

STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER PA1091

1. CONTRACTING PARTIES: This State Cooperative Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, and the following CONTRACTOR:

American Express Travel Related Services Company, Inc
Name
200 Vesey Street
Address
New York NY 10285
City State Zip

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor
 Non-Profit Corporation
 For-Profit Corporation
 Partnership
 Government Agency

Contact Person Melissa K. Schmitt Phone #1-800-896-7731 Fax # 1-800-896-7731
Email melissa.k.schmitt@aexp.com
Federal Tax ID# 13-3133497 Vendor #119414A Commodity Code #94635

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:
American Express Card Acceptance
3. CONTRACT PERIOD: Effective date: March 4, 2011 Termination date: February 29, 2016 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): May be renewed for 3 year increments when approved in writing by both parties.
4. PRICING AS PER THE ATTACHMENT B
PAYMENT TERMS: See Attachment B
DAYS REQUIRED FOR DELIVERY: N/A
MINIMUM ORDER: N/A
FREIGHT TERMS: N/A
5. ATTACHMENT A: Standard Contract Terms and Conditions, State Cooperative Contract (Revised)
ATTACHMENT B: Agreement for American Express Card Acceptance
ATTACHMENT C: N/A
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
a. All other governmental laws, or regulations applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #N/A dated N/A.
c. American Express Merchant Regulations, US

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

Contractor's Signature Date
Kim C. Goodman
President, Merchant Services, Americas
Type or Print Name and Title

Kent D. Beers, Director Date
Div. of Purchasing & General Svs.

State Treasurer Date

ATTACHMENT A

Standard Contract Terms and Conditions State of Utah, State Cooperative Contract (Revised)

1. AUTHORITY: Provisions of this Agreement are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE. All capitalized terms used herein and not otherwise defined, and the terms "you" or "your", shall have meaning ascribed to them in the Agreement for American Express Card Acceptance attached hereto as **Attachment B**. *Contractor* means American Express Travel Related Services Company, Inc. *STATE* means the State of Utah Division of Purchasing and General Services. *Participants* or *participants* shall have the meaning described in section 17 below. *Participant* and *Participating State Entity* shall have the same meaning.

2. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE: This term intentionally deleted. Refer to section 4.d of the General Provision in Attachment B to the Agreement.

3. LAWS AND REGULATIONS: The Contractor and the STATE and its participants hereunder, and any and all supplies, services, equipment, and construction proposed and furnished under this Agreement, will comply fully with all applicable Federal and State laws, rules and regulations.

4. RECORDS ADMINISTRATION: The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this Agreement. These records will be retained by the Contractor for at least three (3) years from the date of the applicable transaction or until all audits initiated within the three (3) years have been completed, whichever is later. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this Agreement, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment, at a site mutually agreed upon by the parties.

5. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM": This term is intentionally deleted.

6. CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of the STATE or participating political subdivisions to secure favorable treatment with respect to being awarded this Agreement.

7. INDEPENDENT CONTRACTOR: Contractor and the STATE and its participants hereunder will be independent contractors, and as such will have no authorization, express or implied to bind the other to any agreements, settlements, liability or understanding whatsoever, and the parties agree not to perform any acts as agent for the other, except as expressly set forth herein. 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 this Agreement. Compensation stated herein will be the total amount payable to the Contractor by the STATE and its participants hereunder. The Contractor will be responsible for the payment of all income tax and social security tax due as a result of payments received from the STATE for these contract services (if any). Persons employed by the STATE or its participants hereunder and acting under the direction of the STATE or its participants hereunder, as applicable, will not be deemed to be employees or agents of the Contractor.

8. INDEMNITY CLAUSE: The Contractor will indemnify and hold the STATE and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees, for any or all (i) bodily injuries to persons or damage to property or (ii) claims for money damages (excluding claims subject to Section 30 of these Standard Contract Terms and Conditions) arising from negligent or wrongful acts or omissions of, or breach or failure to perform under this Agreement by, the Contractor, its employees or subcontractors. The STATE will indemnify and hold the Contractor and its Affiliates, successors, and permitted assigns harmless from and against any damage, cost or liability, including reasonable attorney's fees, for any or all (i) bodily injuries to persons or damage to property or (ii) claims for money damages arising from negligent or wrongful acts or omissions of, breach or failure to perform under this Agreement by, or failure in the provision of goods or services by the STATE or its participants hereunder or their respective employees. The STATE agrees that the term "subcontractor", as used in this Agreement, shall only mean third party companies that Contractor engages for the sole purpose of performing part, or all, of Contractor's obligations under this Agreement, and shall not mean any third party vendor with whom Contractor has entered into an agreement to receive goods and/or services which Contractor utilizes in its regular course of business.

9. EMPLOYMENT PRACTICES CLAUSE: The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

10. SEVERABILITY: If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

11. RENEGOTIATION OR MODIFICATIONS: Except as specifically indicated in the Agreement, the terms of this Agreement will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Director of Purchasing and the Contractor, (except that an e-mail does not constitute such a signed writing), provided that Contractor shall change the Merchant Regulations pursuant to the following provisions. The STATE and its participants hereunder agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations), except to the extent such changes are superseded in Schedule A of Attachment B, as a condition of their agreement to accept the American Express Card. Automatic renewals will not apply to this Agreement.

(1) Scheduled Changes. The Merchant Regulations are published twice each year, in April and October. Contractor has the right to, and hereby notifies the STATE and its participants hereunder that Contractor may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in Contractor's 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, Contractor 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. Contractor also has the right to, and hereby notifies the STATE and its participants hereunder that Contractor may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to the STATE and its participants (unless another effective date is specified in the notice).

12. DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Agreement), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE.

13. TERM AND TERMINATION:

a. Effective Date/Termination Date. The Agreement begins on the Effective Date and continues for a period of five years (*Term*), provided that (i) a participant may terminate Card acceptance at any time during the Term on ninety (90) days prior written notice to Contractor; and (ii) the State may terminate the Agreement at any time following the end of the third year of the Term on ninety (90) days prior written notice to Contractor.

b. Grounds for Termination. If you engage in any activities that harm Contractor's business or the American Express Brand, without waiving Contractor's other rights and remedies, Contractor may terminate the Agreement immediately upon notice to you. If Contractor determines or has reason to believe, in Contractor's sole discretion, that you are involved (or knowingly participate or have participated) in a fraudulent or illegal business activity, Contractor may terminate the Agreement immediately without prior notice to you. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

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 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 days following the end of the Cure Period.

d. Post-Termination. If the Agreement terminates, without waiving Contractor's other rights and remedies, Contractor may withhold from you any payments until Contractor has fully recovered all amounts owing to Contractor and Contractor's Affiliates under this Agreement. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay Contractor within thirty days of Contractor's request. You must also remove all displays of Contractor's Marks, return Contractor's materials and equipment immediately, and submit to Contractor 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 and 4 of the General Provisions in Attachment B to the Agreement, section 8 of Schedule A in Attachment B to the Agreement, and this section 13 of these Standard Contract Terms and Conditions), Contractor's Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify Contractor, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Contractor's right of direct access to the Demand Deposit 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.

14. NONAPPROPRIATION OF FUNDS: The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this Agreement or proportionately reduce the services and purchase obligations from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages (other than (i) the indemnity obligations set forth in Section 8 of these Standard Contract Terms and Conditions or (ii) for breaches of this Agreement by the STATE or its participants hereunder or their respective employees prior to such cancellation or reduction).

15. TAXES: Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is 11736850-010-STC. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the Agreement, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.

16. WARRANTY: This term is intentionally deleted.

17. PARTICIPANTS: This is a contract to provide American Express Card acceptance to the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) as set forth in the Agreement.

18. POLITICAL SUBDIVISION PARTICIPATION: Participation under this Agreement by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to provide American Express Card acceptance to the political subdivisions in accordance with terms, conditions and prices set forth in the Agreement.

19. QUANTITY ESTIMATES: The STATE does not guarantee to purchase any amount under the Agreement to be awarded. Estimated quantities are for proposing purposes only and are not to be construed as a guarantee to purchase any amount.

20. DELIVERY: This term is intentionally deleted.

21. REPORTS: The Contractor shall submit annual reports to the State Purchasing Agent showing the Charge volume and Discount paid by each participant hereunder during the previous STATE fiscal year ("Annual Reports"). Contractor shall submit each Annual Report within sixty (60) days of the end of the applicable STATE fiscal year. STATE's fiscal year begins on July 1st and ends on June 30th.

22. PROMPT PAYMENT DISCOUNT: This term is intentionally deleted.

23. FIRM PRICES: This term is intentionally deleted.

24. PRICE GUARANTEE, ADJUSTMENTS: This term is intentionally deleted.

25. ORDERING AND INVOICING: This term is intentionally deleted.

26. PAYMENT: This term is intentionally deleted. Refer to section 3 of Schedule A in Attachment B to the Agreement.

27. MODIFICATION OR WITHDRAWAL OF BIDS/PROPOSALS: This term is intentionally deleted.

28. BID/PROPOSAL PREPARATION COSTS: This term is intentionally deleted.

29. INSPECTIONS: This term is intentionally deleted.

30. PATENTS, COPYRIGHTS, ETC.: The Contractor will release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability arising from the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used by the Contractor in the performance of this Agreement.

31. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell or transfer, this Agreement, in whole or in part, other than to an Affiliate of Contractor, without the prior written approval of the State Director of Purchasing. STATE and its participants hereunder will not assign, sell or transfer this Agreement, in whole or in part, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without the prior written approval of Contractor. Any purported assignment by operation of law is voidable in Contractor's sole discretion. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

32. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the STATE or Contractor to declare the other party in default of the Agreement: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this Agreement. The non-breaching party will issue a written notice of default providing a period in which the breaching party will have an opportunity to cure, such period not to be less than thirty (30) days. Time allowed for cure will not diminish or eliminate the breaching party's liability for liquidated damages (if listed in this Agreement) or other damages. If the default remains, after the breaching party has been provided the opportunity to cure, the non-breaching party may do one or more of the following: 1. Exercise any remedy

provided by law; 2. Terminate this Agreement and any related contracts or portions thereof in accordance with section 13.c above; 3. Impose liquidated damages, if liquidated damages are listed in the Agreement; 4. If the non-breaching party is the STATE, suspend Contractor from receiving future bid/proposal solicitations to the extent permissible by law.

33. FORCE MAJEURE: Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control (for the avoidance of doubt, a failure by the STATE to appropriate funds as described in section 14 above shall not be deemed such an event). Either party may terminate this Agreement upon notice to the other party after determining such delay or default will reasonably prevent the other party's successful performance of the Agreement.

34. HAZARDOUS CHEMICAL INFORMATION: This term is intentionally deleted.

35. NON-COLLUSION: By signing the bid/proposal, the offeror certifies that the bid/proposal submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent proposing or competition. The parties agree that the Contractor never received any solicitation from the STATE and that no Contractor bid/proposal exists.

36. PUBLIC INFORMATION: Unless an exemption under section 305 of GRAMA (as defined below) applies to the Agreement, related sales orders, if any, and/or invoices, Contractor agrees that the Agreement, related sales orders, if any, and invoices will be "public records" (as that term is defined under GRAMA (as defined below)) to the extent provided under GRAMA (as defined below). So long as an exemption under section 305 of GRAMA (as defined below) does not apply, Contractor gives the STATE express permission to make copies of the Agreement, related sales orders, if any, and invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

37. PROCUREMENT ETHICS: The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).

38. ENERGY CONSERVATION AND RECYCLED PRODUCTS: The contractor is encouraged to offer 7Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this solicitation.

39. CONFLICT OF TERMS: Contractor terms and conditions that apply must be in writing and attached to the Agreement or, in the case of the Merchant Regulations, incorporated by reference in Contractor's terms and conditions attached hereto. No other terms and conditions will apply to this Agreement including terms listed or referenced on a Contractor's website (except for the Merchant Regulations which will apply), terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Attachment A: State of Utah Standard Contract Terms and Conditions; 2. State of Utah Contract Signature Page(s); 3. Schedule A of Attachment B (Agreement for American Express Card Acceptance) and any accompanying exhibits; 4. Merchant Regulations (as defined in Attachment B to the Agreement (Agreement for American Express Card Acceptance)); 5. General Provisions of Attachment B (Agreement for American Express Card Acceptance).

40. LOCAL WAREHOUSE AND DISTRIBUTION: This term is intentionally deleted.

41. ENTIRE AGREEMENT: This Agreement, including all Attachments (including Contractor's Agreement for American Express Card Acceptance) and documents incorporated hereunder (including the Merchant Regulations), constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

ATTACHMENT B



AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE

The Agreement, effective as of the Effective Date, is by and between **American Express Travel Related Services Company, Inc.**, a New York corporation, and the **State of Utah, Division of Purchasing and General Services**. 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*. 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 provide access to the Merchant Regulations so your personnel interacting with customers will be able to become fully familiar with the Merchant Regulations. If we receive a disproportionate number of customer service issues with respect to a Participating State Entity(ies), you agree to cooperate with us to train the impacted Participating State Entity(ies) with whom such disproportionate issues are arising. 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), except as superseded in Schedule A, as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 11 in Attachment A to the Agreement. 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. Schedule A. Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

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 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, provided that no State Entity may be added or deleted without our prior written consent, which will not be unreasonably withheld.

2. ACCEPTING THE CARD

a. Acceptance. Refer to section 2 of Schedule A.

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 comply with our requirements, as described in the Merchant Regulations. You may create multiple Charge Records for a single purchase placed on different Cards, but you must not create multiple Charge Records for a single purchase to the same Card, by dividing the purchase into more than one Charge.

ii. Authorization. You must obtain from and submit to us an Authorization Approval code for all Charges. Authorization does not guarantee that we will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

iii. Submitting Charges and Credits. Your Establishments must submit Charges and Credits in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card account used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.

iv. Payment for Charges. Refer to section 3 in Schedule A.

v. Chargeback. We have Chargeback rights, as described in the Merchant Regulations. We may Chargeback by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Demand Deposit Account), or we may notify you of your obligation to pay us, which you must do promptly and fully. 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 Standard performed by Qualified Security Assessors or Approved Scanning Vendors (or both).

3. 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 electronic mail (*e-mail*); or by facsimile transmission, to the addresses set out below. 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 address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver.

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

American Express Travel Related Services Company, Inc.
P.O. Box 53773
Phoenix, AZ 85072
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

c. Your Notice Address. You must notify us immediately of any change in your notice address. Unless you notify us otherwise, we shall send notices to you at:

State of Utah, Div. of Purchasing & General Svs
3150 State Office Bldg, Capitol Hill
Salt Lake City, UT 84114-1061
Attn: Nancy Orton, Asst. Director
E-mail: nancyo@utah.gov
Fax: 801-538-3882

4. 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, except as provided in the following sentence. If such information is subject to disclosure pursuant to an order, decree, subpoena or other validly issued judicial, administrative or regulatory process (including through requests for information or by oral questions), the receiving party shall use commercially reasonable efforts to promptly notify the other party of such request or requirement so that such other party may seek to avoid or minimize the required disclosure and/or to 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 by the agency or other person receiving the disclosure. In addition, the receiving party shall use its commercially reasonable efforts to cooperate with the other in its efforts to avoid or minimize the required disclosure and/or to obtain such protective order or other relief to protect the information. Notwithstanding the foregoing, and we agree that the provisions of the Agreement will be subject to

disclosure by you to the public under the State of Utah Government Records Access and Management Act (GRAMA) if any such provisions (i) fail to meet any of the enumerated exemptions in section 305 of GRAMA; and (ii) are determined to be “public records” (as that term is defined under GRAMA) under GRAMA.

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 your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time.

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 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, 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 Affiliates, 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; (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 the representations or warranties in the Agreement made by either party becomes materially untrue, inaccurate, or incomplete at any time, the other party may terminate this Agreement with a 10 day written notice.

d. 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 Utah without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 *et seq.* (*E-Sign Act*). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein. Any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County of Salt Lake and State of Utah. Each party

consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

e. 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) 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; (vi) all captions, headings, and similar terms are for reference only.

f. 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.

g. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.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.

h. 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.

i. 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 except that the State of Utah, Division of Purchasing and General Services may announce that the Agreement has been established through (i) its website located at <http://generalservices.utah.gov/statewidecontracts/Contracts.aspx>; and (ii) its newsletters located at <http://purchasing.utah.gov/newsletters/documents/newsletters.pdf>.

j. Counterparty and Facsimile 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 is as effective as executing and delivering the Agreement in the presence of the other party.



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:

American Express Card and *Card* mean (i) any card, account access device, or payment device 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.

Charge means a payment or purchase made on the Card. *Card Present Charge* means a Charge for which the Card is presented at the point of sale. *Card Not Present Charge* means a Charge for which the Card is not presented at the point of sale (e.g., Charges by mail, telephone, fax or the Internet), is used at unattended Establishments (e.g., customer activated terminals, called CATs), or for which the transaction is key-entered. *Disputed Charge* means a Charge about which a claim, complaint, or question has been brought.

Chargeback (sometimes called "full recourse" or "Full Recourse" in our materials), when used as a verb, means our reimbursement from you for the amount of a Charge subject to such right; when used as a noun, means the amount of a Charge subject to reimbursement from you.

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.

Discount means the amount that we charge you for accepting the Card, which amount is: (i) a percentage (*Discount Rate*) of the face amount of the Charge that you submit; or a flat Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).

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 this document other than in Schedule A or any other accompanying schedule or exhibit hereto.

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

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 Merchant Number.

Merchant Number (sometimes called the “Merchant ID” or “Establishment” or “SE” number in our materials) means the unique ten-digit number we assign to your Establishment; if you have more than one Establishment, we may assign to each a separate Merchant Number.

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

PCI DSS means the Payment Card Industry Data Security Standard, which is available at <https://www.pcisecuritystandards.org>.

We, our, and us mean American Express Travel Related Services Company, Inc.

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

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

Affiliate means, with respect to us, any Entity that controls, is controlled by, or is under common control with us, including our subsidiaries. As used in this definition, *control* means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute “control” of the Entity.

(ii) The definition of *Agreement* is hereby deleted in its entirety and replaced with the following:

Agreement means Attachment A: State of Utah Standard Terms and Conditions (as revised); State of Utah Signature Page; Attachment B: General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.

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

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

(iv) 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 in the form attached hereto as Exhibit 2.

State Entities means your departments, agencies, institutions, offices, colleges, universities, school districts, counties, cities, and other state agencies or units of local government.

Other Payment Card means any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the Card excluding cash and check.

(v) 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. ACCEPTING THE CARD

The State of Utah, Division of Purchasing and General Services and the Participating State Entities must accept the Card as payment for all goods and services sold at all of their Establishments that accept Other Payment Cards as of the Effective Date, except as otherwise expressly specified in the Merchant Regulations. In the event that any of the State of Utah, Division of Purchasing and General Services' or the Participating State Entities' Establishments that do not accept Other Payment Cards as of the Effective Date start accepting any Other Payment Card at any time during the Term, then (i) such Establishments must provide prompt written notice to us of such acceptance, and (ii) regardless of the provision of such notice, such Establishment shall be governed by the terms of this Agreement, including, but not limited to, the obligation in the immediately preceding sentence to accept the Card for payment for all goods and services sold at such Establishment, 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 and that charge and credit Cards, including corporate Cards, are interchangeable. Each Participating State Entity is responsible and liable for the performance by its Establishments of all provisions of the Agreement and all obligations of its Establishments under the Agreement.

3. 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. We shall debit your Demand Deposit Account on, or about, the fifth day of each month for all applicable deductions, reversals, and withholdings from the previous month, which shall include: (i) the Discount; (ii) any amounts you owe us or our Affiliates under this Agreement, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.

4. OTHER CHANGES

a. Notwithstanding anything to the contrary in the Agreement, you and we agree that if a conflict is deemed to exist between sections 1.b; 1.d; or 4 of the General Provisions and the Merchant Regulations, sections 1.b., 1.d., and 4 of the General Provisions shall control over the Merchant Regulations.

5. DATA SECURITY OPERATING POLICY

Any provisions in the Data Security Operating Policy, if any, that by their terms would impose on you (a) any indemnification obligations or (b) assessment of non-validation fees, do not apply to you.

6. SETTLEMENT

a. Discount and Fees. Your initial Discount, fees, and payment terms are set forth below.

b. Payment Terms.

Discount Rate :	2.15 %
Prepaid Card Rate:	1.40 %
Payment Plan:	3 days

7. 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 days of the Effective Date, you must use best efforts to 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. You must use best efforts to 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 preparing internal tracking reports showing which State Entities accept the Card. We will only use the List for internal purposes and will not share the List with any third party sales agents.

8. LIMITATION OF LIABILITY

In no event shall we or our Affiliates, successors, or permitted assigns be liable to you for any incidental, indirect, speculative, consequential, special, punitive, or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, or otherwise, 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 or the banking system, except that our rights to create Reserves and exercise Chargebacks will not be impaired by such events.



EXHIBIT 1

PARTICIPATING STATE ENTITIES

Name
1. Utah Transit Authority
2. Utah Board of Education
3. Utah Department of Technology Services
4. Utah Department of Legislative Printing
5. Utah Labor Commission
6. Utah Parks and Recreation
7. Utah Office of Debt Collection
8. Utah School & Institutional Trust Lands Administration
9. Utah Department of Community & Culture
10. Utah Public Safety Department
11. Utah Alcohol Beverage Control Department
12. State of Utah Driver License Division
13. Utah State Tax Commission
14. Utah Public Service Commission
15. Utah Insurance Department
16. University of Utah



EXHIBIT 2

AGENCY PARTICIPATION AGREEMENT
FOR AMERICAN EXPRESS® CARD ACCEPTANCE
[STATE 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 [STATE 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 Utah 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. If you are a State of Utah agency, you represent that you have received all the necessary approvals from the State Treasurer's Office to allow you to enter into this Agency Participation Agreement. Political subdivisions are not required to obtain approvals from the State Treasurer's Office.
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 or until earlier terminated by you on ninety (90) days' prior written notice to us. 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 _____.

[STATE ENTITY]

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

Handwritten signature of Thomas F. Pojero

By: _____

Name: _____

Title: _____

Thomas F. Pojero
Senior Vice President
Merchant Services, United States

AGENCY PARTICIPATION AGREEMENT - SET UP FORM (CONTINUED)
[STATE ENTITY]

SE # 2 (if needed):	Federal Tax Id: (if different from CAP)
DBA Name: (24 spaces)	Location ID: (if applicable)
Physical Address: (24 spaces – no PO Box)	
Physical Address: (line 2)	
City:	State: Zip:
Telephone:	Fax:
Web Site of Business: (for internet setups only)	
Deposits should be made to:	ABA DDA checking savings
Debits should be made to:	same as above (or)
Debits should be made to:	ABA: DDA: checking savings

If you have additional locations with same banking information, you may fill out an excel spreadsheet with all information

Payment Information:	
Credit/Deposit options:	
Individual Pay: (Deposit Per Location)	Central Pay: (Deposit Combined for all locations)
3 day pay	Other: (must be contractual)
Debit/Discount Fee Payment Options: Please check one:	
Net Payment: (discount fees are netted from daily deposits)	
Pay In Gross: (Daily Pay in Gross)	Monthly Pay in Gross (%00.03 charge) (fees debited on the 5 th of each month)
Other (must be contractual)	

Reporting Information:	
Financial Address: (Financial Statements and Chargeback Notification; if not received electronically):	
Same as above	(or)
Address (24 spaces):	Attn:
Physical Address: (line 2)	
City:	State: Zip: Telephone:
Correspondence Address: (Inquiries and all other mail; if you are not receiving electronically)	
Same as above	(or)
Address (24 spaces):	Attn:
Physical Address: (line 2)	
City:	State: Zip: Telephone:

AGENCY PARTICIPATION AGREEMENT - SET UP FORM (CONTINUED)

[STATE ENTITY]

Reporting Method:

Online Merchant Services (OMS): refer to www.americanexpress.com/merchant once merchant number is assigned for self enrollment

Paper Monthly Statements (fee may apply)

Would you like a Welcome Kit sent: Yes No

For Internal use only:

Type of Government Account: Federal State City County

Special Program Code:

Origin Code:

Industry Code:

EFT (merchant will electronically send American Express the monthly payment)