

**AGREEMENT FOR
AMERICAN EXPRESS® CARD ACCEPTANCE**

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND

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

CONTRACT NUMBER PS69501



**Office of
General Services**

**Procurement
Services**

**STATE OF NEW YORK
AGREEMENT FOR
AMERICAN EXPRESS® CARD ACCEPTANCE
WITH
AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.
CONTRACT # PS69501**

THIS AGREEMENT (the **Agreement** or **Contract**) is made this 16th day of November, 2021 by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is on the 36th Floor, Corning Tower Building, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (herein referred to as **OGS or State**), and American Express Travel Related Services Company, Inc., with offices at 200 Vesey Street, New York, New York 10285 (**American Express, our, us or we**). Hereinafter, the State and American Express may be collectively referred to as the “parties” or individually as a “party.”

W I T N E S S E T H:

WHEREAS, OGS is statutorily authorized to enter into centralized procurement contracts for services and technology acquisitions for use by New York State agencies and departments, public authorities, political subdivisions and others authorized by statute to utilize its centralized contracts, (hereinafter **Authorized Users**), and

WHEREAS, OGS is the designated Statewide Electronic Value Transfer Administrator (**EVTA**) under State Finance Law § 4-a. The EVTA is responsible for establishing, facilitating and overseeing statewide policies for the acceptance and collection of payments including Credit/Charge Cards, Debit Cards, electronic funds transfers, and the effective and efficient implementation, operation and administration of such payment programs; and

WHEREAS, OGS has identified a need to provide Authorized Users with the ability to accept the American Express® Card, and to have American Express authorize, capture, settle and report American Express Transactions, and

WHEREAS, American Express is a sole-source provider of American Express authorization, capture, settlement and reporting services, and is acting in such capacity in executing and performing this Agreement, and

WHEREAS, American Express has submitted pricing information to the State for American Express® Card acceptance, and the State has determined that such pricing is reasonable and acceptable in order to fulfill the State's needs and objectives, and

WHEREAS, American Express is ready, willing and able to enter into this Agreement to provide the services set forth herein and American Express agrees to the specifications and terms set forth in this Agreement, and

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the parties do hereby agree as follows:

1. SCOPE

This Agreement sets forth the terms and conditions governing the provision of services by Contractor for the Authorization, processing, Settlement, and reporting of American Express® Card Transactions and other ancillary services to Authorized Users. Except as otherwise set forth in this Agreement, the terms used in this document shall have the meanings set forth in Appendix B. Except as specifically provided herein, amendments or modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties and with the approval of the New York State Attorney General and the State Comptroller.

The Agreement governs the acceptance of American Express® Cards in the United States by Authorized Users. The Agreement covers the Authorized User *alone*. The Authorized User shall distribute all notices, statements, amendments, and other communications related to this Agreement that it receives from American Express to its Establishments accepting the Card hereunder. The Authorized User 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.

The Authorized User must accept the Card as payment for all goods and services sold at all of its Establishments, except as otherwise expressly specified in the Merchant Regulations. Each Authorized User is responsible and liable for the performance by its Establishments of all provisions of and obligations in this Agreement. For the avoidance of doubt, OGS is not responsible or liable for the performance by Authorized Users of the provisions of or obligations in this Agreement.

As the payment processing industry changes and evolves over time, the State reserves the right to allow additional products or services within the general scope of this Contract award to be added to the Contract(s), with the agreement of the Contractor and upon approval by OGS and Contractor, via Contract amendment or Appendix C update, as applicable.

Use of this NYS OGS centralized contract with *American Express Travel Related Services Company, Inc.* is required for Authorized Users to process American Express® Card Transactions. The awarded contractors on centralized contract for *Payment Processing Services (Award 23111)* <https://online.ogs.ny.gov/purchase/snt/awardnotes/7900823111can.htm> shall provide for processing, Settlement, and reporting of American Express® Card Transactions and other ancillary services to Authorized Users of American Express® Cards.

Contractor acknowledges that it does not classify an Authorized User as a Payment Aggregator on Contractor's Network. If an Authorized User wishes to provide Payment Aggregator services and has obtained the necessary approvals to do so, and Contractor, in its sole discretion, approves and classifies such Authorized User as a Payment Aggregator, then Chapter 13, "Payment Aggregator," of the Merchant Regulations shall apply to such Authorized User. Otherwise, Chapter 13 does not apply to an Authorized User, as set forth in Appendix C, section 2.

2. EXCLUSIONS FROM SCOPE

No hardware, supplies or consulting services are available for purchase under this Agreement. No development or customization work will be provided under any order. Furthermore, the Parties agree that no Systems or projects shall be provided under this Agreement. The Parties expressly agree that the Agreement shall not be amended to add hardware, any other consulting services or Systems as an offering. The Parties also agree that no public works or building services work can be provided by the Contractor under this Agreement.

3. DEFINITIONS

Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions that appear in the Merchant Regulations are amended in this section 3. of this Agreement.

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.

American Express Network or **Network** - Network of merchants that accept Cards and the operational, service delivery, systems, and marketing infrastructure that supports this Network and the American Express Brand.

Automated Clearing House (ACH) - the electronic money transfer system of the Federal Reserve System.

Authorized User(s) - a New York State agency, department, public authority, political subdivision or other entity authorized by statute to utilize OGS centralized service contracts. This definition shall supersede and replace the definition set forth in Appendix B, Section 2.a., Definitions. Any and all references in the Merchant Regulations to Affiliate(s), as it applies to Authorized User, are hereby deleted and replaced with references to Authorized User.

Bank - a bank within the United States that participates in ACH.

Bank Account - an account that an Authorized User holds at a bank or other financial institution.

Cardmember - 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.)

Charge - 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)

Convenience Fee - a payment mechanism by which, at the direction of an Authorized User, a service provider (e.g., Internet or Interactive Voice Response service provider) is reimbursed by device users for costs associated with providing such services. The amount of the Convenience Fee and the method by which it may be collected shall be set forth in Authorized User's Implementation Plan.

Corporate Purchasing Card (CPC) - Corporate Purchasing Card (CPC) program assists with procurement costs and enables streamlining of the procurement process from sourcing and buying, to billing payment and reconciliation.

Credit/Charge Cards - the four nationally recognized branded cards: MasterCard, Visa, Discover and American Express.

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

Debit Card - 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.

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

Electronic Pay - the pay program where funds are sent from Contractor electronically via the ACH.

Electronic Value Transfer Administrator (EVTA or OGS) - the New York State Office of General Services.

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

Financial Services Processor (FSP) - a processor of Credit/Charge Cards. Also referred to as a "Processor" in Contractor's materials.

Program Plan Application Form - a document that is to be completed by every State Agency for the purpose of receiving approval from the EVTA and Division of the Budget for their EVTA agency plan. Each State Agency must receive sign off from EVTA prior to submitting this form to the Contractor. The State reserves the right to modify this form, at its discretion, throughout the term of the Agreement without prejudice to Contractor and without the approval of the Department of Law or the Office of the State Comptroller. The Program Plan Application Form is attached as Appendix F of this Agreement.

Work Order Form - a document issued by an Authorized User which provides all the EVT technical project details, project costs and any unique administrative terms and conditions required by an Authorized User. Each Work Order Form that incorporates unique terms or conditions not provided for in the Agreement shall be reviewed and approved in writing by Contractor prior to its commencement of any services described in this Agreement. For a State Agency Authorized User, the EVTA shall review and approve the form in writing prior to

commencement of any services described in this Agreement. The Work Order Form is attached as Appendix G. The State reserves the right to modify this form, at its discretion, throughout the term of the Agreement without prejudice to Contractor and without the approval of the Department of Law or the Office of the State Comptroller.

Full Recourse – Refer to the definition of “Chargeback” in the Merchant Regulations.

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

Merchant Number - a unique number American Express assigns to Authorized Users and their Establishment(s).

Merchant Regulations - the American Express Merchant Regulations – U.S., which are available at www.americanexpress.com/merchantpolicy and can be accessed by entering your online Merchant Account user ID and password. The Merchant Regulations are attached as Appendix E of this Agreement.

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

Plural Interface Processing (PIP) – the multiple direct routing process (via an American Express terminal or software) that routes bank card transactions to FSPs and American Express transactions directly to American Express for both authorizations and submission for settlement.

Reverse PIP – the multiple direct routing process (via a non-American Express terminal or software) that routes bank card transactions to FSPs and American Express transactions directly to American Express for both authorizations and submission for settlement.

Split Dial – the routing process (via a terminal or software) that does not support PIP technology may still have the capability of sending authorization requests directly to American Express, but the settlement submission batch is routed through an FSP, generally meaning that the industry-specific software cannot be accommodated.

Subcontractor or **subcontractor** - means any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract with Contractor, express or implied, for the performance of a portion of 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. This definition shall supersede and replace the definition set forth in Appendix B, Section 2.ii., Definitions.

Telephone Order – an order that occurs when Card payment information is taken over the telephone.

The definition in the Merchant Regulations *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 American Express’s materials) mean the Authorized Users.

4. ORDER OF PRECEDENCE

The following documents shall be deemed part of this Agreement and the Parties agree to perform this Agreement in accordance with all the conditions, covenants and representations set forth in these documents:

- a. Appendix A, Standard Clauses for New York State Contracts;
- b. This Agreement (that is, the material preceding the Parties’ signatures), exclusive of all other Appendices;
- c. Appendix B, General Specifications;
- d. Appendix C, Other Important Provisions for Card Acceptance and Exceptions to the Merchant Regulations;
- e. Appendix E, Merchant Regulations;
- f. Appendix F: Program Plan Application Form;
- g. Appendix G: Work Order Form;
- h. Appendix D, Federal Funding Agency Mandatory Terms and Conditions
- i. Appendix H, Procedures for Updating Agreement Pricing and/or Product Listings.
- j. Appendix I, Contractor’s Insurance Requirements.

In the event of any discrepancy, disagreement or ambiguity among the above listed documents, they shall be given preference in the order listed above to interpret and to resolve such discrepancy, disagreement or ambiguity.

5. APPENDIX A

Appendix A, Standard Clauses for New York State Contracts, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein.

6. CLAUSES RESERVED IN APPENDIX B

The Parties agree that the following clauses from Appendix B are not applicable to this Agreement:

3. International Bidding
4. Bid Opening
5. Late Bids
7. Prevailing Wage Rates – Public Works and Building Services Contracts
10. Product References
11. Remanufactured, Recycled, Recyclable, or Recovered Materials
12. Products Manufactured in Public Institutions
13. Pricing
14. Site Inspections
15. Purchasing Card
16. Bid Evaluation
17. Tie Bids
18. Quantity Changes Prior to Award
19. Timeframe for Offers
27. Scope Changes
28. Estimated/Specific Quantity Contracts
31. Product Delivery
32. Weekend and Holiday Deliveries
33. Shipping/Receipt of Product
35. Product Substitution
36. Rejected Product
37. Installation
38. Repaired or Replaced Products, Parts, or Components
50. Toxic Substances
54. Warranties, sub-sections c., d., e., and i.
64. Ownership/Title to Project Deliverables

7. MERCHANT REGULATIONS

The Merchant Regulations set forth the policies and procedures governing acceptance of the Card. The Authorized User shall ensure that its 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. The Authorized User agrees to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time (i) as required by Applicable Law; and (2) to the extent such provisions do not conflict with the provisions set forth in the Agreement documents that are given preference to the Merchant Regulations in the Order of Precedence above) as if

fully set out herein and as a condition of the Authorized User's agreement to accept the Card. American Express has the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 10 below. 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).

The Parties recognize that the numbering system used in the Merchant Regulations may change. For avoidance of doubt, the Parties agree that the narrative used to describe a section of the Merchant Regulations controls over the number reference. For example, in the phrase "Chapter 14, Merchant Fees", the controlling element is the narrative "Merchant Fees."

8. TRANSITION PERIOD/AUTHORIZED USERS.

In order to ensure continued Card acceptance of existing Authorized Users who are accepting the Card under the prior agreement between the State Of New York - Office of General Services Procurement Services Group and American Express Travel Related Services Company, Inc., for Statewide Electronic Value Transfer Services (Group No. 79008) - Contract No. PS65669 (the **Prior CAA**), during the period of time until the Authorized User executes a new Work Order Form under this Agreement (Contract No. PS69501) (such time period herein called the **Transition Period**) the State, having the authority, authorizes its Authorized Users to continue to accept the Card under the Prior CAA (EVTA forms 1 and 2) during the Transition Period until the Authorized Users complete the OGS approved Work Order Form under this Agreement. It being understood by the parties, the Transition Period shall be no longer than a period of twelve (12) consecutive months from the effective date of this Agreement.

9. CONTRACT TERM

This Agreement shall commence upon New York State Office of the State Comptroller (**OSC**) approval and will be in effect for a term of five (5) years, unless sooner terminated as herein specified. Upon mutual agreement of both parties, this Agreement may be extended for up to one (1) additional five (5) year term.

10. CONTRACT AMENDMENTS

Except as otherwise provided in this Agreement or required pursuant to Applicable Law, this Agreement may not be changed, altered or modified except by an instrument in writing executed and approved by both Parties, subject to

the approval of the New York State Office of the Attorney General and the New York State Office of the State Comptroller, provided that Contractor may change the Merchant Regulations pursuant to the following provisions. Authorized User agrees to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of its agreement to accept the Card to the extent such provisions do not conflict with the provisions set forth in the documents that are given preference to the Merchant Regulations in section 4 above.

(1) Scheduled Changes. The Merchant Regulations are published twice each year, in April and October. Contractor has the right to, and hereby notifies you 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 Authorized User that Contractor may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to Authorized User (unless another effective date is specified in the notice).

Contractor shall provide an electronic copy of each scheduled and unscheduled change to OGS via electronic e-mail within thirty (30) days of the applicable release. Any unscheduled changes which are mandated by law shall take effect as set forth in subsection (2) above of this section 10. Except for unscheduled changes which are mandated by law, OGS agrees to notify Contractor if OGS, or an Authorized User, objects to any of the applicable changes within 60 days of OGS’s receipt of the applicable release, or such other time as the Parties may agree to in writing. If the

Parties cannot reach an agreement with respect to any such changes prior to the effective date of such changes, or some other time mutually agreed upon by the Parties, then: (i) the Authorized User may terminate its Work Order Form; or (ii) OGS may terminate the Agreement. Any such termination shall take effect as of the effective date of the applicable changes. In the event that OGS, or Authorized User, does not object to the changes, or if OGS or Authorized User raises an objection, but does not exercise its termination rights under this section 10, then such changes shall apply to this Agreement as of the effective date of such change.

11. AMEX NETWORK

The State and Contractor agree that the American Express Network, as defined in the April 2021 edition of the Merchant Regulations, with the exception of the Merchant Interactive tool (**MI**), is neither Licensed Software nor a Licensed Product, but that it is a Product. Accordingly, Contractor shall have no obligation to meet the requirements of sections 60 through 66 of Appendix B of this Agreement with respect to the American Express Network (with the exception of the Merchant Interactive tool). Contractor's MI tool allows for reconciliation of payment, facilitates the resolution of Inquiries and Disputed Charges and provides Authorized Users reporting or, more generally, access to an Authorized User's Account online at www.americanexpress.com/merchant.

12. ACCEPTING THE CARD

a. Acceptance. Authorized Users must accept the Card as payment for all goods and services sold at all of an Authorized User's Establishments, except as otherwise expressly specified in the Merchant Regulations. Authorized User(s) 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. Authorized User is responsible and jointly and severally liable for the performance by Authorized User's Establishments of all provisions of the Agreement and all obligations of Authorized User's Establishments under the Agreement.

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

i. Format. You must create a Charge Record for every Charge and a Credit Record for every Credit that complies with our Technical Specifications, as described in the Merchant Regulations. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge

Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.

ii. Authorization. For every Charge, you must obtain from and submit to us an Authorization Approval code. An Authorization Approval does not guarantee that (i) the person making the Charge is the Cardmember, (ii) the Charge is in fact valid or bona fide, (iii) you will be paid for the Charge, or (iv) you will not be subject to Chargeback.

iii. Submitting Charges and Credits. Authorized User and its 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 initial Discount and payment plan are indicated on Appendix C, attached hereto and made a part hereof. In addition to your Discount the only other fee we may charge you are processing/gateway fees, as described in Section 13 below.

v. Chargeback. We have Chargeback rights, as described in the Merchant Regulations. We may Chargeback Authorized Users and their Establishments according to the process described in Section 14 below. 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.

13. AGREEMENT COSTS

All costs associated with this Agreement are outlined in Appendix C (*Other Important Provisions for Card Acceptance/Exceptions to the Merchant Regulations*). For the avoidance of doubt, except for Gateway Fees, any fees set forth in the Merchant Regulations, including, but not limited to, any fees set forth in Chapter 14, Merchant Fees, of the Merchant Regulations, that are not also set forth in Appendix C shall not apply. Any adjustment to the fees set forth in Appendix C shall be submitted to OGS by Contractor pursuant to Appendix H.

- A. Discount Rate – The Discount Rate is calculated as a percentage of the Transaction and is set forth in Appendix C. Effective every April 1st (beginning after the first full calendar year of this Agreement) American Express may seek to adjust the Discount Rate. Any request for an increase in the Discount Rate must be provided to the State, with sixty (60) days advance written notice. American Express must provide the appropriate supporting written documentation for the rate increase, as mandated by the Office of the State Comptroller. The effective date of such change shall coincide with the beginning of the next monthly invoicing cycle following State Comptroller approval. However, if the State determines a change in the discount rate to be unacceptable, the State shall notify Contractor and the parties will negotiate in good faith to attempt to arrive at mutually agreeable terms. If the parties are unable to reach mutually agreeable terms, then the State shall have the option of terminating this Agreement consistent with Section 43 of Appendix B; or (ii) American Express can withdraw such request for an increase in the Discount Rate.

The Discount Rate tables set forth in Appendix C are the Discount Rate tables for merchants classified in the state government industry category (industry code 541) as of the Effective Date. The State acknowledges that American Express's discount rate tables and pricing policies may be modified by American Express from time to time. Any modification to the State's Discount shall follow the procedures outlined in the Agreement in Appendix H.

- B. Gateway Fees – If an Authorized User or its Covered Parties route Authorization requests to Contractor through the Visa or MasterCard processing gateways, Visa and MasterCard charge Contractor fees for these Authorizations. Contractor will pass their fees, which may vary depending on Authorization volume and other factors, on to Authorized User for all Authorized User's Authorizations that are routed through their gateways in a given month. For clarity, any Gateway Fees charged to the Authorized User must be passed through to the Authorized User at cost only (i.e., the amount that Visa or MasterCard charges Contractor for said Gateway), with no markup added by Contractor.

14. CONTRACTOR PAYMENTS

Contractor will pay the Authorized User in United States Dollars for the face amount of Charges that each Authorized User submits. After the close of each month, Contractor shall invoice each Authorized User monthly for the following applicable deductions, rejections and withholdings from the previous month: (i) the aggregate Discount; (ii) any amounts owed by an Authorized User to

Contractor for Gateway Fees; and (iii) any Credits the Authorized User submits. With respect to Chargebacks, Chargebacks will be deducted from an Authorized User's Transaction amount with Contractor for the current month in which the Chargeback was made. If Contractor is unable to deduct the Chargeback from the current Transaction amount, then the Chargeback will be sent to Contractor's debit balance team and the debit balance team will contact the applicable Authorized User payment. In order to be eligible for this billing process, each Authorized User must: (1) submit all Charges to Contractor electronically; and (2) receive all payments electronically via ACH. Authorized User agrees it will not receive payment: (1) for a Charge using a Merchant Number other than its own Merchant Number(s); and (2) on behalf of an entity other than itself or another Authorized User.

15. SETTLEMENT PAYMENT METHOD

Under Electronic Pay, funds are sent electronically via ACH. Authorized User must designate a Bank Account. Authorized User must also provide to American Express the required information about Authorized User's Bank Account and Authorized User's Bank and Authorized User must notify their Bank that American Express may have access to the Bank Account to make payments. Authorized User must immediately notify Contractor of any changes to Authorized User's Bank, Bank Account or ACH information. American Express will initiate payment to Authorized User's Bank Account via ACH within one (1) day and in accordance with the following table and column definitions. As used herein, **One-day payment plan** means that we initiate payment one (1) day after our cutoff time for receiving and processing Charges.

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*

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

Contractor will not be responsible for any obligations, damages or liabilities over and above the amount of the applicable debit, credit or adjustment to Authorized User's Bank Account in the event that any such debit, credit or adjustment is not honored by Authorized User's Bank or is improperly applied to Authorized User's Account by the Bank.

16. AUTHORIZED USER PAYMENTS

All State Agency Authorized User payments will be made to Contractor in conformance with Article XI-A of the New York State Finance Law.

A non-State Agency Authorized User payment will be made to Contractor within thirty (30) calendar days of receipt of a complete and accurate invoice (excluding legal holidays recognized by the State) subject to applicable law under which the Authorized User operates. The non-State Agency Authorized User will provide the Contractor with documentation that supports payment terms exceeding thirty (30) calendar days in its Work Order Form or other writing provided to Contractor.

17. CARD SERVICES

An Authorized User shall procure the services of an FSP for the data capture and routing for authorization of American Express related Transactions. Contractor agrees that it will use commercially reasonable efforts to approve and to accept Transactions through the FSP designated by Authorized User. If Contractor does not approve the Authorized User's designated FSP, Contractor is not obligated to sign or accept that Authorized User's Work Order Form. Because such FSPs are not authorized to handle either the funds or the reports associated with American Express® Card Transactions, American Express shall be responsible for the settlement of funds associated with these Transactions into the Bank Account designated by the Authorized User, and for making the related American Express® Card Transaction Data available to the Authorized User. Contractor shall not be responsible for any errors, omissions, delays or expenses caused by the FSP. Authorized User will provide Contractor with all relevant information requested about the FSP and will notify Contractor promptly in writing if the FSP is changed.

18. TRANSMITTING DIRECTLY TO AMERICAN EXPRESS

This Agreement permits an Authorized User to transmit American Express® Card Transactions directly to American Express. If an Authorized User chooses to transmit both Authorization requests and Batch submissions to American Express directly, the Authorized User must utilize PIP or Reverse PIP. If an

Authorized User chooses to transmit only Authorization requests to American Express directly, the Authorized User must use Split Dial.

19. FULL RECOURSE/CHARGEBACK

In addition to any Full Recourse (also called Chargeback) rights Contractor has in the Merchant Regulations, Contractor shall have Full Recourse if Authorized User does not comply with the terms of this Agreement with respect to a Charge(s), even if Contractor had notice when it paid Authorized User for the Charge(s) that Authorized User did not so comply and even if Authorized User obtained Authorization for the Charge(s) in question. In the event that a dispute involves a Card Not Present Charge that is an Internet Electronic Delivery Transaction, Contractor shall exercise its right of Full Recourse for the full amount of the Charge immediately, without first sending Authorized User an inquiry.

Neither Authorized User nor Contractor shall be responsible hereunder for damages arising from delays or problems caused by any telecommunications carrier or banking system; provided, however, that the foregoing shall have no effect upon Contractor's rights to Full Recourse pursuant to this Agreement.

20. CONVENIENCE FEES

This section shall supersede section 12.11 of the Merchant Regulations titled "Government/Utilities/ Education." The Convenience Fee shall be applied at the direction of the Authorized User. When Convenience Fees are applied, the Authorized User agrees to clearly disclose to Cardmembers: (1) the amount of such Convenience Fee; (2) that the Authorized User is charging the Convenience Fee; and, (3) that the Convenience Fee charged to the Cardmember is an assessment to cover the Authorized User's administrative costs and not as an assessment to cover the Authorized User's cost of accepting the Card. Authorized Users must not impose a higher convenience fee, whether in the form of a flat fee or as a percentage of the final Transaction amount, on Charges than it imposes on Other Payment Products, except for electronic funds transfers, cash, and checks. American Express views discrimination against Cardmembers as a breach of the Agreement. For the Authorized User, the amount of the Convenience Fee and the method by which it may be collected shall be submitted for approval by American Express prior to being set forth in the Authorized User's Work Order Form.

When Convenience Fees are applied and are paid by a Cardmember directly to an Authorized User, then one (1) Charge (constituting both the amount of the payment and the amount of the Convenience Fee) must be submitted to American Express. The Discount will be assessed on this Charge.

When Convenience Fees are applied and are paid by a Cardmember to a party who is not the Authorized User, then two (2) Charges (one (1) constituting the amount of the payment, and one (1) constituting the amount of the Convenience Fee) must be submitted to American Express. The Discount will be assessed on both Charges. In such cases, the Authorized User must instruct American Express as to the payment of the Convenience Fee on the Authorized User's Work Order Form. Authorized User remains responsible for payment of the Discount.

21. PROCEDURES FOR UPDATING AGREEMENT PRICING OR PRODUCT LISTINGS

Appendix H of this Agreement contains procedures related to changes for the addition of services under this Agreement. For each of these Agreement changes, the Contractor must complete the Contract Update Form, which is attached in Appendix H. The State reserves the right to modify Appendix H, at its discretion without the approval of the Department of Law or the Office of the State Comptroller, throughout the term of the Agreement without prejudice to Contractor. If Appendix H is modified, the State will provide written notice to Contractor of such modification to Appendix H.

22. PROTECTIVE ACTIONS

a. Suspension. We may suspend Card acceptance by an Authorized User, upon written notice to the Authorized User, if we determine, in our sole discretion, that: (i) such Authorized User 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 Authorized User under the Agreement. Any such suspended Authorized User 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 Authorized User under the Agreement against amounts that Authorized User owe us or our Affiliates under the Agreement or any Other Agreement.

c. Providing Information. Authorized User must provide to us promptly, upon request, information about it and its Establishments' finances, creditworthiness, and operations, including the most recent certified financial statements.

23. GENERAL AMEX RESPONSIBILITIES

Authorized User that is a State agency: Upon receipt of an executed and approved Program Plan Application Form from an Authorized User, the Contractor can begin to design an American Express® Card acceptance program under this Agreement. Upon receipt of a completed Work Order Form, the Contractor may begin to provide reimbursable services to that Authorized User. Copies of these forms are included in Appendix F and Appendix G.

Authorized User that is not a State agency: The Parties acknowledge that an Authorized User that is not a State Agency is required to submit its completed Program Plan Application Form to the EVTA, but that the EVTA only acknowledges receipt and does not have an approval role. Upon receipt of an executed Program Plan Application Form that denotes "receipt" by the EVTA, the Contractor can begin to design an American Express® Card acceptance program under this Agreement. Upon receipt of a completed Work Order Form, the Contractor may begin to provide reimbursable services to that Authorized User. Copies of these forms are included in Appendix F and Appendix G.

24. CONNECTIVITY

Contractor shall be responsible for maintaining only its interfaces with an FSP. Contractor shall not be responsible for maintaining the FSP's interfaces in order to support any services provided for in this Agreement.

The Contractor system for all critical communication links and routing the Credit Authorization System (CAS) features full redundancy. CAS reliability, excluding delays caused by external telecom providers and/or hardware utilized outside of the American Express Network, exceeds 99% uptime. Contractor minimizes system "down time", with "down time" defined as a period of time during the normal Authorized User's business hours where Contractor's system is unavailable to provide the services pursuant to this Agreement.

25. ASSIGNING MERCHANT NUMBERS

In addition to section 2.3 of the Merchant Regulations, Contractor will provide, at the Authorized User's request, multiple Merchant Numbers to support distinct reporting and reconciliation of Authorized User's payment programs (e.g., revenue sources) and payment channels (e.g., Point of Sale, Internet) within

payment programs. In all cases, however, a separate Merchant Number will be required for Internet transactions.

26. REPORTS

Contractor agrees to provide the following types of reports as listed below. Contractor's MI tool is available to Authorized Users and can be found at: at www.americanexpress.com/merchant.

A. Each month Contractor shall provide each Authorized User with a Merchant Financial Activity Statement. Each Merchant Financial Activity Statement shall include transaction data sufficient to reconcile, monitor and audit Settlements made to the Authorized User by Contractor during the previous month under this Agreement including the aggregate number of: (i) Submissions; (ii) Transactions; (iii) Credits issued; (iv) Discount amounts; (v) Gateway Fees; and (vi) Settlement amounts. Should an Authorized User desire to share its transaction data with a third-party other than OGS or the EVTA, this will be noted on the Work Order Form.

B. Contractor shall provide semi-annual summary reports to OGS and the EVTA summarizing the aggregate number of: (i) Transactions; (ii) Submissions; (iii) Settlements; (iv) Discount owed; (v) Gateway Fees; (vi) Chargebacks; and (vii) Transactions Contractor determines to be fraudulent for all Authorized Users during the prior six months, as applicable. Contractor shall also provide a separate summary report on a semi-annual basis containing the elements listed in subsections (i) through (vii) above for all State Agency Authorized Users. The semi-annual summary reports required by this section shall be made available in electronic format by Contractor, in the form and manner requested by OGS. The semi-annual reports shall be provided by Contractor within thirty (30) days of January 1st and June 30th of each contract year for the prior six (6) month reporting period. If the contract period begins or ends in a fractional portion of a reporting period, only the reporting elements listed in subsections (i) through (vii) above for such fractional period shall be reported in the applicable semi-annual report.

C. Various Reports.

Online Reporting Portal: Contractor shall provide Authorized Users with access to an online reporting portal and shall be required to ensure that each Authorized User and OGS EVTA is provided only the information specific to that Authorized User's payment program respecting American Express® Card Transactions in the reasonable format and timeframe requested by the Authorized User or OGS EVTA. Authorized Users shall be able to export

Transaction Data from the online reporting portal in a variety of file formats (e.g., csv; .xml; .pdf; .html; .xls; and .tab; etc.).

Compliance Reporting: For data security compliance reporting with respect to American Express® Card Transactions, the Contractor shall offer PCI compliance assistance to all Authorized Users and shall maintain all Reports on Validation Documentation (as such term is defined in the American Express Data Security Operating Policy) documenting an Authorized User's PCI compliance under the Contract. Contractor shall retain any and all Reports including the Validation Documentation associated with the Contract in accordance with *Appendix A, Section 10, Records*.

Ad Hoc Reporting: Upon request of the OGS EVTA or by Authorized Users, Contractor shall offer custom reporting as requested by Authorized Users or the OGS EVTA. The OGS EVTA may, upon written notice to Contractor (such notice to include all details of the customized report outlined in notice) request from Contractor customized reporting (e.g., printed or online, or through secure internet applications) be submitted. If Contractor's systems do not have information or data requested by OGS EVTA or Authorized Users, OGS EVTA or Authorized Users as applicable, shall promptly supply Contractor such information to be included in the customized Ad Hoc Reporting. Contractor shall provide said Ad Hoc Reporting within 30 calendar days from the date of the request, or such other timeframe as mutually agreed upon.

Contractor may charge an additional fee, at Contractor's sole discretion, for such custom reporting, it being understood that such additional fee for custom reporting is subject to the prior approval of the Authorized User or OGS. The Contractor will use reasonable efforts to offer a variety of report formats to meet the needs of an Authorized User or OGS, as required. If Contractor's systems do not have information or data that is requested by OGS EVTA or Authorized Users, OGS EVTA or Authorized Users, as applicable shall promptly supply Contractor such information to be included in the customized Ad Hoc Reporting.

Summary Reports for OGS EVTA: For the purpose of supporting program monitoring and Contract administration, the Contractor shall report to OGS throughout the Contract term the following reports:

1. Quarterly ending reports.
2. Annual reports summarizing the previous year's quarterly Contract usage.

Contractor shall maintain data that indicates if an Authorized User is a State or Non-State agency, and whether or not the account is in open or closed status. All data obtained by OGS EVTA through the Contractor's report submissions shall include, but not be limited to:

1. Authorized User Name (as such Authorized User has indicated on the OGS approved Program Plan Application and Work Order forms)
2. Authorized User Payment Program Name (as such Authorized User has indicated on the OGS approved Program Plan Application and Work Order forms)
3. An Authorized User's OGS EVTA approval number (as indicated on such OGS approved Authorized User Program Plan Application and Work Order Forms)
4. Authorized User DBA Name and Legal Name
5. Authorized User Location (e.g., street address)
6. Authorized User Contact Information (e.g., person name, email and phone) and will be provided to OGS in Ad Hoc reporting only.
7. Merchant Identification Number (MID) (also known as Merchant Number)
8. Chain Affiliated Property Number (CAP)
9. Discount
10. Gateway Fees (if applicable) by Service Establishment (SE) of an Authorized User. Gateway Fees are provided to OGS in a separate report from the quarterly and annual reports.
11. Net Total
12. Total number of reversals/Chargebacks by Authorized User

Copies of Invoices: OGS reserves the right to request (by written notice to Contractor) copies of an Authorized User's invoice during the term of the Contract. Such request by OGS shall include to the extent available, the Authorized User CAP number or Merchant Number, month and year in which OGS is requesting the copy of the invoice.

Other Reporting: Upon OGS request, the Contractor shall provide:

1. In the event that unusual or suspicious activity is detected, or fraud is suspected on an Authorized User's merchant account, Contractor agrees, upon request, to assist OGS or an Authorized User with implementing any available fraud controls or monitoring tools.
2. Any other reports detailing Authorized User Contract usage as indicated in the paragraph directly below.

Other reports and other information may include but not be limited to:

1. Total State vs. Non-State Contract usage and dollar volume of any all American Express® Card Transactions under this Contract. OGS shall assist Contractor if Contractor cannot determine a State vs. Non State Authorized User.
2. State Agency and Non-State Agency annual American Express® Card Transactions volume (i.e., subtotal/grand total per Authorized User (AU) Payment Program Name/location, subtotal/grand total per AU Merchant ID, etc.).

3. Total State and Non-State annual number of American Express® Card Transactions, separate and combined.
4. Annual chargeback information including total number of Chargebacks, Credits/debits and total Chargeback amounts for Credits/debits.

27. TRAINING

Online training for Authorized User(s) can be found at Contractor's website: <https://www.americanexpress.com/us/merchant/support-center.html?linknav=merchant-nsnu-training-supportcenter> or via some other mutually agreed upon method. Contractor agrees that OGS will post the Merchant Regulations on their web site as a primary informational resource for all Authorized Users. In addition, upon request, Contractor agrees to provide the following training, including but not limited to, at no additional cost:

- (1) Basic processing / Card acceptance procedures;
- (2) Merchant Interactive (MI);
- (3) Security and fraud detection; and
- (4) General overview of support available (e.g., 800 number merchant support, on-line resources).

28. POINT OF CONTACT

American Express shall provide a point of contact, along with the appropriate level of support staff, whose role will include, but not be limited to, the following functions:

- Oversee the timely processing of American Express® Card Transactions within the American Express Network by the Authorized User;
- Ensure the services provided for under this Agreement are performed; and
- Communicate any identified problems/situations to the Authorized User.

29. LATE PAYMENT REMEDY

In cases where American Express's payment of Authorized User's Charges is five (5) or more days late and not the result of any act or inaction by Authorized User, Authorized User's Bank, the FSP, Force Majeure (as defined in Clause 44 of Appendix B) or other act or inaction by a party other than American Express, American Express will pay Authorized User daily interest on the amount of such payment (but not compounded daily), from the date due until the date such payment is received. Such interest rate if any, shall be paid monthly in arrears on the amount of the late payment, with such rate of interest calculated at the Federal Reserve H.15 (commercial paper, non-financial, 1-month, daily) rate

published at such time at the following website:
<http://www.federalreserve.gov/releases/h15/data.htm>.

Authorized User agrees to contact the then current point of contact at American Express in writing in all such cases where Authorized User believes that this late payment remedy is available to Authorized User. The American Express point of contact as of the Effective Date is set forth below. Authorized User agrees to include Authorized User's Merchant Number with this request and provide American Express with all necessary documents to support Authorized User's request. Authorized User also agrees to allow American Express a commercially reasonable amount of time to investigate the matter and to work with American Express to resolve the matter if there are any disagreements. Contractor shall notify OGS, in accordance with section 53 of this Agreement, in the event that Contractor's then current point of contact changes. Such notice shall include the name and contact information of such new point of contact.

American Express Travel Related Service Company, Inc.
P.O. Box 299051
Fort Lauderdale, FL 33329
Attn: Department 87
Email: American.Express.Contract.Keying@aexp.com
Fax: (602) 744-8413

30. GENERAL AUTHORIZED USER RESPONSIBILITIES

A. An Authorized User that is a State agency must complete, and have approved by the EVTA, a Program Plan Application Form. This Form must be forwarded to American Express prior to the initiation of an American Express® Card acceptance program. An Authorized User that is a State agency must also complete a Work Order Form, to initiate the provision of billable services by American Express consistent with the requirements identified by the Authorized User in its Work Order Form.

B. Authorized User that is not a State agency: The Parties acknowledge that an Authorized User that is not a State Agency is required to submit its completed Program Plan Application Form to the EVTA, but that the EVTA only acknowledges receipt and does not have an approval role. Upon receipt of an executed Program Plan Application Form that denotes "receipt" by the EVTA, the Contractor can begin to design an American Express® Card acceptance program under this Agreement. Authorized User that is not a State agency must complete a Work Order Form, to initiate the provision of billable services by American Express consistent with the requirements identified by the Authorized User in its Word Order Form.

C. This section 30.C shall supersede sections 26 and 30 of Appendix B in relation to the ability of the Authorized User to modify the terms of the transaction between Contractor and Authorized User. In order for an Authorized User to propose any additional terms and conditions, such terms and conditions must be included in Authorized User's Work Order Form and must be mutually agreed to by Authorized User and Contractor.

31. MIGRATION OF CURRENT CARD ACCEPTANCE AGREEMENTS

Eligible Authorized Users, including educational institutions of the State of New York, with independent contracts for Contractor services may, at any time, convert any existing Card Acceptance Agreements with American Express to participate under this Agreement and upon execution of a Work Order Form shall have all rights of an "Authorized User," provided that notice of such migration shall be forwarded to the Contractor in compliance with the notice requirements of this Agreement. The State understands that as of the effective date of this Agreement, the (i) Metropolitan Transportation Authority (MTA), and the MTA's operating agencies: MTA New York City Transit, MTA Bus, Long Island Rail Road, Metro-North Railroad, and MTA Bridges and Tunnels; and (2) New Jersey Transit Corporation, each have their own Card Acceptance Agreement with Contractor.

32. PRESS RELEASES

American Express agrees to obtain written approval from the State or the Authorized User prior to the issuance of any news releases and any paid or unpaid advertising or marketing concerning the subject matter. Notwithstanding the foregoing, American Express may list the State and Authorized Users' name, address, (including the website addresses or URLs), and customer service telephone numbers where Contractor communicates where the Card is accepted and for purposes of Cardmember servicing, including on Cardmembers' monthly statements, Chargeback documentation, and routine customer service communications.

33. CONFIDENTIALITY

A. American Express agrees to comply with the confidentiality requirements of Appendix B, Clause 6. In addition, the following confidentiality requirements are imposed on the Contractor, State and Authorized Users:

- (1) Each party shall keep confidential and not disclose to any third party any information it receives from the other party that is not publicly available or necessary for providing service under this Agreement. The Parties understand that this Agreement will become a State public record.

(2) An Authorized User agrees that the names, addresses and account numbers of Cardmembers are the sole and exclusive property of American Express. An Authorized User shall not use or disclose any Cardmember's name, address or account number except as provided in this Agreement.

B. If any unique confidentiality requirements are necessary for a specific Authorized User, then these shall be set forth on the Work Order Form and must be agreed to by Contractor. This could include the signing of agreements to adhere to certain laws, rules and/or procedures.

34. 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.

35. REPRESENTATIONS AND WARRANTIES

The State and American Express, 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 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. The State further represents and warrants to American Express that: (vii) the State is authorized to enter into the Agreement on behalf of Authorized Users, including those indicated in the Agreement; (viii) the State is 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), (B) listed on the U.S. Department of State's Terrorist Exclusion List (available at 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) State (or Authorized Users as the case may be) has not assigned to any third party any payments due to the State (or Authorized User) under the Agreement and all indebtedness arising from Charges are for bona fide sales of goods or services (or both) at State's or Authorized User's Establishments and free of any liens, claims, and encumbrances other than ordinary sales taxes or with respect to liens or other security interests that the State (or Authorized User) grant pursuant to credit facilities obtained in the ordinary course of business from the State (or Authorized User) commercial banks or other financial institutions; (x) all information that the State (or Authorized User) provided in connection with the Agreement is true, accurate, and complete; and (xi) the State (or Authorized User) have read the Agreement and kept a copy for your file. If any of the State (or Authorized User) representations or warranties in the Agreement become untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

36. PROCUREMENT LOBBYING LAW

Pursuant to State Finance Law §§139-j and 139-k, certain restrictions on communications between OGS and an Offerer/bidder are imposed during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this Agreement. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

37. TAX LAW 5-A

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of

\$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this bid. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698-2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>

38. PERFORMANCE BOND

In accordance with Appendix B, §58 Performance/Bid Bond, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance

of the Contract shall be required at any time during the Initial Term, or any renewal term, for this Agreement.

39. DISPUTE RESOLUTION/GOVERNING LAW

In the event of any dispute or controversy arising out of or relating to this Agreement, the State, subject Authorized User and Contractor agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, State and Authorized User shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Should the dispute not be resolved amicably, each party shall use the legal procedures as governed by New York State Law.

All documents, materials, and information in the possession of either party that are relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying according to the applicable New York State Law requirements. This language covers the discovery rules and guidelines applicable in New York State as well as any laws that apply to claims or disputes by/between State entities.

Governing Law. The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Any action by either party hereunder shall be brought only in the appropriate federal or state court located in the State of New York. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

40. TERMINATION

Authorized User agrees that this Agreement is a contract to extend financial accommodations and that if insolvency or similar proceedings are filed with respect to Authorized User, the subject Authorized User's Work Order Form will be automatically terminated. If Authorized User ceases or adversely alters Authorized User's operations, or if Authorized User sells all or substantially all of Authorized User's assets or stock, or if Authorized User becomes insolvent, or if Contractor receives a disproportionate number of Cardmember inquiries or complaints relating to Charges at an Authorized User Location, or if Contractor has reasonable cause to believe that an Authorized User will not be able to perform all of its obligations under this Agreement, Contractor may, in its discretion, immediately terminate the Work Order Form for the subject Authorized User. Authorized User agrees to notify Contractor immediately if any of the above events occur.

Upon termination, Authorized User must: 1) remove all displays of American Express Marks and return Contractor's materials and equipment immediately; and, 2) submit to Contractor any Charges and Credits incurred prior to the termination in accordance with this Agreement. 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 provision of the sections entitled "Agreement Costs," "Contractor Payment," "Settlement Payment Method," "Full Recourse," "Confidentiality," "Dispute Resolution Process," "Indemnification," "Termination," "Trademarks and Service Marks," "No Waiver," "Section 58 of Appendix B, Limitation of Liability," and Contractor's Full Recourse rights and Authorized User's duties set forth in the Merchant Regulations to protect Cardmember Information, retain documents evidencing Transactions, and notify Authorized User's Recurring Billing customers of such termination shall survive termination of this Agreement.

41. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (**NYCRR**), the New York State Office of General Services (**OGS**) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (**MWBEs**) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (**MWBE Regulations**) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York

State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (**EEO**) and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the **Human Rights Law**) or other applicable federal, State, or local laws.

- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the **Work**) except where the Work is for the beneficial use of the Contractor.
 - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made

a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. NYS Contract System -EEO 101 Workforce Utilization Reporting Module (Commodities and Services)

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Workforce Audit to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Audits must be submitted electronically in the NYS Contract System through the Workforce Audit Module found at the following website: <https://ny.newnycontracts.com> and must be submitted on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate audits shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts may include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development (**ESD**) MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>

42. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (**SDVOBs**), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is

encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

43. INSURANCE REQUIREMENTS

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment K – Insurance Requirements.

44. APPENDIX B AMENDMENTS

Appendix B, clause 1 (Ethics Compliance) is deleted and replaced with the following:

1. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the applicable requirements of Sections 73 and 74 of the Public Officers Law, other applicable State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

Appendix B, subdivision b of clause 6 (Confidential/Trade Secret Materials) is deleted and replaced as follows:

b. Commissioner or Authorized User Contractor further warrants, covenants and represents that any confidential information of the State, Authorized Users or the EVTA obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder, will not be divulged to any third parties; except: (i) pursuant to an order, decree, subpoena or other validly issued judicial

or governmental agency process (including through requests for information or by oral questions); or (ii) if such information is requested from us by our or any of our Affiliates' regulators. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

Appendix B, subdivision d. of clause 25 (Participation in Centralized Contracts) is deleted and replaced with the following:

d. Responsibility for Performance Participation in state Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-state agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their respective failure to perform in accordance with their respective obligations under the Contract.

Appendix B, clause 39 (Employees, Subcontractors and Agents) is deleted and replaced with the following:

39. EMPLOYEES, SUBCONTRACTORS and AGENTS All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the Authorized User. In the event that Contractor furnishes any employee, Subcontractor or agent for the purposes of conducting work under this Agreement at an Authorized User's physical location, then the Commissioner reserves the right to conduct a security background check or otherwise approve

any such employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

Appendix B, clause 40 (Assignment) is deleted and replaced with the following:

40. ASSIGNMENT In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Agreement or its right, title or interest therein, or its power to execute such Agreement to any other person, company, firm or corporation in performance of the Agreement without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

Upon written notice to the Contractor, the Agreement may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Agreement.

Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

Appendix B, subdivision a. of clause 43 (Termination) is deleted and replaced with the following:

a. For Cause: For a material breach that remains uncured for more than thirty (30) days or other greater specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may

complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach. Notwithstanding anything else in this subdivision to the contrary, if the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid amounts incurred and owed to Contractor under this Contract through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

Appendix B, clause 44 (Savings/Force Majeure) is deleted and replaced with the following:

44. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Commissioner with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed. For the avoidance of doubt, a force majeure event shall not relieve Contractor or Authorized Users from their payment obligations under the Agreement.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may:

- a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or
- b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or

c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an upward equitable adjustment in the Contract pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

Appendix B, clause 45 (Contract Invoicing) is deleted and replaced with the following:

45. CONTRACT INVOICING

a. Invoicing. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Agreement and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Agreement or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format reasonably requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Agreement.

b. Payment of Agreement purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic

payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Agreement purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment. The Authorized User and Contractor agree that payments for such Agreement purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice, subject to section 16 of the Agreement. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

Appendix B, subdivisions b and c. of clause 46 (Default – Authorized User) is deleted and replaced with the following and the remaining paragraphs renumbered accordingly:

b. Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity, and agreed to by Contractor, for current and future Contract payments.

c. For Cause. In the event an Authorized User commits a material breach of the Agreement (other than as specified in section 46.b of this Appendix B and in the first paragraph of section 40, Termination, of the Agreement), without waiving its other rights and remedies, the Contractor has the right to send such Authorized User a written notice specifying the breach and providing such Authorized User an opportunity to cure the breach within a period of time no less than 30 days (**Cure Period**). If a breach by an Authorized User is not cured within the Cure Period, then Contractor has the right to suspend Card acceptance by the subject Authorized User, with suspension to be effective not less than 10 days following the end of the Cure Period. Contractor shall notify OGS in writing if a breach by Authorized User is not cured within the Cure Period. If the breach is not cured within 30 days of OGS's receipt of notice from Contractor, or other period of time mutually agreed to by Authorized User and

Contractor, then Contractor may immediately terminate the subject Authorized User's Work Order Form. Notwithstanding the foregoing, if the Authorized User disputes the existence of the material breach, it may invoke the Dispute Resolution Process set forth in section 39 of the Agreement by providing written notice of such dispute to Contractor within 10 days of its receipt of written notification from Contractor under this paragraph. Contractor shall not terminate the Authorized User's Work Order Form during the pendency of the Dispute Resolution Process. Contractor may suspend Card acceptance by the Authorized User during the pendency of the Dispute Resolution Process, provided that any such suspension shall be effective not less than 10 days following the end of the Cure Period.

Appendix B, subdivision d. of clause 48 (Remedies for Breach) is deleted and replaced with the following:

d. Reimbursement of Costs Incurred In the event of Contractor's material breach, the Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Appendix B, clause 51 (Independent Contractor) is deleted and replaced with the following:

51. INDEPENDENT CONTRACTOR No agency, partnership, joint-venture, or employment relationship is created among OGS, EVTA, Contractor and Authorized Users. 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 Contract. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

45. COMPLIANCE WITH LAWS

The Parties shall comply with all applicable laws and government regulations and rules.

46. DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 35 ABOVE, AMERICAN EXPRESS DOES NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

47. 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.

48. NO WAIVER

Either Party's failure to enforce any term or condition of this Agreement or exercise any of its rights under the Agreement shall not be a waiver of the right to later enforce such term or condition or exercise such right under the Agreement. 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.

49. CONDITIONS PRECEDENT

This Agreement shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the State Comptroller. Any amendment or extension of this Agreement shall also be subject to the approval of the Attorney General and the State Comptroller.

50. ASSIGNMENT BY STATE

The State agrees not to assign this Agreement without prior notice to and reasonable consent of American Express; provided, however, that this Agreement

may be assigned, without such consent to another agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the pertinent functions of an agency are transferred to a successor agency or subdivision of the State.

51. VENDOR RESPONSIBILITY

Contractor shall at all times during the term of this Agreement remain responsible under the New York State Finance Law. Contractor agrees, if requested by the Commissioner of General Services (the **Commissioner**) or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, and the head of a State agency, or his or her designee, reserves the right to suspend any services entered into by that agency, at any time, when he or she discovers information that calls into question the responsibility of Contractor. In the event of such suspension, Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Activity under this Agreement may resume at such time as the Commissioner, the head of a State agency, or their designee issues a written notice authorizing a resumption of performance under this Agreement.

Upon written notice to Contractor and a reasonable opportunity to be heard with appropriate State officials or staff, (i) the Commissioner or his or her designee may terminate this Agreement, and (ii) the head of a State agency or his or her designee may terminate services entered into by that agency, at Contractor's expense where Contractor is determined by the Commissioner, the head of a State agency, or their designee to be non-responsible. In such event, the Commissioner, the head of a State agency, or their designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of this Agreement by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise that may be sustained by Contractor as a result of such termination.

52. COOPERATION WITH AUDITS

Contractor shall provide reasonable cooperation to the Applicable Agency with respect to any audits conducted under this Agreement, including providing

adequate workspace to the extent feasible; provided, that the Applicable Agency agrees that access to Contractor's facilities shall be conditioned upon the Applicable Agency's compliance with Applicable Law and Contractor's reasonable site security policies and procedures. **Applicable Agency** means, on an individual basis, the Office of General Services or the Authorized User, the Federal funding agency, the Comptroller General of the United States, or any of their authorized representatives.

53. 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 the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in a postal or electronic address for which no notice was appropriately given, then the notice is effective upon the rejection, refusal or inability to deliver.
- 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 any lawfully permitted electronic means, including by (i) transmission to an electronic address (e.g., email), (ii) posting it on an American Express website, or (iii) making it available to you on an American Express website through a link provided on a statement, other notice or communication. Notices, statements and other communications sent to you electronically will be effective the earlier of when (i) we send it to you, or (ii) we send or otherwise provide you with notice that the notice, statement or communication has been posted on an American Express website. You agree that we may use any electronic address you, or any of your authorized representatives, provide to us in the course of our relationship with you. You will provide us with your current electronic address and notify us promptly with any updates to that address so we may continuously and effectively communicate with you. It is your responsibility to access and retain copies of all electronic notices, statements or communications that we provide you. If you ask us for a paper copy of an electronically delivered notice, statement or communication, we may charge you a fee for providing the copy.

- 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, 49th Floor
New York, New York 10285
Attn: General Counsel's Office/Merchant Services Practice Group

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

New York State Offices of General Services
Procurement Services
Corning Tower – 38th Floor
Empire State Plaza
Albany, New York 12242
Attention: EVTA Administrator
Email: ogs.sm.ps_sw_evta@ogs.ny.gov

- 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.

54. SECURITY OF CARDHOLDER DATA

The Contractor and/or any subcontractors responsible for storing, processing, or transmitting cardholder data must comply with all applicable Payment Card Industry Data Security Standards (PCI-DSS) throughout the term of the Contract. The State acknowledges that as of the effective date of this Agreement,

as a payment brand, Contractor is not a service provider as that term is defined by PCI DSS.

American Express places a top priority on safeguarding Card Member information and, as a regulated financial services institution, adheres to robust legal requirements by U.S. and international regulators, including the Gramm Leach Bliley Act (GLBA), the EU General Data Protection Regulation (GDPR), and the Federal Financial Institutions Examinations Council (“FFIEC”) guidelines. The FFIEC is composed of the primary banking regulators, including the Federal Reserve Board of Governors (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC) and the Consumer Financial Protection Bureau (CFPB) among other banking regulators. PCI-DSS does not address all of the legal and regulatory security requirements that American Express must comply with. As such, American Express’s information security standards address specific concerns for our industry.

55. CAPTIONS

The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

56. INCORPORATION BY REFERENCE

The unnumbered paragraphs of this Agreement that begin with the word “Whereas” and the recitations contained therein are expressly incorporated by reference and constitute a part of this Agreement.

57. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic reproduction thereof, may be attached or appended to any counterpart to complete a fully executed counterpart of this Agreement. The signature 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 email is as effective as executing and delivering the Agreement in the presence of the other party.

58. SEVERABILITY

In the event that any one or more of the provisions of this Agreement shall for any reason be declared unenforceable under the laws or regulations in force,

such provision will have no effect on the validity of the remainder of this Agreement, which shall then be construed as if such unenforceable provision had never been written and was never contained in this Agreement.

59. ENTIRE AGREEMENT

This Agreement and any referenced appendices and attachments constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings of the parties, whether written or oral, with respect to the subject matter hereof. No statement, promise, condition, understanding, inducement or representation, oral or written, express or implied that is not contained herein shall be binding or valid. Except as specifically indicated in this Agreement, any amendment to the Agreement must be in writing executed by the parties and approved by the State Comptroller (except that an e-mail or other electronic communication does not constitute such a signed writing for purposes of amending the Agreement), provided that American Express may change the Merchant Regulations pursuant to the provisions of section 10 above.

[signatures appear on next page]

CONTRACT NO. PS69501

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above, and the persons signing this Agreement represent and warrant that they are duly authorized to sign on behalf of the respective parties.

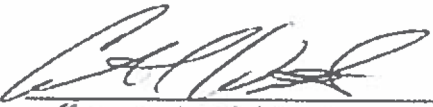
Agency Certification

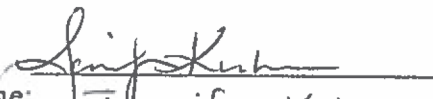
In addition to the acceptance of this Agreement, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

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

**THE PEOPLE OF THE STATE OF NEW
YORK,**

acting by and through the Commissioner
of General Services

By: 
Name: *Letitia James*
Title: *Vice President - Gen. Manager - ASIS*
Federal Tax I.D. No.: 13-3133497
NYS Vendor I.D. No.: 1000006309
Date: *10/27/21*

By: 
Name: *Jennifer Kuhn*
Title: *Contract Management Specialist 3*
Date: *10/27/2021*

APPROVED AS TO FORM
Letitia James
Attorney General

APPROVED
Thomas P. DiNapoli
State Comptroller

APPROVED
DEPT. OF AUDIT & CONTROL

Nov 16 2021
James M. Iwaneczko

FOR THE STATE COMPTROLLER

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF NEW YORK }

: SS.:

COUNTY OF New York }

On the 27th day of OCTOBER in the year 20 21, before me personally appeared Curtis L Wilson, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at 200 Vesey Street NY NY 10285, Town of NEW YORK, NY, County of NEW YORK, State of NEW YORK; and further that:

[Check One]

If an individual: he executed the foregoing instrument in his/her name and on his/her own behalf.

If a corporation: he is the Vice President of AMERICA'S EXPRESS TRAVEL SERVICES CORPORATION the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If a partnership: he is the _____ of _____ the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

If a limited liability company: he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

[Signature]
Notary Public

Registration No. Lysbel Anglero
NOTARY PUBLIC STATE OF NEW YORK
Registration ID: 0TAN6179668
Qualified in New York County
Commission Expires March, 2023

State of: New York