



THE COLLEGE SYSTEM  
of TENNESSEE

1 Bridgestone Park, Third Floor  
Nashville, Tennessee 37214  
615-366-4400 OFFICE 615-366-3922 FAX

[tbr.edu](http://tbr.edu)

April 14, 2017

Ms. Krista Lee, Director  
320 6<sup>th</sup> Avenue North  
8<sup>th</sup> Floor, Rachel Jackson Building  
Nashville, TN 37243

Dear Ms. Lee:

Enclosed please find an Agreement between Tennessee Board of Regents (TBR) and American Express for the purpose of acceptance of the American Express Card at TBR Institutions. To provide some history, TBR initially utilized American Express via the Department of Finance and Administration's Agreement and then, in 2012, received Fiscal Review Committee approval for a non-competitive Agreement.

Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the appropriate representatives to ensure they are present for the meeting in which the contract will be discussed. If you have any questions or need additional information, please feel free to contact me at (615) 366-4436 or by email at [angela.flynn@tbr.edu](mailto:angela.flynn@tbr.edu)

Sincerely,

A handwritten signature in black ink that reads "Angela Gregory Flynn".

Angela Gregory Flynn  
Assistant Vice Chancellor for Purchasing and Contracts

cc: Chancellor Tydings, TBR  
Vice Chancellor Sims, TBR

# REQUEST: NON-COMPETITIVE CONTRACT

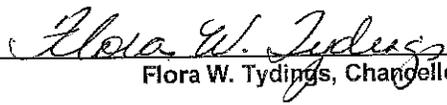
APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

<b>1) RFS #</b>		
<b>2) State Agency Name:</b>	Tennessee Board of Regents (TBR)	
<b>3) Service Caption:</b>	Acceptance of American Express Cards	
<b>4) Proposed Contractor:</b>	American Express Travel Related Services Company, Inc.	
<b>5) Contract Start Date:</b> (attached explanation required if date is < 60 days after F&A receipt)	7/1/2017	
<b>6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:</b>	6/30/2022	
<b>7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:</b>	Approx. \$3,149,900.00	
<b>8) Approval Criteria:</b> (select one)	<input type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state	
	<input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
<b>9) Description of Service to be Acquired:</b>	Agreement to allow acceptance of the American Express Card at TBR Institutions	
<b>10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service:</b>	Will allow students to provide payment to an institution for tuition and fees for undergraduate and graduate courses.	
<b>11) Explanation of Whether the Procuring Agency Bought the Service in the Past, &amp; if so, What Procurement Method It Used:</b>	TBR has previously utilized the Department of Finance and Administration's Agreement with American Express and then, in 2012, received Fiscal Review Committee approval for a non-competitive 5-year Agreement.	
<b>12) Name &amp; Address of the Proposed Contractor's Principal Owner(s):</b> (not required if proposed contractor is a state education institution)	American Express Travel Related Services Company, Inc., 3 World Financial Center, New York, NY 10285	
<b>13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service:</b>	American Express has been issuing its card on a global level for over 160 years.	
<b>14) Documentation of Office for Information Resources Endorsement:</b> (required <u>only</u> if the subject service involves information technology)		

<b>select one:</b>	<input type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
<b>15) Documentation of Department of Personnel Endorsement:</b> (required <u>only</u> if the subject service involves training for state employees)		
<b>select one:</b>	<input type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
<b>16) Documentation of State Architect Endorsement:</b> (required only if the subject service involves construction or real property related services)		
<b>select one:</b>	<input type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
<b>17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives:</b>		
The American Express card is proprietary property of American Express Travel Related Services Company, Inc.		
<b>18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process:</b> (Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)		
<ol style="list-style-type: none"> <li>1. The vendor possesses exclusive and/or predominant capabilities or the items contain a patented feature providing superior utility not obtainable from similar products.</li> <li>2. The product or service is unique and easily established as one of a kind.</li> <li>3. The product is available from only one source and not merchandised through wholesalers, jobbers, and retailers.</li> <li>4. The item must be interchangeable or compatible with in-place items.</li> </ol>		
<b>REQUESTING AGENCY HEAD SIGNATURE &amp; DATE:</b> ( <u>must</u> be signed & dated by the <u>ACTUAL</u> procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)		
 _____ Flora W. Tydings, Chancellor		_____ 4-17-17 Date

# CONTRACT SUMMARY SHEET

021406

<b>RFS #</b>		<b>Contract #</b>	
<b>State Agency</b>		<b>State Agency Division</b>	
Tennessee Board of Regents			
<b>Contractor Name</b>		<b>Contractor ID # (FEIN or SSN)</b>	
American Express		<input type="checkbox"/> C- or <input type="checkbox"/> V-	
<b>Service Description</b>			
Acceptance of the American Express Card			
<b>Contract BEGIN Date</b>	<b>Contract END Date</b>	<b>Subrecipient or Vendor?</b>	<b>CFDA #</b>
7/1/2017	6/30/2022		

**Mark Each TRUE Statement**

Contractor is on STARS
  Contractor's Form W-9 is on file in Accounts

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
17/18					\$ 580,000.00
18/19					\$ 604,900.00
19/20					\$ 630,000.00
20/21					\$ 655,000.00
21/22					\$ 680,000.00
					\$ -
<b>TOTAL:</b>	\$ -	\$ -	\$ -	\$ -	<b>\$ 3,149,900.00</b>

<b>— COMPLETE FOR AMENDMENTS ONLY —</b>			<b>State Agency Fiscal Contact &amp; Telephone #</b>
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	Dale Sims (615) 366-3921
			<b>State Agency Budget Officer Approval</b>
			<i>Dale Sims</i>
			<b>Funding Certification</b> (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
<b>TOTAL:</b>	\$ -	\$ -	
<b>End Date</b>			

**Contractor Ownership** (complete only for base contracts with contract # prefix: FA or GR)

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	

**Contractor Selection Method** (complete for ALL base contracts— N/A to amendments or delegated authorities)

<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg, ID, GG, GU)	<input type="checkbox"/> Other

**Procurement Process Summary** (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)

American Express is the sole provider of the acceptance of its card.

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Angela Gregory Flynn	*Contact Phone:	(615) 366-4436		
*Contract Number:		*RFS Number:			
*Original Contract Begin Date:	07/01/17	*Current End Date:	6/30/22		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Tennessee Board of Regents				
*Division:					
*Date Submitted:	4/14/17				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	American Express				
*Current Maximum Liability:					
<b>*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY: 17/18	FY: 18/19	FY: 19/20	FY: 20/21	FY: 21/22	FY
\$580,000.00	\$604,900.00	\$630,000.00	\$655,000.00	\$680,000.00	\$
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)</b>					
FY:	FY:	FY:	FY:	FY:	FY
				\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
*Contract Funding Source/Amount:	State:	X	Federal:		
Interdepartmental:			Other:		
If "other" please define:					

Supplemental Documentation Required for  
Fiscal Review Committee

Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>
Method of Original Award: <i>(if applicable)</i>	State Contract
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>	
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>	
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>	

**CONTRACT  
BETWEEN THE TENNESSEE BOARD OF REGENTS  
AND  
AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.**

This Contract is by and between the Tennessee Board of Regents, hereinafter referred to as the "Institution" and American Express Travel Related Services Company, Inc., hereinafter referred to as the "Contractor," and shall be effective as of July 1, 2017 ("Effective Date"). The terms "you" and "your" and the terms "we", "our" or "us" shall have the meanings ascribed to them in section 1 of Schedule A of this Contract. The term "Contract" shall have the same meaning as the term "Agreement". The term "Agreement" is defined in Section 1 of Schedule A of this Contract.

The Contractor is a for-profit corporation. The Contractor's address is:

American Express  
3 World Financial Center  
New York, NY 10285

The Contractor's place of incorporation or organization is New York. The parties agree as follows:

**A. SCOPE AND OTHER PARTS OF THE AGREEMENT; DEFINITIONS**

- A.1. Scope of the Agreement. The Agreement governs your acceptance of American Express® Cards in the United States. The Agreement covers you *alone*. You shall distribute all notices, statements, amendments, and other communications related to this Agreement that you receive from us to your Affiliates and any other Entities accepting the Card hereunder. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.
- A.2. Other Parts of the Agreement.
- a. Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We 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 F.2 of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. We will provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our Merchant Services representatives (telephone: 1-800-528-5200). We may charge you a fee for each copy that you request.
  - b. 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.
- A.3. 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.
- A.4. Participating Education Entities. Exhibit 1 contains a list of certain Participating Education Entities, and you must promptly notify us in writing of any changes to that list, provided that no Education Entity may be added or deleted without our prior written consent. You and we acknowledge that we may refer any request for a copy of this Agreement made by a Participating Education Entity to you.

## B. ACCEPTING THE CARD

- B.1. 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.
- B.2. 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.
- a. Format. You must create a Charge Record for every Charge and a Credit Record for every Credit that comply 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.
  - b. 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.
  - c. 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.
  - d. Chargeback. We have Chargeback rights, as described in the Merchant Regulations. We may Chargeback by (i) deducting, withholding, recouping from, or otherwise offsetting against our payments to you or debiting your Bank Account, or we may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our failure to demand payment does not waive our Chargeback rights.
  - f. 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.

## C. PROTECTIVE ACTIONS

- C.1 Creating a Reserve. Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to establish a Reserve respecting a Participating Education Entity. If we believe that we need to create a Reserve respecting a Participating Education Entity, we may immediately establish a Reserve respecting such Participating Education Entity or terminate Card acceptance by such Participating Education Entity's under the Agreement upon providing notice to you. We may establish a Reserve by (i) withholding amounts from payment we otherwise would make to the applicable Participating Education Entity under the Agreement or (ii) requiring the applicable Participating Education Entity to deposit funds or other collateral with us. Any collateral provided pursuant to this section C of the General Provisions is subject to our prior written approval. We may increase the amount of the Reserve at any time so long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement respecting the applicable Participating Education Institution (including Charges submitted by the applicable Participating Education Entity for goods or services not yet received by Cardmembers and our costs of handling Disputed Charges) or to us or our Affiliates under any Other Agreement, or to Cardmembers. Upon the occurrence of an event described in section C.2.viii of the General Provisions, and during any continuation of such

event, we may take immediate action to establish or increase the amount of any Reserve to an amount proportional to the risk covered by such event.

- C.2 Trigger Events for Reserve. Some of the events that may cause us to establish a Reserve include: (i) a Participating Education Entity ceasing a substantial portion of or adversely altering its operations; (ii) a Participating Education Entity selling all or substantially all of its assets or any party acquiring 25% or more of the equity interests issued by a Participating Education Entity (other than parties currently owning 25% or more of such interests), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) a Participating Education Entity suffering a material adverse change in its business or a material adverse change occurs in its industry; (iv) a Participating Education Entity's breach of section C.5 of the General Provisions; (v) a Participating Education Entity becoming or threatening to become insolvent; (vi) our receiving a disproportionate number or amount of Disputed Charges at a Participating Education Entity's Establishments; (vii) our reasonable belief that a Participating Education Entity will not be able to perform its obligations under the Agreement, any Other Agreement, or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom a Participating Education Entity has entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to a Participating Education Entity, (B) requires a Participating Education Entity to make a direct payment into a reserve account or similar device, or (C) requires a Participating Education Entity to provide such Entity with a letter of credit or other third-party guaranty of payment.
- C.3 Application of Reserve. We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts the applicable Participating Education Entity owes us or any of our Affiliates under the Agreement or any Other Agreement; (ii) any costs incurred by us in connection with the administration of the Reserve, including attorneys' fees, subject to applicable law, and our costs of handling Disputed Charges; and (iii) any costs incurred by us as a result of a Participating Education Entity's failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including, subject to applicable law, attorneys' fees.
- C.4 Other Protections. We may take other reasonable actions to protect our rights and the rights of any of our Affiliates, including changing the speed or method of payment for Charges, exercising Chargeback under any of our Chargeback programs, offsetting any amounts due to you under the Agreement against amounts that you owe us or our Affiliates under the Agreement or any Other Agreement, or charging you fees for Disputed Charges.
- C.5 Providing Information. You must provide to us promptly, upon request, information about your and your Participating Education Entities' finances, creditworthiness, and operations, including the most recent certified financial statements. You must notify us immediately of the occurrence of any event described in section C.2.viii of the General Provisions.

## D. **CONTRACT TERM**

- D.1 Term. This Contract shall be effective for the period commencing on the Effective Date and continuing for a period of five years ("Term"). Except as otherwise expressly provided in the Agreement, the Institution shall have no obligation for services rendered by the Contractor which are not performed within the Term.

## E. **PAYMENT TERMS AND CONDITIONS**

- E.1. Maximum Liability/Compensation Firm. Subject to the terms of this Agreement, your maximum liability for payment of compensation under this Contract shall be the aggregate amount of (i) Discount, (ii) Credits, (iii) Chargebacks, and (v) fees and assessments payable by you under the Contract during the Term. The Discount in Section 3.b of Schedule A includes all applicable taxes. Contractor shall not adjust your Discount during the first three years of the Term and your Discount is not subject to escalation during such three year period for any reason unless the Contract is amended. Contractor may adjust your Discount at any time during year four or year five of the Term on sixty (60) days prior written notice to you; provided, that if any such adjustment results in an increase to your Discount, you may terminate the Contract on written notice to Contractor no less the thirty (30) days prior to the effective date of such Discount adjustment.

- E.2. Payment Methodology. You shall submit all Charges electronically. We will pay you according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less any Credits you submit. We may debit your Bank Account for all applicable deductions, rejections, and withholdings, which include: (i) any amounts you owe us or our Affiliates (excluding the Discount), (ii) any amounts for which we have Chargebacks, and (iii) any Credits you submit that we are unable to deduct from our payments to you. On a monthly basis: (a) we shall invoice you or debit your Bank Account for (a) the Discount and (b) we shall invoice you for any amounts described in subsections (i) through (iii) of this section E.2 that we are unable to debit from your Bank Account. You shall pay us within thirty (30) days of your receipt of our invoice. Notwithstanding the foregoing, if you do not pay us within thirty (30) days of your receipt of our invoice, we may offset such invoiced amounts from future payments we would otherwise make to you. Your initial Discount and payment plan are set forth in section 3.b of Schedule A of this Agreement. We may adjust your Discount as set forth in section E.1 of the General Provisions. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations or as otherwise provided to you in writing by us. Subject to Section E.1, we may adjust any of these amounts and may change any other amount we charge you for accepting the Card.
- E.3. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- E.4. Payment of Invoice. The payment of the invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

## F. STANDARD TERMS AND CONDITIONS

- F.1. Required Approvals. The Institution will not execute this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee state laws and regulations.
- F.2. Modification and Amendment. Except as specifically indicated herein, any amendment to this Contract must be in writing and duly executed by both parties hereto (except that an email does not constitute such a signed writing) and approved by the appropriate officials in accordance with applicable Tennessee state laws and regulations, provided that we shall change the Merchant Regulations pursuant to the provisions set forth below. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card.

(a) 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.

(b) 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).

- F.3. Grounds for Termination. In addition to the termination rights in sections C.1 and F.5 of the General Provisions, if you engage in any activities that harm our business or the American Express Brand, without waiving our other rights and remedies, we may terminate the Agreement immediately upon notice to you. If we determine or have reason to believe, in our sole discretion, that you are involved (or knowingly

participate or have participated) in a fraudulent or illegal business activity, we may terminate the Agreement immediately without prior notice to you.

- F.4. Termination for Convenience. The Institution or Contractor may terminate this Contract without cause for any reason. Such termination shall not be deemed a Breach of Contract. The terminating party shall give the other party at least one hundred and twenty (120) days written notice before the effective termination date.
- F.5. Termination for Cause. If a party commits a material breach of the Agreement (other than as specified in section F.3 above), without waiving its other rights and remedies, the other party has the right to send the breaching party a notice specifying the breach and providing the breaching party an opportunity to cure the breach within a period of time no less than thirty days (*Cure Period*). If the breach is not cured within the Cure Period, then the non-breaching party has the right to terminate the Agreement by notice to the breaching party, with termination to be effective not less than ten days following the end of the Cure Period.
- F.6. Post-Termination. If the Agreement terminates, without waiving our other rights and remedies, we may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to us any Charges and Credits incurred prior to termination.
- F.7. 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 A, C, H, F.2, F.6, F.7, F.14, F.15, F.17, F.18, F.19, F.20, F.21, F.22, F.23, F.24, F.25, F.26, F.27, G, I.12, I.13, and I.14 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to (i) protect Cardmember Information, (ii) indemnify us, (iii) retain documents evidencing Transactions, and (iv) notify your Recurring Billing customers of such termination. Our right of direct access to the Bank Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.
- F.8. Conflicts of Interest. The Contractor warrants that no part of the total amount payable by you under the Contract shall be paid by Contractor directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- F.9. Nondiscrimination. The Contractor hereby warrants that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or Tennessee constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- F.10. Records. The Contractor shall maintain applicable merchant statements verifying amounts charged to the Institution under this Contract. Such merchant statements, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the applicable merchant statement and shall be subject to audit upon reasonable notice by the Institution, the Comptroller of the Treasury, or their duly appointed representatives at a time and location agreed upon by the parties.
- F.11. Monitoring. The Contractor's performance of its obligations under this Contract and records maintained pursuant to section F.10 of these General Provisions shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives at a time and location agreed upon by the parties.
- F.12. Progress Reports. Progress Reports No more than once per calendar quarter during the Term, Institution may request a report from Contractor ("Report") containing the following information ("Report Data") for the

prior calendar quarter period, or longer period of time as may be agreed to by Contractor ("Reporting Period"):

- i. The aggregate Charge volume of each Establishment of each Participating Education Entity;
- ii. The aggregate Charge volume of all Establishments of each Participating Education Entity;
- iii. The aggregate Charge volume for all Participating Education Entities;
- iv. The aggregate number of Transactions for each Establishment of each Participating Education Entity;
- v. The aggregate number of Transactions for all Establishments of each Participating Education Entity;
- vi. The aggregate number of Transactions for all Participating Education Entities;
- vii. The average Transaction amount for each Establishment of each Participating Education Entity;
- viii. The average Transaction amount for all Establishments of each Participating Education Entity; and
- ix. The average Transaction amount for Participating Education Entities.

If requested by Institution, Contractor shall include in the applicable Report a comparison of the Report Data against the Report Data for Reporting Period(s) of the same duration which began within the twelve months prior to Institution's request, or such other period of time as may be agreed to by Contractor. If Institution requests that Contractor include additional information in the applicable Report, Contractor shall provide such additional information if Contractor reasonably determines that it is able to do so. Contractor shall provide the applicable Report within thirty (30) days of its receipt of Institution's request.

F.13. Strict Performance. Failure by any party to this Contract to exercise any of its rights under the Contract, insist in any one or more cases upon the strict performance of any of the terms; covenants, conditions, or provisions of this Contract, its delay in enforcing any right, or its waiver of its rights on any occasion shall not be construed as or constitute a waiver or relinquishment of any such right, term, covenant, condition, or provision on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No term or condition of this Contract shall be held to be waived, 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.

F.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Contract shall be construed to create an agency, partnership, joint-venture or employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. 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, being an independent contractor and not an employee of the Institution, agrees to carry adequate liability and other appropriate forms of insurance, including workers' compensation coverage as required by applicable law on the Contractor's employees. The Contractor agrees to pay any transactional taxes which are applicable to this Agreement. Transactional taxes shall not include any federal, state or local privilege or franchise taxes, taxes based upon your net income and any taxes or amounts in lieu thereof. Each party shall be solely responsible for all taxes, assessments, and other ad valorem levies on its owned property.

F.15. Institution Liability. Neither party shall have any liability to the other, except as otherwise expressly provided in this Contract.

F.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.

F.17. Compliance with Laws. You and we, respectively, shall comply with all applicable State and Federal laws and governmental regulations and rules in the performance of this Contract.

- F.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee without regard to internal principles of conflicts of law. Subject to section G of these General Provisions, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the State of Tennessee. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens. Subject to Section G of these General Provisions, Contractor agrees that any action brought by Contractor hereunder will be subject to the exclusive jurisdiction of the Tennessee Claims Commission. The Contractor acknowledges and agrees that any claims against the Institution or its employees hereunder shall be subject to the applicable requirements under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- F.19. Severability. Other than as set forth in the last sentence of section G.3(c) of these General Provisions, if any terms and conditions of this Contract are held by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, and the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. If the provision that was previously held to be illegal or unenforceable is subsequently found to not be illegal or unenforceable as a result of a legislative, regulatory or judicial mandate or agreement of an authority with competent jurisdiction, such provision shall be reinstated in the Agreement and shall supersede the replacement provision. If any such legislative, regulatory or judicial mandate that caused a provision to be held illegal or unenforceable is subsequently modified in any manner, the provision shall be replaced by an enforceable provision that most closely reflects the parties' intentions as shown by the original contract provision.
- F.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- F.21. Interpretation. In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to;" (iv) the term "day" means "calendar day;" (v) all amounts are stated in U.S. dollars; (vi) references to a "party" means us, on the one hand, and you, on the other hand; (vii) the term "may" (unless followed by "not") means "has the right, but not the obligation, to"; (viii) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (ix) any reference to a website or a URL (or both) refers to its successor website or URL; (x) all captions, headings, and similar terms are for reference only; and (xi) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of the Merchant Regulations, and the provisions of any accompanying schedules and exhibits shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: any accompanying schedules or exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.
- F.22. Assignment. You shall not assign the Agreement or any of your rights, interests, or obligations hereunder, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement, or any of our rights, interests, or obligations hereunder, without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.
- F.23. 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.
- F.24. Disclaimer of Warranties. TO THE EXTENT NOT PROHIBITED BY APPLICABLE TENNESSEE LAW, EXCEPT AS EXPRESSLY SET FORTH IN SECTION I.14 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.

- F.25. 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.
- F.26. 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.
- F.27. Counterparts and Facsimile/Email Versions. The parties may execute the Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or by attaching to an email is as effective as executing and delivering the Agreement in the presence of the other party.

## G. DISPUTE RESOLUTION

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

- G.1. Arbitration Rights. All Claims shall be resolved, upon your or our election, through arbitration pursuant to this section G rather than by litigation. 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 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 G.2 below.
- G.2. Mediation. Any Claim that has not been resolved pursuant to section G.1 above shall be resolved, upon the election by you or us, through mediation administered by an Entity or organization located in New York, New York mutually agreed 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 days from the first meeting of the parties in mediation, then the parties shall settle the Claim through binding arbitration, as described in section G.3 below.
- G.3. Arbitration Rules/Organizations. Any Claim that has not been resolved pursuant to section G.1 or G.2 above shall be resolved, upon the election by you or us, through arbitration. The party asserting the Claim shall select one of the following arbitration organizations, which shall apply its rules in effect at the time the Claim is filed. In the event of an inconsistency between this section G and any rule or procedure of the arbitration organization, this section G controls. The party asserting the Claim shall simultaneously notify the other party of its selection. If our selection is not acceptable to you, then you may select another of the following organizations within thirty days after you receive notice of our initial selection. Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located.
- National Arbitration Forum (NAF): P.O. Box 50191, Minneapolis, MN 55404-0191; (800) 474-2371; [www.adrforum.com](http://www.adrforum.com)
  - American Arbitration Association (AAA): 1633 Broadway, New York, NY 10019; (800) 778-7879; [www.adr.org](http://www.adr.org)
  - JAMS (JAMS): 1920 Main Street, Suite 300, Irvine, CA 92614; (949) 224-1810; [www.jamsadr.com](http://www.jamsadr.com)

In addition to the arbitration organizations listed above, Claims may be referred to any other arbitration organization that is mutually agreed upon in writing by you and us, or to an arbitration organization or arbitrator(s) appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. § 16 *et seq.* (FAA), provided that the arbitration organization and arbitrator enforce the terms of sections G.4 and G.5 below.

- G.4. Limitation of Rights. IF ARBITRATION IS CHOSEN BY A PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES OR PROCEDURES OF NAF, AAA, OR JAMS, AS APPLICABLE. FURTHER, YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF

ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT AND WITHOUT WAIVING EITHER PARTY'S RIGHT TO APPEAL SUCH DECISION, IF ANY PORTION OF THIS SECTION G.4 OR OF SECTION G.5 BELOW IS DEEMED INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION G (OTHER THAN THIS SENTENCE) SHALL NOT APPLY.

- G.5 Individually Named Parties Only. **If either party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. All parties to the arbitration must be individually named. There is no right or authority for any Claims to be arbitrated or litigated on a class-action or consolidated basis, on behalf of the general public or other parties, or joined or consolidated with claims of other parties, and you and we are specifically barred from doing so.** This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against us. The arbitrator's authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator's authority to make awards is limited to awards to you and us alone.
- G.6 Application of Provision. You or we may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Either you or we may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section G applies to any putative class action lawsuit that has been filed against us prior to the Effective Date of the Agreement relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Agreement as described in sections A and B of these General Provisions and Chapter 3 (Card Acceptance) of the Merchant Regulations, or prior versions of a Card acceptance agreement.
- G.7 Equitable Relief. The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section G, nor to determine any matter or make any award except as provided in this section G.
- G.8 Injunctive Relief. Injunctive relief sought to enforce the provisions of sections I.12 and I.13 of these General Provisions is not subject to the requirements of this section G. This section G is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.
- G.9 Governing Law/Appeal/Entry of Judgment. This section G is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply Tennessee law and applicable statutes of limitations, honor claims of privilege recognized by law and, at the timely request of either party, provide a written and reasoned opinion explaining his or her decision. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA or if the amount of the award exceeds US \$100,000, in which case either party can appeal that award to a three-arbitrator panel administered by NAF, AAA, or JAMS, as applicable, which shall reconsider de novo any aspect of the initial award requested by majority vote and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. The costs of such an appeal shall be borne by the appellant regardless of the outcome of the appeal. Judgment upon the award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.
- G.10 Confidential Proceedings. Mediation and arbitration proceedings and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the negotiations, mediations, arbitrations, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by the mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or

discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation, mediation, or arbitration.

- G.11 Split Proceedings for Equitable Relief. Either you or we may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered. Except as otherwise provided in section G.4 above, if any portion of this section G (other than section G.4 or G.5) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this section G, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.
- G.12 Costs of Arbitration Proceedings. You will be responsible for paying your share, if any, of the arbitration fees (including filing, administrative, hearing and/or other fees) provided by the Arbitration Rules, to the extent such fees do not exceed the amount of the filing fees you would have incurred if the Claim had been brought in a state or federal court that would have jurisdiction over the Claim located in the federal judicial district where your headquarters are located. We will be responsible for paying the remainder of any arbitration fees. At your written request, we will consider in good faith making a temporary advance of all or part of your share of the arbitration fees for any Claim you initiate as to which you or we seek arbitration. You will not be assessed any arbitration fees in excess of your share if you do not prevail in any arbitration with us.
- G.13 Definitions. For purposes of this section G of the General Provisions only, (i) *we*, *our*, and *us* include any of our Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) you and your include any of your Education Entities, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing.
- G.14 Continuation. This section will survive termination of this Agreement, any legal proceeding to collect a debt, any bankruptcy and any sale of you or your assets (in the case of a sale, its terms will apply to the buyer). If any portion of this Dispute Resolution section, except as otherwise provided in the Limitations on Arbitration subsection, is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Dispute Resolution section, the Agreement or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.
- G.15. All provisions of this entire Section G, Dispute Resolution, shall be subject to the applicable requirements of TCA Section 8-6-301 and TCA Section 20-13-103.

## **H. LIMITATION OF LIABILITY**

- H.1 TO THE EXTENT NOT PROHIBITED BY APPLICABLE TENNESSEE LAW, IN NO EVENT SHALL A PARTY OR ITS RESPECTIVE AFFILIATES (IN OUR CASE), PARTICIPATING EDUCATION 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, INTERNET SERVICE PROVIDERS, OTHER COMMUNICATION NETWORKS OR THE BANKING SYSTEM, EXCEPT THAT OUR RIGHTS TO CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

## **I. SPECIAL TERMS AND CONDITIONS**

- I.1. Communications and Contacts. (i) 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 email or by 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.

(ii) Electronic Communications. We may provide any notice, including any notice under section 1.1(i), as well as any statement, or other communication related to this Agreement to you by any lawfully permitted electronic means, including by (a) transmission to an electronic address (e.g., email), (b) posting it on an American Express website, or (c) 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 (x) we send it to you, or (y) 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 addresses(es) and notify us promptly with any updates to those address(es) so we may continuously and effectively communicate with you. It is your responsibility to access and retain copies of all electronic notices, statements or communications that we provide you. If you ask us for a paper copy of an electronically delivered notice, statement or communication, we may charge you a fee for providing the copy. The provisions of this paragraph will survive termination of this agreement.

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

Angela Gregory Flynn  
Tennessee Board of Regents  
1 Bridgestone Park  
Nashville, TN 37214  
Tel. (615) 366-4436  
Fax (615) 366-2243  
angela.flynn@tbr.edu

B. Your Contact Information. We may send notices, statements or other communications to you at any postal or electronic address, or facsimile number, you or any of your authorized representatives provide to us in the course of our relationship with you, either as part of your application or otherwise. You must notify us immediately of any change to your contact information, including without limitation the contact information and address(es) described in section 1.1(i), 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.

C. Our Notice Address. Unless we notify you otherwise, you shall send notices under sections 1.1(i) to us at:

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

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

1.2. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Institution reserves the right to terminate the Contract upon written notice to the Contractor. Such termination shall not be deemed a breach of Contract by the Institution. Should such an event occur, the Contractor shall be entitled to compensation for all amounts due to Contractor under the Agreement as of the termination date. Notwithstanding anything to the contrary in the Contract, if Contractor determines that sufficient funds are not appropriated or otherwise made available to support the Participating Education Entities' continued acceptance of the Card and payment of compensation under the Contract, then Contractor may suspend Card acceptance by the Participating Education Entities upon providing notice to Institution unless and until Institution secures approval for additional compensation under the Contract. You shall remain liable for all amounts due to Contractor under the Agreement prior to the effective date of such suspension., The Contractor shall have no right to recover from the Institution any special, incidental, or consequential, damages, including attorneys' fees or other expenses of litigation, whatsoever of any description or amount as a result of such termination.

1.3. Breach. A party shall be deemed to have breached the Contract if any of the following, including but not limited to, occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract; or
- violation of any warranty.

1.4. Insurance. The Contractor shall maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Contractor shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability Limits of \$100,000. The Contractor shall deliver to the Institution a certificate of insurance no later than the effective date of the Contract. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution unless such cancellation notice is to be rescinded or the cancelled policy is to be replaced with another policy in compliance with the requirements herein prior to the cancellation date.

The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor's legal responsibilities arising out of or resulting from the services under this Contract.

1.5. Competitive Procurements If this Contract provides for reimbursement of the cost of goods, materials supplies, equipment, or services, such procurements shall be made on a competitive basis, where practical.

1.6. Equipment/Inventory. No equipment shall be purchased under this Contract.

1.7. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I.8. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

I.9. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it :

- a. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or Institution department or agency;
- b. has not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false Statements, or receiving stolen property;
- c. is not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. has not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

I.10. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated as Exhibit 3. You agree that the terms "subcontractor" and "Subcontractor", as used in this Agreement, shall only mean third party companies that Contractor engages for the sole purpose of performing part, or all, of Contractor's obligations under this Agreement, and shall not mean any third party vendor with whom Contractor has entered into, or may enter into, an agreement to receive goods and/or services which Contractor utilizes in its regular course of business.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach to the extent allowed by applicable law. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

I.11. Red Flags and Identity Theft. The Contractor shall comply with all applicable provisions of the Fair and Accurate Credit Transactions Act of 2003.

I.12. Confidentiality. Subject to the applicable requirements of the Tennessee Public Records Act, TCA, Title 10, Chapter 7, you and we, respectively, must keep confidential and not disclose to any non-Affiliated third party the provisions of the Agreement and any information that it receives from the other under the Agreement that is not publicly available, except (a) 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 (b) if such information is requested from us by our or any of our Affiliates' regulators.

I.13. Proprietary Rights and Permitted Uses. Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent.

I.14. 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 (A) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)), (B) listed on the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or (C) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (ix) you have not assigned to any third party any payments due to you under the Agreement and all indebtedness arising from Charges are for bona fide sales of goods or services (or both) at your Establishments and free of any liens, claims, and encumbrances other than ordinary sales taxes or with respect to liens or other security interests that you grant pursuant to credit facilities obtained in the ordinary course of business from your commercial banks or other financial institutions; (x) all information that you provided in connection with the Agreement is true, accurate, and complete; and (xi) you have read the Agreement and kept a copy for your file. If any of your representations or warranties in the Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

- I.15. Sovereign Immunity. The Tennessee Board of Regents is a public institution of higher learning. As an entity of the State of Tennessee, under the Constitution of the State of Tennessee it possesses certain rights and privileges, is a subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and law of the State of Tennessee. Notwithstanding any other provision to the contrary, nothing in this Agreement is intended to be, nor shall it be construed to be, a waiver of the sovereign immunity of the State of Tennessee or a prospective waiver or restriction of any of the rights, remedies, claims and privileges of the State of Tennessee. Moreover, notwithstanding the generality or specificity of any provision herein, but subject to the provisions of Section F.19 of the General Provisions, the provisions of this Agreement as they pertain to the Tennessee Board Regents are enforceable only to the extent they are not prohibited by the Constitution and laws of the State of Tennessee.

**IN WITNESS WHEREOF:**

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

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**Gunther Bright, Executive Vice President, Merchant  
Services – U.S.**

**Date**

**APPROVED:**

**TENNESSEE BOARD OF REGENTS:**

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**Flora W. Tydings, Chancellor**

**Date**

**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, the Merchant Regulations, and any accompanying schedules and exhibits, , collectively (sometimes referred to as the Card Acceptance Agreement in our materials).

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

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

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

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

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

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

*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.

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

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

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

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

*Merchant Number* means a unique number we assign to your Establishment; 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 online Merchant Account user ID and password.

*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., a New York corporation.

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 Education Entities.

(iii) The following definitions are added:

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

*Education Entities* means your departments, agencies, institutions, offices, colleges, universities, and school districts.

(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 Education 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. SETTLEMENT

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

b. Payment Terms.

Discount Rate (Non-CPC):	2.20%
Discount Rate (CPC):	2.20%
Prepaid Card Rate:	1.80%
Payment Plan:	1 day

c. Third Party Providers. You acknowledge that you and the Education 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.

## 4. ADDITIONAL REQUIREMENTS

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

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



EXHIBIT 1

PARTICIPATING EDUCATION ENTITIES

The Participating Education Entities, as of the Effective Date, are set forth in the table below.

1. Austin Peay State University
2. East Tennessee State University
3. Middle Tennessee State University
4. Tennessee State University
5. Tennessee Technological University
6. The University of Memphis
7. Cleveland State Community College
8. Columbia State Community College
9. Dyersburg State Community College
10. Jackson State Community College
11. Motlow State Community College
12. Nashville State Community College
13. Northeast State Community College
14. Pellissippi State Community College
15. Roane State Community College
16. Southwest Tennessee Community College
17. Volunteer State Community College
18. Chattanooga State Community College
19. Walters State Community College
20. Tennessee Technology Center at Athens
21. Tennessee Technology Center at Chattanooga
22. Tennessee Technology Center at Covington
23. Tennessee Technology Center at Crossville
24. Tennessee Technology Center at Crump
25. Tennessee Technology Center at Dickson
26. Tennessee Technology Center at Elizabethton
27. Tennessee Technology Center at Harriman
28. Tennessee Technology Center Hartsville
29. Tennessee Technology Center at Hohenwald
30. Tennessee Technology Center at Jacksboro
31. Tennessee Technology Center at Jackson
32. Tennessee Technology Center at Knoxville
33. Tennessee Technology Center at Livingston
34. Tennessee Technology Center at McKenzie
35. Tennessee Technology Center at McMinnville
36. Tennessee Technology Center at Memphis
37. Tennessee Technology Center at Morristown
38. Tennessee Technology Center at Murfreesboro
39. Tennessee Technology Center at Nashville
40. Tennessee Technology Center at Newbern
41. Tennessee Technology Center at Oneida/Huntsville
42. Tennessee Technology Center at Paris
43. Tennessee Technology Center at Pulaski
44. Tennessee Technology Center at Ripley
45. Tennessee Technology Center at Shelbyville
46. Tennessee Technology Center at Whiteville
47. Tennessee Board of Regents Center Office



EXHIBIT 2

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

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

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

1. The terms and conditions of the Agreement for American Express® Card Acceptance between the **Tennessee Board of Regents** 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 Tennessee Board of Regents 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 \_\_\_\_\_.

**[EDUCATION ENTITY]**

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

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

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

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

Executive Vice President and General Manager  
Merchant Services - United States

**EXHIBIT 3**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	American Express Travel Related Services Company, Inc.
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

**SIGNATURE &  
DATE:**

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NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.