



# State of West Virginia Agency Master Agreement

Order Date: 2020-11-24

CORRECT ORDER NUMBER MUST  
APPEAR ON ALL PACKAGES,  
INVOICES, AND SHIPPING PAPERS.  
QUESTIONS CONCERNING THIS  
ORDER SHOULD BE DIRECTED TO  
THE DEPARTMENT CONTACT.

Order Number:	AMA 1300 1300 STO13E05 1	Procurement Folder:	800056
Document Name:	American Express Card Services	Reason for Modification:	
Document Description:	American Exp Card Services		
Procurement Type:	Agency Master Agreement		
Buyer Name:	Alberta Kincaid		
Telephone:	(304) 341-0723		
Email:	alberta.kincaid@wvsto.com		
Shipping Method:	Vendor	Effective Start Date:	2020-10-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-02-19

VENDOR				DEPARTMENT CONTACT																					
<b>Vendor Customer Code:</b> 000000104040 AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY INC 200 VESEY ST  NEW YORK NY 10285 US <b>Vendor Contact Phone:</b> 999-999-9999 <b>Extension:</b>  <b>Discount Details:</b> <table><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></table>					Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			<b>Requestor Name:</b> Shelly Murray <b>Requestor Phone:</b> (304) 341-7089 <b>Requestor Email:</b> shelly.murray@wvsto.com	
	Discount Allowed	Discount Percentage	Discount Days																						
#1	No	0.0000	0																						
#2	No																								
#3	No																								
#4	No																								

INVOICE TO	SHIP TO
WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US	WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE  CHARLESTON WV 25304 US

Total Order Amount:	Open End
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DEPARTMENT AUTHORIZED SIGNATURE

SIGNED BY : Bryan Archer

DATE: 2020-11-24

ELECTRONIC SIGNATURE ON FILE

**Extended Description:**

Converted Contract - merchant card / credit card services per the attached Agreement Contract

Effective date of contract: Feb 20, 2013 through Feb 19, 2023

Services will now be paid for directly by State Agencies, effective Oct 1, 2020

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	84141602				\$0.00
	<b>Service From</b>	<b>Service To</b>			
	2020-10-01	2023-02-19			

**Commodity Line Description:** Credit card service providers

**Extended Description:**

Card Processing Fees for AmExp branded card products

# PURCHASE ORDER

**FILE**  
**MAILED**  
3/12/13 *all*



WV State Treasurer's Office  
Bldg. 1, Suite E-145  
1900 Kanawha Blvd., E  
Charleston, WV 25305

PURCHASE ORDER NO.

STO13E05

CHANGE ORDER NO.

**VENDOR:**

American Express Travel Related Services  
Co., Inc  
PO Box 53773, Attn: Department 87  
Phoenix, AZ 85072

Contact/Rep: Rip Creekmore  
800.377.0370 / rip.creekmore@aexp.com

**Invoice to:**

WV State Treasurer's Office  
Attn: Accts Payable  
Building 1, Suite E-145  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**Ship to:**

WV State Treasurer's Office  
Cash Management Division  
One Players Club Drive  
Charleston, WV 25311

FEIN/SSN:	133133497
FUND:	1345-2013-1300-099-
Fund - Continued	089-07311
DATE:	3/7/2013
UC/MC Verify:	Yes
SOS Verify:	Yes
i-Comp Verify:	Yes
DOA TEAM ID#	726105836
FIMS ID#	379946

Quantity	Description	Unit Price	Total
	<b>AGREEMENT</b>  This Agreement constitutes the acceptance of a Card Acceptance contract made by and between the WV State Treasurer's Office and American Express Travel Related Services Company, Inc. in accordance with the attached:  Agreement for American Express Card Acceptance Amendment to American Express Card Acceptance Agreement  This Agreement covers the WV STO and all Participating State Entities.  Service beginning February 20, 2013 and extends through February 19, 2023 (10 year term).		
		<b>TOTAL</b>	Open End

By:

*[Signature]*

WV STATE TREASURER'S OFFICE AUTHORIZED SIGNATURE

DATE

3-12-2013

Page 1 of 23

ASSISTANT/GENERAL COUNSEL:

*[Signature]*

DATE:

3/11/13

*all*

✓ Note - The standard STO  
Terms & Conditions page  
is not to be included per  
negotiation (per C. Merbedone)  
2/26/2013

A. Kincaid



## AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE

The Agreement, effective as of the later date of signature below (*Effective Date*), is by and between **American Express Travel Related Services Company, Inc.**, a New York corporation, and the **West Virginia State Treasurer's Office (STO)**. The parties agree as follows:

### General Provisions

#### 1. SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS

a. Scope of the Agreement. The Agreement governs your acceptance of American Express Cards in the United States. The Agreement covers only the STO and all Participating State Entities. The STO and all Participating State Entities will not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

b. Other Parts of the Agreement.

i. Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. To the extent not prohibited by applicable law, you agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 8.j of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our Merchant Services representatives (telephone: 1-800-528-5200). We may charge you a fee for each copy that you request.

ii. Schedule A. Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

iii. Agreement Addendum. The Agreement Addendum, STO-WV-96 (rev. 9/2011) is a part of the Agreement and is attached hereto as Exhibit 3 to Schedule A.



v. Purchasing Affidavit. The Purchasing Affidavit (rev. 07/01/12) is a part of the Agreement and is attached hereto as Exhibit 5 to Schedule A.

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

d. Participating State Entities. Exhibit 1 contains a list of certain Participating State Entities. Subject to sections 3 and 6.b of these General Provisions, no State Entity may be added to Exhibit 1 and no Participating State Entity may be deleted from Exhibit 1 unless mutually agreed upon in writing by the parties. Upon receipt of written notice from the STO that a State Entity wishes to accept the Card, such State Entity may participate in Card acceptance by signing a copy of the Agency Participation Agreement, substantially in the form attached hereto as Exhibit 2. STO shall send all notices required in the immediately preceding sentence to the email address that we direct STO. The parties acknowledge and agree that we may notify the Participating State Entities listed in Exhibit 1 that this Agreement has been executed, and that the terms of this Agreement shall govern their continued acceptance of the Card as of the Effective Date. The parties further acknowledge that we may refer any request for a copy of this Agreement made by a Participating State Entity to the STO.

## **2. ACCEPTING THE CARD**

a. Acceptance. You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember's choice of which Card to use and that charge and credit Cards, including corporate Cards, are interchangeable. You are responsible and jointly and severally liable for the performance by your Establishments of all provisions of the Agreement and all obligations of your Establishments under the Agreement to the extent not prohibited by applicable law.

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

i. Format. You must create a Charge Record for every Charge and a Credit Record for every Credit that complies with our Technical Specifications, as described in the Merchant Regulations. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.

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



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

iv. Chargeback. We have Chargeback rights, as described in the Merchant Regulations. We may Chargeback by (i) deducting, withholding, recouping from, or offsetting against our payments to you or debiting your Bank Account, or we may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our failure to demand payment does not waive our Chargeback rights.

v. Protecting Cardmember Information. You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI DSS.

### 3. PROTECTIVE ACTIONS

We may suspend Card acceptance by a Participating State Entity, upon written notice to STO, if we determine, in our sole discretion, that: (i) such Participating State Entity will not be able to perform any of its obligations under the Agreement; or (ii) we have, or will have, financial exposure or risk with respect to such Participating State Entity under the Agreement. Any such suspended Participating State Entity(ies) shall remain liable for all amounts due to us under the Agreement prior to the effective date of any such suspension.

### 4. NOTICES

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

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

American Express Travel Related Services Company, Inc.  
P.O. Box 53773  
Phoenix, AZ 85072  
Attn: Department 87  
E-mail: American.Express.Contract.Keying@aexp.com  
Fax: (602) 744-8413  
Tel: (800) 528-5200

With a copy to:

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

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

West Virginia State Treasurer's Office  
Building 1, Suite E-145  
1900 Kanawha Boulevard, East  
Charleston, WV 25305  
Attn: Assistant Treasurer

With a copy to:

West Virginia State Treasurer's Office  
Cash Management Division  
1 Players Club Drive  
Charleston, WV 25311  
ATTENTION: Deputy Treasurer  
E-mail: misty.price@wvsto.com  
Fax: 304.558-5162

## **5. LIMITATION OF LIABILITY**

IN NO EVENT SHALL A PARTY OR ITS RESPECTIVE AFFILIATES (IN OUR CASE), PARTICIPATING STATE ENTITIES (IN YOUR CASE), SUCCESSORS, OR PERMITTED ASSIGNS (AND IN OUR CASE, OUR THIRD PARTY LICENSEES) BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NEITHER YOU NOR WE WILL BE RESPONSIBLE TO THE OTHER FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS OR THE BANKING SYSTEM, EXCEPT THAT OUR RIGHTS TO EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

## **6. TERM AND TERMINATION**

a. Effective Date/Termination Date. The Agreement begins on the Effective Date and shall remain in effect for a period of ten (10) years unless terminated by either party upon providing thirty (30) days prior written notice to the other party.



**b. Grounds for Termination.** In addition to the termination rights in sections 6.a of the General Provisions, if the STO engages in any activities that harm our business or the American Express Brand, without waiving our other rights and remedies, we may terminate the Agreement immediately upon notice to you. If we determine or have reason to believe, in our sole discretion, that you are involved (or knowingly participate or have participated) in a fraudulent or illegal business activity, we may terminate the Agreement immediately upon notice to you. If a Participating State Entity engages in activities that harm our business or the American Express Brand, or if we determine or have reason to believe, in our sole discretion, that a Participating State Entity is involved (or knowingly participates or has participated) in a fraudulent or illegal business activity, without waiving our other rights and remedies, we may suspend Card acceptance by such Participating State Entity immediately upon notice to you. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

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

**d. Post-Termination.** If the Agreement terminates, and any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty (30) days of your receipt of our invoice. If you contest an invoice, you must notify us upon receipt of the invoice. Payment of a contested invoice will be due within thirty (30) days of all disputed matters being resolved in writing. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to us any Charges and Credits incurred prior to termination.

**e. Effect of Termination.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 1,3, 5, 6, 7, and 8 of these General provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our right of direct access to the Bank Account will also survive until such time as all credits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

## **7. DISPUTE RESOLUTION**

**a. Asserting a Claim.** All Claims shall be resolved pursuant to this section 7. In the event of any Claim, you and we shall use commercially reasonable efforts to settle the Claim. To this effect, the party asserting the Claim shall provide notice thereof to the other party, and they shall meet and negotiate with each other and, recognizing their mutual interests, attempt, in good faith, to reach a solution satisfactory to both parties. If they do not reach a solution within a period of sixty (60)



days from the first meeting of the parties in negotiation, then the parties shall attempt to settle the Claim through mediation as described in section 7.b below.

b. Mediation. Any Claim that has not been resolved pursuant to section 7.a above shall be resolved, upon the election by you or us, through mediation administered by an Entity or organization mutually agreed upon by the parties. The parties shall share equally in the costs of mediation. If they do not reach a solution within a period of sixty (60) days from the first meeting of the parties in mediation, then the parties may seek to settle the Claim through litigation.

c. Injunctive Relief. Injunctive relief sought to enforce the provisions of sections 8.a and 8.b of these General Provisions is not subject to the requirements of this section 7. This section 7 is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback.

d. Confidential Proceedings. To the extent not prohibited by applicable law, all offers, promises, conduct, and statements, whether written or oral, made in the course of the negotiations and mediations by either party, its agents, employees, experts or attorneys, or by the mediator, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or mediation.

## **8. MISCELLANEOUS**

a. Confidentiality. To the extent not prohibited by applicable law, you and we, respectively, must keep confidential and not disclose to any non-Affiliated third party any information that it receives from the other under the Agreement that is not publicly available, except as provided in the following sentence. If such information is subject to disclosure pursuant to an order, decree, subpoena or other validly issued judicial, administrative or regulatory process (including through requests for information or by oral questions), the receiving party shall use commercially reasonable efforts to promptly notify the other party of such request or requirement so that such other party may seek to avoid or minimize the required disclosure and/or to obtain an appropriate protective order or other appropriate relief to ensure that any information so disclosed is maintained in confidence to the maximum extent possible by the agency or other person receiving the disclosure. In addition, the receiving party shall use its commercially reasonable efforts to cooperate with the other in its efforts to avoid or minimize the required disclosure and/or to obtain such protective order or other relief to protect the information. Notwithstanding the foregoing, we acknowledge and agree that, the Agreement is publicly available and not confidential.

Notwithstanding anything to the contrary in the Agreement, the West Virginia Freedom of Information Act ("WVFOIA") requires that public records be made available upon request to agencies. To the extent you receive a request under the WVFOIA for public records, as they are defined under the WVFOIA, that fail to meet any of the enumerated exemptions in section W. Va. Code § 29B-1-4 of the WVFOIA, we acknowledge that you must comply with the request within the statutory time frame if the WVFOIA so requires. We shall not make any claims against you if, in order to comply with the WVFOIA, you make available to the public the provisions of the Agreement or any information that you receive from us under the Agreement. You agree that the names, addresses and account numbers of Cardmembers are the sole and exclusive property of



American Express. You must not use or disclose any Cardmember's name, address or account number except as provided in this Agreement. You acknowledge that we are entering into this Agreement with the understanding that Cardmember Information, as that term is defined in the Agreement, is not the type of information subject to request and disclosure under the WVFOIA.

**b. Proprietary Rights and Permitted Uses.** Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations. Neither party may use the other party's Marks without first obtaining the prior written consent of the other party, [except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers to the benefit of Cardmembers.

**c. Representations and Warranties.** You and we, respectively, represent and warrant to the other that: (i) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized; (ii) it is duly qualified and licensed to do business in all jurisdictions in which it conducts business; (iii) it has full authority to enter into the Agreement and all necessary assets and liquidity to perform its obligations and pay its debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on its business or its ability to perform its obligations or pay its debts hereunder; (v) the individual who signs the Agreement on behalf of a party has the authority to bind that party to the Agreement; and (vi) it is a sophisticated business, has negotiated individually each of the material provisions of the Agreement on an arm's length basis with the advice of competent counsel, in order to meet the respective needs of each party, and that no ambiguity in the drafting of the Agreement shall be construed against the drafter. You further represent and warrant to us that: (vii) you are authorized to enter into the Agreement on behalf of your Establishments and Affiliates, including those indicated in the Agreement; (viii) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (ix) you have not assigned to any third party any payments due to you under the Agreement and all indebtedness arising from Charges are for bona fide sales of goods or services (or both) at your Establishments and free of any liens, claims, and encumbrances other than ordinary sales taxes; (x) all information that you provided in connection with the Agreement is true, accurate, and complete; and (xi) you have read the Agreement and kept a copy for your file. If any of your representations or warranties in the Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

**d. Compliance with Laws.** You and we, respectively, shall comply with all applicable Federal, State and local laws, regulations, rules and ordinances including, but not limited to, the prevailing wage rates of the WV Division of Labor.

**e. E-Sign Act.** The parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 *et seq.* (*E-Sign Act*). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to



electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein.

**f. Interpretation.** In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term “or” is not exclusive; (iii) the term “including” means “including, but not limited to;” (iv) the term “day” means “calendar day;” (v) all amounts are stated in U.S. dollars; (vi) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (vii) any reference to a website or a URL (or both) refers to its successor website or URL; (viii) all captions, headings, and similar terms are for reference only; and (ix) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of Schedule A, and the provisions of the Merchant Regulations shall be interpreted to give each their full effect. [However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: Schedule A and any accompanying exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

**g. Assignment.** We may assign the Agreement or any of our rights, interests, or obligations hereunder, to only our parent company or our Affiliates without your consent. You may assign the Agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to us. Upon receipt of such notice, we may immediately terminate the Agreement in our sole discretion. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

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

**i. Savings Clause.** If any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties’ intentions, with the balance of the Agreement remaining unaffected.

**j. Amendments.** Except as specifically indicated herein, any amendment to the Agreement must be in writing and duly signed by both parties (except that an e-mail does not constitute such a signed writing), provided that we shall change the Merchant Regulations pursuant to the following provisions. To the extent not prohibited by applicable law, you agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card.

**(1) Scheduled Changes.** The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called “Notification of Changes” in our materials) as follows:



- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
- a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.

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

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

Any scheduled or unscheduled changes which are mandated by law shall take effect as set forth in section J.1 or J.2 of these General Provisions, as applicable. Except for scheduled and unscheduled changes which are mandated by law, you shall notify us if you object to any change to the Merchant Regulations, as follows: (i) for a scheduled change(s), within sixty (60) days of the applicable release date; or (ii) for an unscheduled change(s), within five (5) days of the applicable release date. If the parties cannot reach an agreement with respect to any such change as follows: (i) for a schedule change(s), at least thirty (30) days prior to the effective date of such change; (ii) for an unscheduled change(s), prior to the effective date of such change; or (iii) some other time mutually agreed upon by the parties, then we shall have the option to determine that the applicable change shall not apply to you. If we determine that the change does apply to you, then you may terminate the Agreement as of the effective date of the applicable change(s) by providing prior written notice to us. If you do not object to a change, or if you raise an objection, but do not exercise your termination rights under this section 8.j of these General Provisions, then such change shall apply to this Agreement, to the extent not prohibited by applicable law, as of effective date of such change. In the event any change violates the laws and policies of the State of West Virginia, you may immediately terminate this Agreement upon providing written notice to us.

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

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

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

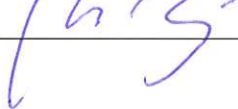
n. Press Releases. Neither party shall issue any press release or make any public announcement (or both) in respect of the Agreement or the other party without the other party's prior written consent.

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


p. Counterparty and Facsimile Versions. The parties may execute the Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering the Agreement in the presence of the other party.

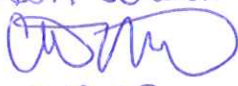
q. Bankruptcy. In the event we file for bankruptcy protection, this Agreement is automatically null and void, and is terminated without further order unless otherwise specified by the STO.

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

By:   
Ramón Martin  
President  
Merchant Services, Americas  
Date: 2/12/13

**WEST VIRGINIA STATE TREASURER'S  
OFFICE**

By:   
Danny Ellis  
Assistant State Treasurer  
Date: 2-20-13

Asst. General Counsel  
  
2.18.13





## Schedule A Other Important Provisions for Card Acceptance

### 1. DEFINITIONS

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

*Agreement* means the General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.

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

*Cardmember* means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.

*Charge* means a payment or purchase made on the Card.

*Chargeback* (sometimes called "full recourse" or "Full Recourse" in our materials), 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.

*Claim* means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements or the relationship resulting therefrom.

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

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

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

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

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

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

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

*Merchant Regulations* means the American Express Merchant Regulations – U.S., which are available at [www.americanexpress.com/merchantpolicy](http://www.americanexpress.com/merchantpolicy) and can be accessed by entering your Merchant Number.

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

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

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

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

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

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

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

(iii) The following definitions are added:

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



*State Entities* means your (a) departments, agencies, institutions, offices, colleges, universities, school districts, and other state agencies; and (b) counties, cities and other units of local government participating in your L-Government program that perform sovereign functions. For the avoidance of doubt, Entities participating in your L-Government program that are neither a county, city nor a unit of local government shall not meet the requirements of this definition and will not be covered by this Agreement.

(iv) You and we acknowledge that the definition of “State Entities,” as set forth in section 1.b.iii of this Schedule A, shall not include: (i) public hospitals, including university hospitals; (ii) public convention centers, including conference and exhibition centers; or (iv) local public transportation systems, including local toll and transit authorities.

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

## **2. DATA SECURITY OPERATING POLICY**

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

## **3. PAYMENT FOR CHARGES**

You shall submit all Charges electronically. We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less: (i) any amounts for which we have Chargebacks; and (ii) any Credits you submit. We shall invoice you for: (i) the Discount, and (ii) any amounts you owe us or our Affiliates. You shall pay us within thirty (30) days of your receipt of our invoice. You will send such payments electronically via ACH to the demand deposit account (*Amex Account*) we designate at a bank in the United States (*Amex Bank*) that participates in ACH. We will provide you with our Amex Bank’s name and ABA (bank routing) number and our Amex Account’s DDA (bank account) number, and we will notify our Amex Bank that you will have access to our Amex Account for crediting the Amex Account. You shall not debit the Amex Account for any reason or under any circumstances. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us.

## **4. SETTLEMENT**

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

b. Payment Terms.

Discount Rate (Non-CPC):	2.25%
Discount Rate (CPC):	2.25%
Prepaid Card Rate:	1.80%
Payment Plan:	2 days



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

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

## **5. ADDITIONAL REQUIREMENTS**

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

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



## EXHIBIT 1

### PARTICIPATING STATE ENTITIES

1. The State Entities that accept the Card as of the Effective Date are set forth in the table below.

Board of Accountancy
Bluefield State College
Blue Ridge Community Technical College
Bridgmont Community Technical College
City of Dunbar
City of Fairmont
City of Hurricane
City of Shinnston
Claywood Park Public Service District
County of Cabell
County of Hancock
Department of Commerce
Division of Natural Resources
Department of Transportation
Division of Culture & History
Division of Motor Vehicles
Division of Purchasing
Division of Tourism
Ethics Commission
Fairmont State College
Fairmont State University
Insurance Commission
Kanawha Valley Community Technical College
Lubeck Public Service District
Marshall University
New River Community Technical College
Secretary of State
Shepherd University
Southern West Virginia Community College
State Auditor's Office
State Treasurer's Office
Supreme Court of Appeals
Town of Eleanor
West Liberty University
West Virginia Institute of Technology
West Virginia Northern Community College
West Virginia Parkways Authority/WV Turnpike
West Virginia State Board of Investments
West Virginia State University
West Virginia University
WV NET



## EXHIBIT 2

### AGENCY PARTICIPATION AGREEMENT FOR AMERICAN EXPRESS® CARD ACCEPTANCE [STATE ENTITY]

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

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

1. The terms and conditions of the Agreement for American Express® Card Acceptance between the **West Virginia State Treasurer's Office** and us (*Master Agreement*) are incorporated herein by this reference as if fully set forth herein and all references therein to "you" and "your" apply to you. Capitalized terms used but not defined herein have the same meaning as in the Master Agreement, unless specified to the contrary.
2. You agree to accept the Card under the terms of the Master Agreement. You represent that you have received all the necessary approvals from the State Treasurer's Office to allow you to enter into this Agency Participation Agreement.
3. Notwithstanding anything to the contrary contained herein, all terms and conditions of the Master Agreement shall remain unchanged and in full force and effect, and this Agency Participation Agreement shall continue in effect for so long as the Master Agreement is in full force and effect. If the Master Agreement terminates for any reason, this Agency Participation Agreement shall also immediately terminate without further notice.

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

[STATE ENTITY]

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

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



### **EXHIBIT 3**

(See attached Agreement Addendum, STO-WV-96 (rev. 9/2011))

## AGREEMENT ADDENDUM

STO-WV96  
Rev. 9/2011

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the General Counsel of the West Virginia State Treasurer's Office.

ACCEPTED BY:  
WEST VIRGINIA STATE TREASURER'S OFFICE (Agency)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

VENDOR

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*American Express Travel Related  
Services Company, Inc.  
President, Merchant Services, Americas  
2/12/13*



## **EXHIBIT 4**

(See attached Purchasing Affidavit (rev. 07/01/12))

File STO13E05  
RFQ No. \_\_\_\_\_

STATE OF WEST VIRGINIA  
Purchasing Division

## PURCHASING AFFIDAVIT

**MANDATE:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

**"Debt"** means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: American Express Travel Related Services Company, Inc.

Authorized Signature: \_\_\_\_\_ Date: 2/12/13

State of New York

County of New York, to-wit:

Taken, subscribed, and sworn to before me this 12<sup>th</sup> day of February, 2013.

My Commission expires 4/11/14, 2014.

**AFFIX SEAL HERE**

**NOTARY PUBLIC**

Michael Stempa  
Purchasing Affidavit (Revised 07/01/2012)

MICHAEL STEMPA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01ST6070959  
Qualified In Queens County  
My Commission Expires April 11, 2014





**AMENDMENT TO AGREEMENT FOR AMERICAN EXPRESS® CARD  
ACCEPTANCE BY AND BETWEEN WEST VIRGINIA STATE TREASURER'S  
OFFICE AND AMERICAN EXPRESS TRAVEL RELATED SERVICES  
COMPANY, INC.**

This amendment (*Amendment*) amends and supplements the Agreement For American Express® Card Acceptance by and between **AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.** (*we, our or us*), and the **WEST VIRGINIA STATE TREASURER'S OFFICE** (*you or your*) including any and all exhibits, amendments, addenda, appendices and supplements thereto respecting your acceptance of the American Express® Card at your Establishments (*Agreement*). This Amendment shall be effective as of the later date of the signature below. Capitalized terms used but not defined herein shall have the same meaning as in the Agreement unless otherwise specified.

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

1. Notwithstanding anything to the contrary in the Agreement Addendum STO-WV-96 which is incorporated herein by reference (Agreement Addendum), including the conflict language in the first sentence, in the event of a conflict between this Amendment and the Agreement Addendum, this Amendment shall control. For the avoidance of doubt, the previous sentence shall supersede the conflict language in the first sentence of the Agreement Addendum for the purposes of this Amendment. The term "Agency", as used in the Agreement Addendum, shall have the same meaning as "you" and "your" set forth in Schedule A of the Agreement.

2. Exhibit 3, Agreement Addendum, of the Agreement is hereby amended as follows:

a. Section 8, "Fiscal Year Funding," is deleted in its entirety and replaced with the following:

**FISCAL YEAR FUNDING** –The Agreement may be continued in succeeding fiscal years for the term of the Agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for the Agency's continued acceptance of the Card and payment of compensation under the Agreement. In the event funds are not appropriated or otherwise available for the Agency's continued acceptance of the Card and payment of compensation under the Agreement, the Agreement shall terminate without penalty on June 30<sup>th</sup> of the then current fiscal year. After that date, the Agreement becomes of no effect and is null and void. The Agency shall give you written notice of such non-allocation of funds as soon as possible after the Agency receives notice. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default. If the Agreement terminates pursuant to the terms of this section 8, the Agency shall remain liable for all amounts due to us under the Agreement prior to the effective date of such termination. The Agency shall cooperate with us so that we may notify each Participating State Entity of the cessation of Card acceptance.

- b. Section 12, "Assignment," is hereby deleted in its entirety. Refer to section 8.g of the General Provisions.
- c. Section 13, "Limitation of Liability" is hereby deleted in its entirety and replaced with the following:

The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property. The previous sentence does not make you or us liable for special, incidental, or consequential damages which are limited per Section 5 of the General Provisions.


- d. Section 20, "Confidentiality," is hereby deleted in its entirety. Refer to section 8.a of the General Provisions.
- e. Section 21, "Amendments," is hereby deleted in its entirety. Refer to section 8.j of the General Provisions.


This Amendment modifies the Agreement only as expressly set forth herein. In all other respects the terms and conditions of the Agreement remain unmodified and in full force and effect.

This Amendment may be executed in counterparts, each of which shall be deemed an original, but both of which shall together constitute one and the same instrument. Delivery of an executed signature page hereto by facsimile or electronic e-mail shall be equally effective as delivery of an original signature page.

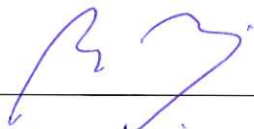
**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this Amendment as of the dates written below.

**WEST VIRGINIA STATE  
TREASURER'S OFFICE**

By:   
Name: John Perdue  
Title: State Treasurer  
Date: 2-20-13

  
2/18/13

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

By:   
Name: Ramon Martin  
Title: President, Merchant Services, Americas  
Date: 2/12/13