

AFFILIATE MEMBER AGREEMENT
FOR AFFILIATE MEMBERS LOCATED IN THE UNITED STATES, PUERTO RICO, U.S.
VIRGIN ISLANDS, OTHER U.S. TERRITORIES

THIS AGREEMENT, is by and between AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC., a New York corporation, with an office at American Express Tower, World Financial Center, New York, New York 10285 (“Amex”, “we”, or “our”) and “Affiliate Member”, a member of Preferred Hotel Group, Inc. (“Affiliate Group”).

RECITALS

WHEREAS, Amex, its subsidiaries, Affiliates, and the licensees of each of them that issue American Express® Cards and other American Express account access and payment devices bearing the American Express name or bearing a trademark, service mark or logo owned or marketed by Amex, its subsidiaries or Affiliates and persons named on currently effective Cards may charge purchases of goods and services with Cards at establishments participating in the American Express Card Service;

WHEREAS American Express Travel Related Services Company, Inc., and Preferred Hotel Group, Inc. entered into a Lodging Affiliate Group Card Acceptance And Marketing Agreement, effective as of January 1, 2015 (“Master Agreement”), governing the acceptance by Preferred Hotel Group, Inc. and its Affiliate Members of the American Express® Card;

WHEREAS, Affiliate Member is engaged in the food and lodging business (including goods and services sold at spas, retail stores, eating facilities and other typical facilities housed at lodging properties) at its lodging property located in the United States, Puerto Rico, U.S. Virgin Islands and Other United States Territories owned and/or operated by Affiliate Member and held out to the public as affiliated with Affiliate Group; and

WHEREAS, Affiliate Member desires to participate in the Card Service in the United States, Puerto Rico, U.S. Virgin Islands and Other United States Territories pursuant to an agreement between Amex and Affiliate Group (“Master Agreement”)

permitting Affiliate Members to aggregate Charge Volume to take advantage of potential Discount Rate and marketing benefits.

NOW, THEREFORE, you hereto agree as follows:

GENERAL PROVISIONS.

1. Scope/Participation in the Card Service/Definitions.

a. This Agreement governs Affiliate Member’s and its Establishment(s) acceptance of American Express Cards in the United States, Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions. You must notify us if you have any Establishments outside of the United States, Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions and cause them to comply with the terms of an agreement with our Affiliate governing Card acceptance there. You will be notified of those terms. This Agreement covers Affiliate Member and its Establishments alone. Affiliate Member and its Establishments must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

b. i. Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing Affiliate Member’s and Establishment’s acceptance of the Card. Affiliate Member and its Establishments shall ensure that their respective 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. Affiliate Member and Establishments 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 Affiliate Member’s agreement to accept the Card. Amex have the right to make changes to the Merchant Regulations in scheduled

changes and at any time in unscheduled changes as set forth in Section 8j. below. 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, Amex shall provide Affiliate Member 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). Amex may charge Affiliate Member a fee for each copy that you request.

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

iii. Definitions.

“Affiliate” means any Entity that controls, is controlled by, or is under common control with either party, including its 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.

“Affiliate Member”, “you” and “your” (sometimes called the “Merchant”, “Service Establishment,” or “SE” in our materials) means (i) your independent lodging Establishment(s) (as defined below) owned and operated by you in which you are a member of the group of hotels known as Preferred Hotel Group, Inc., and for which Affiliate Group provides marketing and other services and (ii) the Entity who duly entered into this Member Agreement with Amex to honor Cards.

“Agreement” means the General Provisions, the Merchant Regulations, and any accompanying schedules and exhibits, collectively.

“American Express Card” or “Cards” 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.

“Amex”, “we”, “our”, and “us” means American Express Travel Related Services Company, Inc.

“Bank Account” means an account that you or your Establishments hold at a bank or other financial institution.

“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.

“Card Service” means the American Express® Card service operated by Amex its subsidiaries, Affiliates, and the licensees of each them.

“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, except for the validity, enforceability, or scope of Section 7.c of the General Provisions.

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

“Credit Transaction Fee” a fee for each Credit Transaction submitted to us, which will \$0.50 for each Credit Transaction or retention of the Discount Rate, whichever amount is lower.

“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.

“Establishment” means Affiliate Member’s lodging properties, locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that you adopt in the future that are owned and/or operated by you and such lodging properties are held out to the public as affiliated with Affiliate Group.

“General Provisions” means the provisions set out in this Agreement other than the provisions in the Merchant Regulations and in Schedule B or any accompanying schedule or exhibit hereto.

“Local Priced Country” means a certain selected country or countries that Amex may, from time to time, at its sole discretion, generally offer a Discount Rate which is different than the Discount Rates set forth in Schedule A.

“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.

“Merchant Regulations” means the American Express Merchant Regulations – U.S., which are available at www.americanexpress.com/merchantpolicy and can be accessed by entering your Merchant Number.

“Net Annual Local Charge Volume” means the aggregate of Charges accepted by Amex from Affiliate Members located in a Local Priced Country during the preceding calendar year under the Agreement less Credits, adjustments and amounts charged back by Amex pursuant to its rights to Chargeback under this Agreement.

“Net Annual Worldwide Charge Volume” is defined as the aggregate of Charges accepted by Amex from Affiliate Members located worldwide (except for Charges from Affiliate Members located in a Local Priced Country if Local Discount Rate is applied), during the preceding calendar year under this Agreement, and the separate Card acceptance agreements between Amex and Affiliate Members (collectively “Affiliate Member Agreements”) respectively, less Credits, adjustments and amounts charged back by Amex pursuant to its rights to Chargeback under this Agreement and the Affiliate Member Agreements.

“Other Agreement” means any agreement, other than this Agreement, between (i) you or any of your Affiliates and (ii) us or any of our Affiliates.

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

“Reserve” means a fund established and/or collateral held by us as security for your or any of your Affiliates’ obligations to us or any of our Affiliates under the Agreement or any Other Agreements.

c. Affiliate Member represents and warrants that it has a written agreement with Affiliate Group whereby Affiliate Member:

i. is permitted, pursuant to said written agreement, to use the tradename and/or trademark, service mark, logo or other similar proprietary designation of Affiliate Group (“Affiliate Group Designation”);

ii. displays to the public, to the extent permitted by law, prominent exterior and/ or interior signage bearing the Affiliate Group Designation at Establishments. The Affiliate Group Designation shall be within reasonable proximity to the Establishment's own tradename and/or trademark, service mark, logo or other similar

proprietary designation (the “Affiliate Member Designation”);

iii. appears to the public as being clearly affiliated with Affiliate Group, including by the prominent use of the Affiliate Group Designation on all advertising for lodging services, other promotional materials, collateral materials such as in-room brochures, stationery and folios, such Affiliate Group Designation being within prominent interior and exterior signage bearing the Affiliate Group Designation in direct association with the Affiliate Member Designation;

iv. displays association with representation entities other than Affiliate Group, if at all, no more prominently than the display the Affiliate Group affiliation. In addition, Affiliate Member may not have or display any affiliation with any lodging chain or group;

v. utilizes a central reservations system operated by and maintained by or on behalf of Affiliate Group; and

vi. complies with quality guidelines of Affiliate Group governing such areas as hotel maintenance, customer service, marketing and promotional activities.

In addition to any other termination rights contained herein, Affiliate Member shall notify Amex as far in advance as reasonably practicable if Affiliate Member ceases to be affiliated with Affiliate Group. Unless and until the parties enter into a new agreement for Affiliate Member’s participation in the Card Service, this Agreement shall continue in full force and effect and Amex shall have the right, in its sole discretion to modify Affiliate Member’s Discount Rate in accordance with Amex’s then current standard lodging industry Discount Rate table.

d. Affiliate Member agrees that Affiliate Group was authorized to negotiate the terms of this Affiliate Member Agreement on Affiliate Member’s behalf. By accepting Cards for the purchase of goods and services, Affiliate Member and Establishment(s) are bound by the terms of this Agreement and any amendments received by Affiliate Member from Amex.

e. Affiliate Member will and will cause all Establishments to honor Cards and will be responsible and liable to Amex for the performance by Establishments of all of the terms and provisions of this Agreement.

f. Affiliate Member will supply to Amex on a quarterly basis and keep current a list of Establishments.

g. Notwithstanding any provision of this Agreement, Amex may, upon any reasonable business basis, including but not limited to a legal/compliance risk or a risk of credit or fraud losses, (i) refuse to allow Affiliate Member and/or an Establishment to participate in the Card Service or (ii) suspend participation in the Card Service.

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. 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. 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 must 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.

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 account used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations. With respect to any Credit Transaction submitted to us; (i) a \$0.50 fee shall be applied for each Credit Transaction; or (ii) we shall retain the Discount Rate for said Credit Transaction, whichever amount is lower.

iv. Payment for Charges. A. We will pay you according to your payment plan in U.S. dollars for the face amount of Charge submitted from your Establishments less: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Your initial Discount is 3.00% or as otherwise provided to you in writing by us in accordance with the Net Annual Worldwide Charge Volume pursuant to the Discount Rate table indicated in Schedule A. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement. The Discount Rate for all Cards other than "Prepaid Cards" shall be as follows:

(1) Establishments that (A) obtain Authorization of Charges electronically and (B) submit Charges and Credits electronically, the Discount Rate will be determined based upon the Net Annual Worldwide Charge Volume according to Schedule A attached to this-Agreement and made a part hereof.

(2) For Establishments that do not obtain Authorization and transmit Charges and Credits electronically, the Discount Rate will be 3.60%.

(3) Amex will use its best efforts to advise Affiliate Group of its prior year's Net Annual Worldwide Charge Volume as soon as possible, but in no event later than April 1st of each calendar year. Any new Discount Rate will become effective as of first day of the month which is at least forty-five (45) days

following Affiliate Group's receipt of its Affiliate Members Net Annual Worldwide Volume of Charges.

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. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.

B. Current Payment Plan Options:

(1) a 3-day Payment Plan whereby payment is initiated by Amex to Affiliate Member within the next three (3) business days after receipt of the Charge by Amex prior to Close of Business. (This 3-day option must be chosen for the Discount Rate Schedule A to apply.) (For purposes of this Schedule A, "initiated" shall mean placed in the mail or put in process if some other form of payment is made available by Amex and mutually agreed upon by the parties.) For example, payment for Charges received by Amex before the Close of Business on Monday will be initiated to Affiliate Member by Thursday, and payment for Charges received before the Close of Business on Thursday will be initiated on Monday;

(2) a 15-day Payment Plan, whereby payment is initiated by Amex to Affiliate Member on the first business day falling fifteen (15) calendar days after the date of receipt (before the Close of Business) by Amex from Affiliate Member of Charges submitted in conformance with the requirements of this Agreement; or

(3) a 30-day Payment Plan, whereby payment is initiated by Amex to Affiliate Member on the first business day falling thirty (30) calendar days after the date of receipt (before the Close of Business) by Amex from Affiliate Member of Charges submitted in conformance with requirements of this Agreement.

In the event Affiliate Member in the United States elects the 15-day Payment Plan or 30-day Payment Plan, it shall be entitled to a reduction in the Discount Rate shown under the 3-day Payment Plan on the Discount Rate Schedule, said reduction to be set by

Amex at its discretion and subject to change by Amex upon notice to Affiliate Member.

v. 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 so promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our failure to demand payment does not waive our Chargeback rights.

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

3. PROTECTIVE ACTIONS

a. 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. If we believe that we need to create a Reserve, we may immediately establish a Reserve or terminate the Agreement. We shall inform you if we establish a Reserve or terminate the Agreement. We may establish a Reserve by (i) withholding amounts from payment we otherwise would make to you under the Agreement or (ii) requiring you to deposit funds or other collateral with us. Any collateral provided pursuant to this Section 3 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 (including Charges submitted by you 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 3.b.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, in our reasonable judgment, proportional to the risk to us and our Affiliates arising from such event.

b. Trigger Events for Reserve. Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties owning 25% or more of such interests as of the Effective Date of the Agreement), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business or a material adverse change occurs in your industry; (iv) your breach of Section 3.e of the General Provisions; (v) your becoming insolvent; (vi) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; (vii) our reasonable belief that you will not be able to perform your 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 you have 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 you, (B) requires you to make a direct payment into a reserve account or similar device, or (C) requires you to provide such Entity with a letter of credit or other third-party guaranty of payment.

c. Application of Reserve. We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts you or any of your Affiliates owe 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; and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including attorneys' fees and our costs of handling Disputed Charges.

d. 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.

e. Providing Information. You must provide to us promptly, upon request, information about your and your Affiliates' 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 3.b.viii of the General Provisions.

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 299051
Fort Lauderdale, FL 33329
Attn: Department 87
E-mail:
American.Express.Contract.Keying@aexp.com
Fax: (602) 744-8413
Tel: (800) 528-5200

With a copy to:

American Express Travel Related Services
Company, Inc.
3 World Financial Center
200 Vesey Street, 49th Floor
New York, NY 10285

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

c. Affiliate Member Notice Address. We shall send notices to you at the address, e-mail address, or facsimile number you indicated on your application to accept the Card. You must notify us immediately of any change in your notice address.

5. INDEMNIFICATION AND LIMITATION OF LIABILITY

a. Indemnity. You shall indemnify, defend, and hold harmless us and our Affiliates, successors, and assigns from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from your breach, negligent or wrongful act or omission, failure to perform under the Agreement, or failure in the provision of your goods or services.

b. Limitation of Liability. IN NO EVENT SHALL WE OR OUR AFFILIATES, SUCCESSORS, OR ASSIGNS BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, 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 CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

6. TERM AND TERMINATION

a. Effective Date/Termination Date. The Agreement and any amendment or supplement hereto will be effective three (3) days after it is mailed to Affiliate Member and shall continue for a period of one (1) year from the Effective Date hereof. Thereafter this Agreement will continue for

successive one (1) year periods unless terminated by either party giving at least ninety (90) days prior written notice of termination to the other, or terminated pursuant to Section 3 hereof, or automatically terminated if the Master Agreement terminates. Affiliate Member and Establishments will continue to honor Cards in accordance with this Agreement until the effective date of any termination.

b. Grounds for Termination. In addition to the termination rights in sections 3.a and 6.a above, 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. 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. 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.

d. 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, indemnify us, 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 and debits permitted by the Agreement, and relating to

Transactions prior to the effective date of termination, have been made.

7. DISPUTE RESOLUTION

We value our merchant relationships. Most merchant concerns can be resolved by contacting our Merchant Services representatives at tel: 1-800-528-5200 or by e-mail: American.Express.Contract.Keying@aexp.com. Please be prepared to provide them with any information you have about the matter, including any efforts you may have made to address or resolve the matter. In the event Merchant Services is unable to resolve a complaint to your satisfaction, this section explains how Claims can be resolved through mediation, arbitration or litigation. It includes an arbitration provision. Your agreement to this Dispute Resolution provision does not preclude you from bringing your concerns to the attention of any appropriate governmental agencies.

a. Notice of Claim. Before filing a lawsuit or beginning a mediation or arbitration regarding a Claim, you and we agree to send a written notice (*Claim notice*) to each party against whom the Claim is asserted. This provides the parties an opportunity to resolve the Claim informally or through mediation. The Claim notice must describe the nature and basis of the Claim and state the specific amount or other relief demanded. Notice to us must include your name, your Merchant name, address, and Merchant Number and be sent to our notice address set forth in section 4.b of the General Provisions. If the Claim proceeds to arbitration, the amount of any relief demanded by you or us in a Claim notice shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled on the Claim.

b. Mediation. In mediation, a neutral mediator helps parties resolve a claim. The mediator does not decide the claim but helps parties reach agreement.

i. Initiation of Mediation. Before beginning a mediation, you or we must first provide the Claim notice described above. Within thirty days after sending or receiving a Claim notice, you or we may submit the Claim to JAMS (1-800-352-5267, jamsadr.com) or the American Arbitration Association (“AAA”) (1-800-778-7879, adr.org) for mediation, or to an alternative mediator mutually agreed upon in writing by you and us.

ii. Conduct of Mediation. You and we agree to cooperate in selecting a mediator from a panel of neutrals and in scheduling the mediation proceedings. We will pay the fees of the mediator.

iii. Confidentiality/Tolling. All communications made for the purpose of, in the course of, or pursuant to the mediation shall be confidential, and no evidence of any such communication shall be admissible for any purpose or subject to discovery. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled from thirty days following the sending of the Claim notice for sixty (60) days or until termination of the mediation, whichever is earlier.

iv. Termination. Either you or we may terminate the mediation at any time following the first mediation proceeding. Your or our submission or failure to submit a Claim to mediation shall not affect your or our right to elect to resolve a Claim through arbitration.

c. Arbitration. You or we may elect to resolve any Claim by individual arbitration. Claims are decided by a neutral arbitrator.

If arbitration is chosen by any party, neither you nor we will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, you and we will not have the right to participate in a representative capacity or as a member of any class pertaining to any Claim subject to arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights you or we would have in court may also not be available in arbitration.

i. Initiation of Arbitration. Before beginning an arbitration, you or we must first provide the Claim notice described above. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration provision and the selected organization's rules in effect

when the Claim is filed, except where those rules conflict with this Agreement. If we choose the organization, you may select the other within 30 days after receiving notice of our selection. Contact JAMS or AAA to begin an arbitration or for other information. Claims also may be referred to another arbitration organization if you and we agree in writing or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (*FAA*). Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located or New York, NY, at your election.

ii. Limitations on Arbitration. **If either party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Merchants or other persons similarly situated.** The arbitrator's authority is limited to Claims between you and us alone. Claims may not be joined or consolidated unless you and we agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case and cannot be used in any other case except to enforce the award. This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against us. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

iii. Previously Filed Claims/No Waiver. 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 applies to any class-action lawsuit relating to the "Honor All Cards," "non-

discrimination,” or “no steering” provisions of the Merchant Regulations, or any similar provisions of any prior Card acceptance agreement, that was filed against us prior to the effective date of the Agreement.

iv. Arbitrator’s Authority. 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, nor to determine any matter or make any award except as provided in this section.

v. Split Proceedings for Equitable Relief. Either you or we may seek equitable relief in aid of 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.

vi. Small Claims Court; Injunctive Relief. We shall not elect to use arbitration under this section for any Claim you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court. Injunctive relief sought to enforce the provisions of sections 8.a and 8.b of the General Provisions is not subject to the requirements of this section. This section 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.

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor claims of privilege recognized by law. 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, provided that any party may request that the arbitrator expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty days of any objecting party’s submission. If your Claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator’s decision shall be final and binding, except for any rights of appeal provided by the FAA. If the amount of the award exceeds \$100,000, either party can appeal that award to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider de novo any aspect of the initial award requested and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. Judgment upon an award rendered by the arbitrator or by a panel of arbitrators on appeal may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

viii. Confidential Proceedings. The arbitration proceeding 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 Claim resolution, negotiations, mediations, arbitration, 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.

ix. Costs of Arbitration Proceedings. You will be responsible for paying your share of any *arbitration fees* (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees you would have incurred if you had brought a Claim in court. We will be responsible for any additional arbitration fees. At your written request, we will consider in good faith making a temporary advance of your share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

x. Additional Arbitration Awards. If the arbitrator rules in your favor for an amount greater than any final offer we made before arbitration, the arbitrator's award will include: (1) any money to which you are entitled, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees.

d. Definitions. For purposes of section 7 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 Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing.

e. 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.

8. MISCELLANEOUS

a. Confidentiality. You must keep confidential and not disclose to any third party the provisions of the Agreement and any information that you receive from

us that is not publicly available. Affiliate Member hereby consents that Amex may disclose information to Affiliate Group regarding Affiliate Member's Amex Charge volume, Discount Rate and other financial information relating to Affiliate Member's transactions under this Affiliate Member Agreement, including Affiliate Member's merchant identification number(s).

b. Proprietary Rights and Permitted Uses. Neither party has any rights in the other party's Marks, except as otherwise expressly specified, nor shall one party use the other party's Marks without its prior written consent, except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time. Cardmember Information is confidential and Amex's and/or the Issuer's sole property. Except as otherwise specified, you must not disclose Cardmember Information, nor use it other than to facilitate Card transactions in accordance with this Agreement.

c. Your Representations and Warranties. You represent and warrant to us that: (i) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (ii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iii) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts hereunder; (v) you are authorized to enter into the Agreement on behalf of your Establishments and Affiliates, including those indicated in the Agreement, and the individual who signs the Agreement or otherwise enters into it has authority to bind you and them to it; (vi) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at www.treas.gov/ofac), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at www.state.gov), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as

noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (vii) 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, or encumbrances other than ordinary sales taxes; (viii) all information that you provided in connection with the Agreement is true, accurate, and complete; and (ix) you have read the Agreement and kept a copy for your file. If any of your representations or warranties in the Agreement become untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

d. Compliance with Laws. You shall comply with all Applicable Laws and governmental regulations and rules.

e. Governing Law; Jurisdiction; Venue. The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Subject to section 7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any Claim of lack of jurisdiction or forum non conveniens.

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) references to a “party” means us, on the one hand, and you, on the other hand; (vii) the term “may” (unless followed by “not”) means “has the right, but not the obligation, to;” (viii) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (ix) any reference to a website or a URL (or both) refers to its successor website or URL; (x) all captions, headings, and similar terms are for reference only; and (xi) where specific language is used to illustrate by

example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of the Merchant Regulations, and the provisions of any accompanying schedules or exhibits shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: any accompanying schedules or exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

g. 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.

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. Other than as set forth in the last sentence of section 7.c.ii of these General Provisions, 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. We reserve the right to change the Agreement at any time (including by amending any of its provisions, adding new provisions, or deleting or

modifying existing provisions) on at least ten days' prior notice to you, provided that we shall change the Merchant Regulations pursuant to the following provisions. 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. We are not bound by any changes that you propose in the Agreement, unless we expressly agree in a writing signed by our authorized representative. An e-mail or other electronic communication does not constitute such a signed writing.

(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).

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.** 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.** Except for the indemnitees specified in section 5.a of the General Provisions, 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. The parties reserve the right to amend or terminate the Agreement without the consent of those indemnitees.

n. **Press Releases.** You shall not issue any press release or make any public announcement (or both) in respect of the Agreement or us without our 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.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: 

Anne Williams, President
Global Merchant Services Americas

SCHEDULE A

AFFILIATE MEMBERS LOCATED IN THE UNITED STATES, PUERTO RICO, U.S. VIRGIN ISLANDS, OTHER U.S. TERRITORIES WITH ELECTRONIC AUTHORIZATION AND ELECTRONIC SUBMISSION

Prior Calendar Year's Net Annual Worldwide Charge Volume (\$U.S.)	Discount Rate*
\$ 610,200,000 - \$ 2,033,999,999	3.05%
\$2,034,000,000 - \$ 4,067,999,999	3.00%
\$4,068,000,000 - \$ 7,118,999,999	2.95%

(* Based on prior calendar year's Net Annual Worldwide Charge Volume and the current 3-Day Payment Plan.)

Prepaid Card Discount Rate is currently: 1.65% plus \$.05 per Transaction.



Schedule B Other Important Provisions for Card Acceptance

1. Central Billed Account. Amex markets a Card product whereunder all Charges made by authorized individuals are billed to a central Card account ("Central Billed Account"). Individuals authorized to use the Central Billed Account may not have a physical Card. With respect to Charges made to a Central Billed Account when a physical card is not presented, Affiliate Members and Establishments will accept use of the Central Billed Account in accordance with the following acceptance procedures:

- (i) the Central Billed Account number must be provided to Affiliate Member and/or Establishment(s) at the time of reservation;
- (ii) at check-in, reasonable valid identification is presented by the Cardmember;
- (iii) at check-in Authorization is obtained in accordance with provisions of Chapter 5 (Authorization) of the Merchant Regulations (if the Cardmember does not have a physical card, Authorization must be obtained by either keying the Card number into the electronic point of sale device or via telephone);
- (iv) Establishment complies with the provisions of Chapter 4 (Transaction Processing) of the Merchant Regulations.

2. Notwithstanding Section 1 a. of the Agreement, it is understood that as a convenience to customers, Establishment(s) arranges for excursions, car services and other services provided by third parties and bill such services through the Establishment. If an Establishment submits Charges for such services, such Charges are subject to the terms of the Agreement (including but not limited to Amex's rights to Chargeback) and Establishment is liable therefor.

3. Extended Payment. "Extended Payment" means any product of Amex's (other than the Optima Card and other revolving credit card products) which allows the user to make a purchase on an extended payment basis, whether by installments or otherwise (e.g. Sign and Travel Account).