLINA /FIEL	ST OF NORTH CAROLINA /FIEL
1326974185	NORTH CAROLINA STATE HLTH	NORTH CAROLINA STATE HLTH
4321580359	ASHEVILLE-BUNCOMBE TECHNI	ASHEVILLE-BUNCOMBE TECHNI
4322718271	EAST CAROLINA UNIVERSITY	EAST CAROLINA UNIVERSITY
4321476939	UNCW - WILMINGTON	UNIV N CAROLINA WILMINGTO
1321028243	NC BOARD OF COSMETIC ART	NC BOARD OF COSMETIC ART
4322187675	NC DEPT OF AGRICULTURE &	NC DEPT OF AGRICULTURE &
4321956625	GUILFORD TECHNICAL CMMNTY	GUILFORD TECHNICAL CMMNTY
4321628307	CITY OF HIGH POINT	CITY OF HIGH POINT
4321617896	ECU - INDIVIDUAL	EAST CAROLINA UNIVERSITY
4327361762	NC HOUSING FINANCE AGENCY	NORTH CAROLINA HOUSING FI

1325086031	NC TURNPIKE AUTHORITY/DOT	NORTH CAROLINA DEPARTMENT
1323371633	NC OFFICE OF THE COMMISSI	NC OFFICE OF THE COMMISSI
4325229078	TOWN OF CHAPEL HILL	TOWN OF CHAPEL HILL
4320880248	PUBLIC HEALTH DEPT	GUILFORD COUNTY
4321423212	GASTON COLLEGE	GASTON COLLEGE
3323267526	CENTRAL PIEDMONT COMMUNIT	CENTRAL PIEDMONT COMMUNIT
2328303052	NC CENTRAL UNIVERSITY FOU	NC CENTRAL UNIVERSITY FOU
1320651086	CENTRAL PIEDMONT COMMUNIT	CENTRAL PIEDMONT COMMUNIT
4321701104	UNC SCHOOL OF THE ARTS	NORTH CAROLINA
4321550782	ELIZABETH CITY STATE UNIV	ELIZABETH CITY STATE UNIV
4325217644	OITS	OFFICE OF INFORMATION TEC
4326625704	NC A & T UNIVERSITY	NC A & T UNIVERSITY
1321012353	CPCC SERVICES CORPORATION	CPCC SERVICES CORPORATION
1324190552	OFFICE OF THE STATE CONTR	OFFICE OF THE STATE CONTR
1320153703	SOUTH PIEDMONT COMMUNITY	SOUTH PIEDMONT COMMUNITY
1324389626	NC DEPARTMENT OF REVENUE	NC DEPARTMENT OF REVENUE
1325075422	COUNTY OF WAKE	COUNTY OF WAKE
1325240729	CITY OF FAYETTEVILLE	CITY OF FAYETTEVILLE
1325443034	NC WILDLIFE RESOURCES COM	STATE OF NORTH CAROLINA
3327886651	THE FOUNDATION FOR N.C. A	THE FOUNDATION FOR N.C. A
4321555062	ASHEVILLE REGNL APRT AUTH	ASHEVILLE REGNL APRT AUTH
4321974057	UNC ASHEVILLE	UNC ASHEVILLE
4322486796	NC DHHS OFFICE OF THE CON	STATE OF NORTH CAROLINA
4322494584	COUNTY OF CURRITUCK	COUNTY OF CURRITUCK



**EXHIBIT 2**

**AGENCY PARTICIPATION AGREEMENT  
FOR AMERICAN EXPRESS® CARD ACCEPTANCE  
[LEGAL NAME OF PARTICIPATING 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 **LEGAL NAME OF PARTICIPATING 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 North Carolina, as represented by the State Controller and us (*Master 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 Master Agreement, unless specified to the contrary.
2. You agree to accept the Card under the terms of the Master 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 Master Agreement shall remain unchanged and in full force and effect, and this Agency Participation Agreement shall continue in effect for so long as the Master Agreement is in full force and effect. If the Master Agreement terminates for any reason, this Agency Participation Agreement shall also immediately terminate without further notice.

**IN WITNESS WHEREOF**, the parties have caused this Agency Participation Agreement to be executed effective as of **ENTER DATE**.

**LEGAL NAME OF PARTICIPATING**

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

By: \_\_\_\_\_

Name: **ENTER NAME OF SIGNER**

Colleen J. Taylor  
President, Global Merchant & Network S  
Services

Title: **ENTER TITLE OF SIGNER**

**SCHEDULE B**  
**Exceptions to the Merchant Regulations**

This Schedule B sets forth certain exceptions to the Merchant Regulations as applied to acceptance of Cards:

Provisions Superseded. The following provisions of the Merchant Regulations are deemed superseded by the Agreement:

- a. Section 7.2 (Settlement Amount)
- b. Section 7.3 (Discount)
- c. Section 7.5 (Speed of Pay)
- d. Section 12.1 through 12.12 (Specific Industries)
- e. Section 12.14 through 12.16 (Specific Industries)
- f. Section 13 (Payment Service Provider)
- g. Section 14 (Fees)
- h. Appendix A.1 (Arbitration Agreement)

## **SCHEDULE C**

### **State of North Carolina Provisions**

**1. REQUIRED CERTIFICATIONS:** Vendor warrants that:

- a) this Agreement was entered into without collusion (G.S. 143-54),
- b) none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and
- c) it is not an ineligible Vendor as set forth in G.S. 143-59.1.
- d) to the best of Vendor's knowledge and belief, it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.
- e) as required by G.S. 143-48.5, it, and each of its sub-Contractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of those employees through the federal E-Verify system.
- f) Vendor is not aware of the offer, acceptance, or promise of a gift prohibited by G.S. 133-32 and Executive Order 24 (2009) by any of its employees or agents.

**2. PERFORMANCE:**

- a) It is anticipated that the tasks and duties undertaken by the Vendor under the contract which results from the State solicitation in this matter (Contract) shall include the Card Service, as deliverables.
- b) Intentionally Omitted.
- c) If the State provides Vendor State Data, Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.

- d) Vendor or its suppliers, as specified and agreed in the Contract, shall provide support assistance to the State related to all Services performed hereunder during the State's normal business hours. 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. The Card Service is available and provided to the State 24 hours 7 days a week.
- e) The State may document and take into account in awarding or renewing future contracts, the general reputation, performance and performance capabilities of the Vendor under this Contract as provided by G.S. 143-52 and 143-135.9 (a) and (b) (Best Value).

**3. GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the of the Services offered, it shall be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations.

**4. AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds appropriated or allocated to the agency for the purpose set forth in the Contract.

**5. NON-DISCRIMINATION COMPLIANCE:**

- a) The Vendor will take affirmative action in complying with all State requirements and laws concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability or rights, such as preserved by Governor Roy Cooper Order E.O. 24 or 25, and will take necessary action to ensure that its internal employee policies and procedures are consistent with Executive Order #82 (Roy Cooper, December 6, 2018), which extends workplace protections and accommodations to pregnant employees.
- b) Federal Law, such as the following, applies as provided for therein: Titles VI and VII of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (prohibiting discrimination on the basis race, color, national origin and ensuring that individuals are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age); Title IX of the Education

Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.) (prohibiting discrimination on the basis of sex); Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 (prohibiting discrimination on the basis of disability); Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) (prohibiting discrimination on the basis of handicap); the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.) (prohibiting age discrimination); Executive Order 11063 as amended by Executive Order 2259; and Section 109 of the Housing and Community Development Act of 1974, as amended

**6. INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor shall indemnify, defend and hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of any patent, copyright, trademark or patent, or violation of a trade secret right in the United States of any third party (hereafter, “intellectual property right”) in any Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

a) Vendor warrants to the best of its knowledge that:

1. Performance under the Contract does not infringe upon any intellectual property rights of any third party; and
2. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b) Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor’s judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor for such deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.

- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed by Vendor in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
1. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
  2. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Vendor will not be required to defend or indemnify the State to the extent any claim by a third party against the State for infringement or misappropriation results solely from the State's material alteration of any Vendor-branded deliverables or Services, or from the continued use of the Services or other deliverables after receiving written notice from the Vendor of the claimed infringement.

**7. COOPERATION WITH AUDITS/RECORD RETENTION:**

During, and after the Initial Term or any Renewal Term (if applicable) hereof during the relevant period required for retention of records by State law (G.S. 121-5, 132-1 *et seq.*, typically five (5) years), the State Auditor and any Participating State Agency's internal auditors shall have access to persons and records solely related to the Contract to verify accounts and data affecting Discount or Gateway Fees (if any) or performance under the Contract, as provided in G.S. 143-49(9). However, if any audit, litigation or other action arising out of or related in any way to this Agreement is commenced before the end of the such retention of records period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the record retentions period, whichever is later.

Consistent with the requirements of G.S. 147-64.7, American Express shall provide reasonable cooperation to the State Auditor (or the Participating State Agency auditor, if applicable) with respect to any audit conducted solely in connection with American Express's obligations under this Agreement, including providing adequate workspace to the extent feasible; provided, that the State agrees that access to American Express's facilities shall be conditioned upon the State Auditor's/



Participating State Agency's compliance with Applicable Law and American Express's reasonable site security policies and procedures.

**8. INSURANCE:** During the term of the Agreement, as a minimum we at our sole cost and expense shall maintain the following insurance coverage:

- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
- b) **Commercial General Liability** - General Liability Coverage on an ISO form (or reasonable equivalent) on an occurrence basis in the minimum amount of \$5,000,000.00 Combined Single Limit.
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.
- d) Providing and maintaining adequate insurance is a material obligation of this Agreement. The limits of coverage under each insurance policy shall not be interpreted as limiting our liability or increasing any obligations under this Agreement.

**9. ELECTRONIC PROCUREMENT:**

- a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this Contract.
- b) The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall

be responsible for the solicitation, bids received, evaluation of bids received, award of Contract, and the payment for goods delivered.

- c) Vendor shall at all times maintain the confidentiality of its username and password for the Statewide EProcurement Services. Vendor shall be responsible for all activity and all charges by its agents or employees. Vendor agrees not to permit a third party to use its E-Procurement Services account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach

**10. CARE OF STATE DATA AND PROPERTY:** Any State property, information, data, instruments, documents, studies or reports (*State Data*) given to or prepared or assembled by or provided to the Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract in accordance with the Section 8.a. (Confidentiality) of the General Provisions of the Agreement. The definition of State Data does not include Cardmember Information.

The State Data, in the hands of the Vendor, if any, shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. Upon written request to Vendor, and in accordance with Vendor's retention schedule and compliance with Applicable Law, such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement.

For further information, see, G.S. 75-60 *et seq.* Notice is given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment. If Vendor uses the State network, IT software and equipment, then Vendor agrees that it shall comply with G.S. 143B-1376.

**11. OUTSOURCING:** Except as prohibited by Applicable Law, American Express, as a global financial services company, is hereby authorized to provide the Card Service within and outside of the United States as necessary to facilitate the use of Cards by Cardmembers anywhere in the world. Notwithstanding the foregoing, the State acknowledges American Express may perform some back-end functions and provision of 24/7 customer servicing worldwide, including call centers, back-up systems, and security operations associated with the services outside of the United States provided, however, the Card Services performed for the State under this Agreement shall be primarily performed in the United States.

**12. FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such

obligations as a result of events beyond its reasonable control, including, without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, other catastrophic epidemic or pandemic, natural event or Act of God.

**13. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under Applicable Law.