

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

<hr/>		X
BANCO SANTANDER (BRASIL), S.A.,	:	
	:	No. 20-cv-3098
Plaintiff,	:	
	:	<b>COMPLAINT</b>
v.	:	
	:	
AMERICAN AIRLINES, INC.,	:	
	:	
Defendant.	:	
<hr/>		X

Plaintiff Banco Santander (Brasil), S.A. (“Santander”), by and through its undersigned counsel, alleges upon knowledge as to itself and its own acts, and upon information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. This case arises out of a December 9, 2016 AAdvantage Program Participation Agreement (the “Agreement”), between Santander and American Airlines, Inc. (“American Airlines”). A copy of the Agreement is annexed hereto as Exhibit A.

2. Under the Agreement, Santander issues co-branded airline credit cards, jointly sponsored by American Airlines, to qualified cardholders with postal mailing addresses in Brazil (“Brazilian Cardholders”). By making purchases using the credit cards, Brazilian Cardholders earn reward points (“AAdvantage Miles”) for use on American Airlines flights. Under the Agreement, Santander purchases AAdvantage Miles from American Airlines, which American Airlines posts to Brazilian Cardholder accounts to cover the AAdvantage Miles accrued from Brazilian Cardholder purchases.

3. Section 20.4.5 of the Agreement provides a termination option to Santander in the event that American Airlines delays performance or fails to perform due to a “Force Majeure

Event” (as defined in Section 23 of the Agreement) and such delay continues for a period of 90 days. Due to worldwide disruptions to, and unprecedented decrease in demand for, air travel as a consequence of the COVID-19 pandemic, American Airlines has ceased flights between Brazil and the United States for over 90 days.

4. On June 29, 2020, Santander sent a termination letter to American Airlines, seeking to terminate the Agreement in accordance with Section 20.4.5. American Airlines, however, disputes that a termination event has occurred, and insists that Santander continue purchasing millions of dollars of AAdvantage Miles, resulting in a substantial loss to Santander. Terminating the Agreement, as Santander is expressly authorized to do, will avoid millions of dollars in losses that Santander would otherwise incur if it were required to continue performing under the Agreement.

5. Accordingly, through this action, Santander seeks a declaratory judgment that a contractual termination event has occurred, entitling Santander to terminate the Agreement.

#### **PARTIES**

6. Santander is a *sociedade anônima* organized under the laws of the Federative Republic of Brazil, with its principal place of business at Avenida Presidente Juscelino Kubitscheck, 2041/2235, Bloco A, Vila Olimpia, São Paulo, São Paulo, 4543011, Brazil.

7. American Airlines is a corporation organized under the laws of Delaware, with its principal place of business at 1 Skyview Drive, Fort Worth, Texas 76155.

#### **JURISDICTION AND VENUE**

8. Santander brings this claim for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

9. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2), because there is complete diversity of citizenship between Santander and American Airlines, and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

10. Venue is proper in this Court under 28 U.S.C. § 1391, because the parties contractually agreed in the Agreement that state or federal court “located in the City of New York” would be the “exclusive jurisdiction . . . for the purposes of any suit, action or proceeding arising out of or relating to this Agreement.” (Ex. A § 25.9.) *See, e.g., Power Up Lending Grp., Ltd. v. Nugene Int’l, Inc.*, 2019 WL 2119844, at \*11 (E.D.N.Y. Jan. 10, 2019) (“venue is proper” in forum designated in contractual “forum selection clause”); *Textbroker Int’l, LLC v. Skupnick*, 2020 WL 71164, at \*1 (S.D.N.Y. Jan. 6, 2020) (“Venue is proper pursuant to the New York forum selection clause in the Terms of Service agreement.”).

### **SUBSTANTIVE ALLEGATIONS**

11. Co-branded credit cards are credit cards jointly sponsored by retailers and banks. Co-branded credit cards are common in the airline industry.

12. Co-branded airline credit cards are marketed to the relevant bank’s customers, who can use the credit card for purchases anywhere the relevant credit cards are accepted, and may earn travel rewards miles to exchange for flights and other products offered by airlines. The more flights the airline has to offer, the more attracted the bank’s clients will be to the co-branded credit card.

13. Generally, airlines benefit from such co-branded credit cards by attracting more customers to their loyalty programs, whereas participating banks benefit by collecting annual fees and interest from cardholders. Cardholders generally benefit by earning points or miles that can be used to purchase flights with the relevant airline.

14. An airline co-branded credit card is beneficial to cardholders and the participating bank (here, Santander) only if, among other things, the airline does what it is supposed to do—that is, to offer regular and abundant flights and ultimately engage in air travel. This is because, from the perspective of a cardholder, the primary and overriding purpose of obtaining airline loyalty rewards miles is to use them for purchasing tickets for air travel. If an airline ceases to engage in air travel, cardholders will not be willing to use the co-branded credit card, and potential cardholders will not apply for a co-branded credit card, because the loyalty rewards miles would be effectively useless.

15. If the airlines ceases to offer regular and abundant flights to multiple jurisdictions, cardholders may lose interest and may stop or reduce significantly the use of the co-branded credit card, which causes the participating bank to incur substantial losses. This is because, as here, the participating bank must purchase from the airline a minimum amount of airline rewards miles per year irrespective of whether cardholders are using the credit cards and earning rewards miles that the participating bank would otherwise post to cardholder accounts.

16. Thus, the existence of a functioning airline industry is a central assumption under which an airline co-branded credit card arrangement exists. Indeed, a central assumption of the Agreement here is that American Airlines continues to engage in air travel between the United States and Brazil.

17. American Airlines has developed and operates its AAdvantage Program, under which program participants, such as Brazilian Cardholders, can exchange AAdvantage Miles for airline tickets on American Airlines flights or certain other purchases. Under the Agreement, Santander is authorized to issue co-branded airline credit cards, jointly sponsored by American Airlines, to Brazilian Cardholders.

18. Under the Agreement, Santander must purchase from American Airlines a minimum quantity of AAdvantage Miles at an established rate per mile. (Ex. A §§ 12.1 & 13.1.) American Airlines posts such AAdvantage Miles to Brazilian Cardholder accounts to cover the AAdvantage Miles accrued from Brazilian Cardholder daily purchases. (Ex. A § 10.1.)

19. The minimum quantity of AAdvantage Miles that Santander must purchase from American Airlines increases over the term of the Agreement, from [REDACTED] AAdvantage Miles in Year 1 of the Agreement, to [REDACTED] AAdvantage Miles in Year 10 of the Agreement. (Ex. A § 13.1.) For example, in Year 4 of the Agreement—which runs from April 1, 2020 to March 31, 2021—Santander must purchase a minimum of [REDACTED] AAdvantage Miles.

20. In addition to purchasing an increasing minimum amount of AAdvantage Miles each year, the purchase price per AAdvantage Mile that Santander must pay also increases each year, from [REDACTED] per mile in Year 1 of the Agreement, to [REDACTED] per mile in Year 10 of the Agreement. (Ex. A § 12.1.) For example, in the current Year 4 of the Agreement, Santander must pay [REDACTED] per AAdvantage Mile.

21. The total dollar amount of AAdvantage Miles that Santander must purchase each year from American Airlines is referred to as the “Revenue Guarantee.” (Ex. A § 13.1.) The Revenue Guarantee ranges from [REDACTED] in Year 1 of the Agreement, to [REDACTED] in Year 10 of the Agreement. For example, in the current Year 4 of the Agreement, the total amount of the Revenue Guarantee that Santander must pay American Airlines is [REDACTED].

22. The Agreement provides that Santander may terminate the Agreement in specified circumstances. In particular, as relevant here, Section 20.4.5 provides:

If pursuant to Section 23 American delays performance or fails to perform due to a Force Majeure Event, and such delay continues for a period of ninety (90) days, then Bank may terminate this Agreement immediately by providing written notice to American.

(Ex. A § 20.4.5 (underline in original).)

Section 23, in turn, defines “Force Majeure Event” broadly to include any “delay[] or failure in [American Airlines’] performance hereunder caused by any act of God, war, strike, labor dispute, work stoppage, fire, act of government, act or attempted act of terrorism or any other cause, whether similar or dissimilar, beyond the control of that Party.” (Ex. A § 23.)

23. The World Health Organization declared COVID-19 a pandemic on March 11, 2020.<sup>1</sup> On March 13, 2020, the United States declared a national emergency in response to COVID-19.<sup>2</sup>

24. In response to the growing spread of COVID-19, the U.S. Department of State issued an unprecedented Global Level 4 Do Not Travel Advisory on March 19, 2020, “advis[ing] U.S. citizens to avoid all international travel due to the global impact of COVID-19.”<sup>3</sup>

25. On March 19, 2020, Governor Gavin Newsom of California, the most populous state in the United States, issued a state-wide shelter-in-place order. The order instructed “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operation of the federal critical infrastructure sectors” and

---

<sup>1</sup> *New ICD-10-CM Code for the 2019 Novel Coronavirus (COVID-19)*, Center for Disease Control and Prevention (April 1, 2020), available at <https://www.cdc.gov/nchs/data/icd/Announcement-New-ICD-code-for-coronavirus-3-18-2020.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *U.S. Issues Level “Do Not Travel” Advisory, Urging Citizens to Come Home*, Forbes (March 19, 2020), available at <https://www.forbes.com/sites/suzannerowankelleher/2020/03/19/us-to-issue-level-4-do-not-travel-advisory-urging-citizens-to-come-home/#4f1633dd460d>.

other sectors as designated by the State Public Health Officer.<sup>4</sup> Governor Andrew Cuomo of New York, the fourth most populous state in the U.S., issued a similar state-wide shelter-in-place order on March 20, 2020.<sup>5</sup> By April 15, 2020, nearly all states issued some form of shelter-in-place or stay-at-home order.<sup>6</sup>

26. Brazilian states began issuing shelter-in-place orders in late March 2020. For example, Brazil's most populous state, São Paulo, issued a state-wide shelter-in-place order on March 24, 2020, ordering the closure of all businesses except those offering essential services such as food, health, public safety, and urban cleaning.<sup>7</sup>

27. As COVID-19 continued to spread in Brazil, reaching more than 105,000 confirmed cases as of May 4, 2020, several Brazilian cities went beyond shelter-in-place orders and instituted total lockdowns.<sup>8</sup> São Luis, a city in the northeastern Brazilian state of Maranhão,

---

<sup>4</sup> Cal. Exec. Order N-33-20 (March, 19, 2020), available at <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

<sup>5</sup> N.Y. Exec. Order No. 202.8 (March 20, 2020), available at [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_202.8.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf).

<sup>6</sup> See *State 'Shelter-in-Place' and 'Stay-at-Home' Orders*, Finra.org, available at <https://www.finra.org/rules-guidance/key-topics/covid-19/shelter-in-place>.

<sup>7</sup> *Quarentena Começa a Valer Nesta Terça-Feira em Todo o Estado de SP*, Folha de São Paulo (March 24, 2020), available at <https://agora.folha.uol.com.br/sao-paulo/2020/03/quarentena-comeca-a-valer-nesta-terca-feira-em-todo-o-estado-de-sp.shtml> (article in Portuguese).

<sup>8</sup> *Brazilian Cities Move Toward Lockdowns as COVID-19 Crisis Intensifies*, The Associated Press (May 12, 2020), available at <https://www.cbc.ca/news/world/brazil-cities-lockdown-1.5567118>.

became the first major Brazilian city to institute such a lockdown on May 5, 2020, “forbid[ding] people from going outside except to obtain groceries, medications or cleaning supplies.”<sup>9</sup>

28. On May 24, 2020, President Trump responded to Brazil’s growing COVID-19 outbreak by issuing a Proclamation “restrict[ing] and suspend[ing] the entry into the United States, as immigrants and nonimmigrants, of all aliens who were physically present within the Federative Republic of Brazil during the 14-day period preceding their entry or attempted entry into the United States,” subject to certain limited exceptions.<sup>10</sup> This Proclamation became effective on May 26, 2020 and will remain in effect until terminated by President Trump.

29. Due to worldwide disruptions to, and unprecedented decline in demand for, air travel as a consequence of the COVID-19 pandemic, American Airlines’ last flight between Brazil and the United States was on March 29, 2020, and American Airlines has not resumed flights between the two countries for over 90 days. On June 4, 2020, American Airlines issued a press release indicating that it intends to resume travel to Brazil on August 5, 2020—which would be 129 days after American Airlines’ last flight between Brazil and the United States on March 29, 2020.<sup>11</sup>

---

<sup>9</sup> *Major Brazilian Cities Set Lockdowns as Virus Spreads*, Reuters.com (May 5, 2020), available at <https://www.reuters.com/article/us-health-coronavirus-brazil-lockdown/major-brazilian-cities-set-lockdowns-as-virus-spreads-idUSKBN22H2V3>.

<sup>10</sup> *Proclamation on Suspension of Entry of Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Novel Coronavirus*, Whitehouse.gov (May 24, 2020), available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-novel-coronavirus/>.

<sup>11</sup> *Bring on Summer: American Airlines Increases Domestic Flying for Summer Travel Season, Begins Reopening Admirals Clubs and Increases Flexibility*, American Airlines Press Release (June 4, 2020), available at <http://news.aa.com/news/news-details/2020/Bring-on->



30. In an April 30, 2020 Form 10-Q filed publicly with the United States Securities & Exchange Commission (“SEC”), American Airlines expressly identified the ongoing COVID-19 pandemic as the reason for its reduced (and in the case of Brazil, total suspension of) air travel, stating that “[a]s a result” of the COVID-19 “global health pandemic” and the “implementation of significant, government-imposed measures to prevent or reduce its spread”—including “travel restrictions, closing of borders, ‘shelter in place’ orders and business closures”—American Airlines has “experienced an unprecedented decline in the demand for air travel,” and has “taken aggressive actions to mitigate the effect of COVID-19.”<sup>12</sup> Such steps to mitigate the effects of COVID-19 included “significantly reduc[ing] our capacity (as measured by available seat miles).”<sup>13</sup> The outbreak of the COVID-19 pandemic, and the resulting government-imposed measures and unprecedented decline in demand for air travel, were “beyond the control” of American Airlines. (Ex. A § 23.)

31. In a June 12, 2020 Form 8-K filed publicly with the SEC, American Airlines reiterated that the ongoing COVID-19 pandemic has caused a “severe decline in demand for air travel,” affecting the company “to an unprecedented extent”:

The COVID-19 outbreak, along with the measures governments and private organizations worldwide have implemented in an attempt to contain the spread of this pandemic, has resulted in a severe decline in demand for air travel, which has adversely affected the Company’s business, operations and financial condition to an unprecedented extent. Measures ranging from travel restrictions, “shelter in place” and quarantine orders, limitations on public gatherings to cancellation of public events and many others have

---

Summer-American-Airlines-Increases-Domestic-Flying-for-Summer-Travel-Season-Begins-Reopening-Admirals-Clubs-and-Increases-Flexibility-OPS-DIS-06/default.aspx.

<sup>12</sup> American Airlines Form 10-Q dated April 30, 2020.

<sup>13</sup> *Id.*

resulted in a precipitous decline in demand for both domestic and international business and leisure travel.<sup>14</sup>

32. With the United States and Brazil leading the world in confirmed COVID-19 cases according to the World Health Organization's COVID-19 dashboard, as of July 10, 2020,<sup>15</sup> the effects of the COVID-19 pandemic likely will continue to have a fundamental impact on the desirability of air travel between the United States and Brazil for the foreseeable future. Among other things, expectations are for a significant decrease in the demand for air travel for an indeterminate amount of time. Even when travel restrictions, shelter-in-place and quarantine orders are lifted, demand for international air travel will likely remain significantly lower than before the onset of the COVID-19 pandemic due to, among other things, (i) a general reluctance to travel, (ii) the possibility of an actual recurrence of the pandemic, (iii) any government mandates that either impose travel restrictions or limit the number of seats that can be occupied on an aircraft to allow for social distancing, (iv) any government mandates that may discourage certain passengers from traveling, such as any imposing requirements for passengers to wear face coverings while traveling, submit to tests or examinations administered prior to entering an airport or boarding an airplane, or quarantine for at least 14 days upon arrival, and (v) the increased usage of "virtual" teleconferencing products as an alternative to face-to-face meetings.

33. Indeed, analysis by the International Air Transport Association ("IATA") indicates that "[t]he impacts of the [COVID-19] crisis on long-haul travel will be much more severe and of a longer duration than what is expected in domestic markets," that "global passenger

---

<sup>14</sup> American Airlines Form 8-K dated June 12, 2020.

<sup>15</sup> WHO Coronavirus Disease (COVID-19) Dashboard, available at <https://covid19.who.int>.

demand” in 2021 would be “24% below 2019 levels,”<sup>16</sup> and that “[i]nternational air travel may not recover [to] 2019 levels until 2023-24.”<sup>17</sup> The Organisation for Economic Co-operation and Development (“OECD”) has similarly warned that “expectations are growing that recovery to pre-crisis levels may take two years or more.”<sup>18</sup> On July 1, 2020, American Airlines issued a press release reiterating that “demand has significantly diminished due to COVID-19,” announcing that it was permanently reducing capacity between the United States and Brazil, and stating that “[i]n response to the prolonged downturn in international travel, American expects summer 2021 long-haul international capacity to be down 25% versus 2019.”<sup>19</sup>

34. On June 29, 2020, Santander sent a letter to American Airlines pursuant to Section 20.4.5 of the Agreement providing written notice that Santander was terminating the Agreement due to a Force Majeure Event. A copy of Santander’s June 29, 2020 letter is annexed hereto as Exhibit B.

35. On July 6, 2020, American Airlines responded, stating that “American disputes Santander’s right to terminate the Program Agreement pursuant to Section 20.4.5 because no termination event has occurred.”

---

<sup>16</sup> *Don’t Make A Slow Recovery More Difficult with Quarantine Measures*, IATA (May 13, 2020), <https://www.iata.org/en/pressroom/pr/2020-05-13-03/>.

<sup>17</sup> *COVID-19: Outlook For Air Travel In The Next 5 Years*, IATA (May 13, 2020), available at <https://www.iata.org/en/iata-repository/publications/economic-reports/covid-19-outlook-for-air-travel-in-the-next-5-years/>.

<sup>18</sup> *Tourism Policy Responses to the Coronavirus (COVID-19)*, OECD (June 2, 2020), available at <https://www.oecd.org/coronavirus/policy-responses/tourism-policy-responses-to-the-coronavirus-covid-19-6466aa20/>.

<sup>19</sup> *American Airlines Resets International Network for Remainder of 2020 Through Summer 2021*, American Airlines Press Release (July 1, 2020), <https://news.aa.com/news/news-details/2020/American-Airlines-Resets-International-Network-for-Remainder-of-2020-Through-Summer-2021-OPS-DIS-07/>.

36. As Santander explained in its June 29, 2020 letter, Santander will continue to “perform under the Agreement in order to cause as little disruption as possible to affected Members and Cardholders, but do so under protest,” until receiving a declaratory judgment that its termination of the Agreement is effective. (Ex. B.)

**COUNT ONE**  
**(Declaratory Judgment That the Agreement Has Been Terminated Pursuant to the Force Majeure Termination Provision in the Agreement)**

37. Santander hereby repeats and realleges the allegations set forth in Paragraphs 1-36 of this Complaint as if fully set forth herein.

38. American Airlines’ cessation of air travel between the United States and Brazil due to the COVID-19 pandemic and the resulting government-imposed measures and unprecedented decline in demand for air travel, all of which were beyond American Airlines’ control, qualifies as a “Force Majeure Event” under Section 23 of the Agreement. In particular, American Airlines’ cessation of air travel was “caused by” an “act of God,” “work stoppage,” “act of government,” or “any other cause, whether similar or dissimilar, beyond the control of [American Airlines].” (Ex. A § 23.)

39. Because American Airlines has ceased air travel between the United States and Brazil for more than 90 days due to the COVID-19 pandemic and the resulting government-imposed measures and unprecedented decline in demand for air travel, all of which were beyond American Airlines’ control, Santander may validly terminate the Agreement pursuant to Section 20.4.5.

40. American Airlines disagrees with Santander’s position that American Airlines’ cessation of air travel between the United States and Brazil for more than 90 days due to the COVID-19 pandemic constitutes a termination event under the Agreement.

41. Accordingly, there is an actual, ongoing, and justiciable controversy between Santander and American Airlines regarding whether the Agreement has been terminated pursuant to the force majeure termination provision of the Agreement (Sections 20.4.5).

42. The dispute is immediate and real because, despite Santander's termination notice, American Airlines insists that the Agreement has not been terminated and that Santander must continue to offer, market, and issue its co-branded cards and pay the more than [REDACTED] in Revenue Guarantees that would otherwise be due at the end of this contract year (plus pay hundreds of millions of dollars more in additional Revenue Guarantees that would be due if the Agreement continues until the March 2027 termination date). Indeed, American Airlines has stated that it "expects Santander" to "continue to perform under the Program Agreement" despite Santander's termination notice. (American Airlines July 6, 2020 Letter.)

43. A judicial resolution of this dispute will resolve the considerable uncertainty and controversy that currently exists between the parties with respect to whether Santander has validly terminated the Agreement.

44. Accordingly, pursuant to 28 U.S.C. § 2201, Santander is entitled to a declaratory judgment that the Agreement has been terminated effective June 29, 2020—*i.e.*, 90 days after American's last flight between the United States and Brazil—pursuant to the force majeure termination provision of the Agreement (Section 20.4.5).

**COUNT TWO**  
**(Declaratory Judgement, in the Alternative, That Further Performance of the Agreement  
By Santander is Excused Under the Common Law Frustration Purpose Doctrine)**

45. Santander hereby repeats and realleges the allegations set forth in Paragraphs 1-36 of this Complaint as if fully set forth herein.

46. Santander entered into the Agreement with American Airlines, and agreed to issue co-branded airline credit cards, on the assumption that American Airlines would continue

operating flights between the United States and Brazil. At the time the parties negotiated and entered into the Agreement, the parties did not foresee that a pandemic would disrupt all air travel worldwide and lead American Airlines to cease all air travel between the United States and Brazil.

47. American Airlines' cessation of air travel between the United States and Brazil has destroyed the underlying reason for Santander to continue performing the Agreement. Moreover, it is anticipated that when American Airlines resumes flights between the United States and Brazil, such flights will not be as attractive to customers nor as comprehensive as they were at the time that American Airlines and Santander entered into the Agreement.

48. American Airlines' cessation of air travel between the United States and Brazil has rendered the Agreement valueless to Santander. Continuing to perform the Agreement will cause Santander to incur millions of dollars in losses by purchasing AAdvantage Miles that are effectively valueless.

49. Moreover, to the extent that American Airlines resumes air travel between the United States and Brazil in some capacity, the effects of the COVID-19 pandemic likely will continue to have a fundamental impact on the desirability of air travel between the United States and Brazil for the foreseeable future. Among other things, expectations are for a significant decrease in the demand for air travel for an indeterminate amount of time. Thus, even after the COVID-19 pandemic begins to abate, Santander likely will continue to incur millions of dollars in losses by purchasing AAdvantage Miles that will be significantly less desirable to Brazilian Cardholders than before the COVID-19 pandemic. As such, Santander's performance will likely be materially more burdensome and costly than it would otherwise be if the COVID-19 pandemic had not occurred.

50. There is an actual, ongoing, and justiciable controversy between Santander and American Airlines regarding Santander's obligations, if any, to continue performing under the Agreement in light of the unforeseen COVID-19 pandemic that has led American Airlines to cease air travel between the United States and Brazil.

51. Santander's position is that American Airlines' cessation of air travel between the United States and Brazil due to the COVID-19 pandemic excuses Santander from performing under the Agreement. American Airlines has taken the opposite view.

52. The dispute is immediate and real because American Airlines insists that Santander must continue to perform under the Agreement, including by continuing to offer, market, and issue its co-branded cards and pay the more than [REDACTED] in Revenue Guarantees that would otherwise be due at the end of this contract year (plus pay hundreds of millions of dollars more in additional Revenue Guarantees that would be due if the Agreement continues until the March 2027 termination date).

53. A judicial resolution of this dispute will resolve the considerable uncertainty and controversy that currently exists between the parties with respect to whether Santander may validly terminate the Agreement, or, in the alternative, stop performing its obligations under the Agreement.

54. Accordingly, in the alternative, pursuant to 28 U.S.C. § 2201, Santander is entitled to a declaratory judgment that American Airlines' cessation of air travel between the United States and Brazil due to the unforeseen COVID-19 pandemic excuses Santander from continuing to perform under the Agreement.

## PRAYER FOR RELIEF

WHEREFORE, Santander is entitled to a judgment against American Airlines:

- a. Declaring that the Agreement has been terminated effective June 29, 2020, pursuant to the force majeure termination provision of the Agreement (Section 20.4.5), and that any final reconciliation for the Revenues Guarantee relating to Year 4 of the Agreement is to be calculated on a pro rata basis up the June 29, 2020 Termination Date.
- b. Declaring, in the alternative, that American Airlines' cessation of air travel between the United States and Brazil due to the unforeseen COVID-19 pandemic excuses Santander from continuing to perform under the Agreement.
- c. Awarding Santander its costs in this action, and reasonable attorneys' fees.
- d. Granting to Santander such other and further relief as the Court deems just and proper.

Dated: New York, New York  
July 10, 2020

Respectfully submitted,

/s/ James L. Bromley

James L. Bromley (*bromleyj@sullcrom.com*)

Jacob E. Cohen (*cohenja@sullcrom.com*)

SULLIVAN & CROMWELL LLP

125 Broad Street

New York, New York 10004-2498

Telephone: (212) 558-4000

Facsimile: (212) 558-3588

*Attorneys for Plaintiff Banco Santander (Brasil),  
S.A.*



# Exhibit A

**C O N F I D E N T I A L**

**AADVANTAGE® PROGRAM PARTICIPATION  
AGREEMENT**

**by and between**

**AMERICAN AIRLINES, INC.,**

**and**

**BANCO SANTANDER (BRASIL), S.A.**



**Table of Contents**

<b><u>Section #</u></b>		<b><u>Page #</u></b>
<b>1. Definitions</b>	.....	<b>1</b>
<b>2. Card Program Administration</b>	.....	<b>19</b>
<b>3. Approved Cards and Card Account Administration</b>	.....	<b>19</b>
3.1 Cards	.....	19
3.2 Administrator and Creditor	.....	19
3.3 Compliance and Approvals	.....	20
3.4 Credit Risk	.....	20
3.5 Changes to Pricing and Cardholder Privileges	.....	20
3.6 Impact of Changes	.....	20
3.7 Billing Statements	.....	21
3.8 Costs	.....	21
<b>4. Applications, Credit or Debit Agreements and Credit Approvals</b>	.....	<b>21</b>
4.1 Applications and Credit or Debit Agreements	.....	21
4.2 Evaluation and Response Time	.....	22
4.3 Credit Decisions; Credit Criteria	.....	22
<b>5. Exclusivity</b>	.....	<b>22</b>
5.1 American Exclusivity	.....	22
5.2 Bank Exclusivity	.....	23
5.3 Wind Down of Current Cobrand Program	.....	23
5.4 Restrictions Imposed on Third Parties	.....	23
<b>6. AADVANTAGE Program and Operations</b>	.....	<b>24</b>
6.1 Enrollment	.....	24
6.2 Membership Criteria	.....	24
6.3 Modification to AADVANTAGE Program	.....	25
6.4 Termination of AADVANTAGE Program	.....	26
6.5 Administration of AADVANTAGE Program	.....	26
6.6 Systems Document	.....	26
6.7 Account Mergers	.....	26
6.8 Other Provisions	.....	26

H

- 7. Customer Servicing, Support and Training .....26**
  - 7.1 Card Account Inquiries..... 26
  - 7.2 AADVANTAGE Program Inquiries ..... 27
  - 7.3 Customer Service ..... 27
  - 7.4 Decision Responsibilities ..... 27
  - 7.5 Telephone Customer Service ..... 27
  - 7.6 Customer Service Scripts ..... 28
  - 7.7 Bank Employees..... 28
  - 7.8 American Employees ..... 28
- 8. Bank Reporting ..... 28**
  - 8.1 Enrollment File..... 28
  - 8.2 Card Account Cancellations..... 28
  - 8.3 Service Levels ..... 28
  - 8.4 Campaign Reporting ..... 29
  - 8.5 Card Program Metrics Report ..... 29
  - 8.6 Additional Information ..... 30
  - 8.7 Accuracy of Reports ..... 30
- 9. Miles Awarded by Bank and Miles Reporting ..... 30**
  - 9.1 Miles Awarded by Bank ..... 30
  - 9.2 Base Miles ..... 30
  - 9.3 Bonus Miles ..... 30
  - 9.4 Conversion Methodology ..... 31
  - 9.5 Miles Reporting to American ..... 31
  - 9.6 Gold Elite Status Requests ..... 32
- 10. AADVANTAGE Miles Posting and American Reporting ..... 32**
  - 10.1 Posting of AADVANTAGE Miles ..... 32
  - 10.2 Additional Conditions ..... 32
  - 10.3 Customer Disputes ..... 32
  - 10.4 Accuracy of Reporting Information ..... 33
- 11. Payments, Invoicing and Taxes. .... 33**
  - 11.1 Miles Prepayments ..... 33
  - 11.2 Currency Event..... 34
  - 11.3 Miles Payments ..... 35

14

11.4	Miles Invoicing .....	35
11.5	Other Invoicing .....	35
11.6	Fee for Procedural Non-Compliance .....	35
11.7	Payments and Bank Accounts .....	36
11.8	Taxes .....	36
11.9	Reconciliation .....	38
<b>12.</b>	<b>Rate Per Mile and Interchange Decrease Adjustments .....</b>	<b>38</b>
12.1	Rate Per Base Mile and Bonus Mile .....	38
12.2	Interchange Decrease .....	39
12.3	Reversal of Adjustment .....	39
<b>13.</b>	<b>Revenue Guarantees .....</b>	<b>40</b>
13.1	Amount of Revenue Guarantee .....	40
13.2	Reconciliation and Shortfall Miles .....	40
<b>14.</b>	<b>AADVANTAGE Program Support and Bank Approvals .....</b>	<b>41</b>
14.1	Participant Support .....	41
14.2	Bank Approval Requirements .....	41
14.3	Marketing Suspension .....	42
14.4	Modification or Cancellation .....	42
14.5	Use of AADVANTAGE List .....	43
<b>15.</b>	<b>Bank Support and American Approvals .....</b>	<b>43</b>
15.1	Bank Solicitations .....	43
15.2	Bank Advertising .....	43
15.3	American Approval Requirements and Disclosures .....	44
15.4	Payment Network Incentives .....	45
15.5	AADVANTAGE Program "Gold" Elite Status .....	45
<b>16.</b>	<b>Intellectual Property .....</b>	<b>48</b>
16.1	Permission to Use American Trademarks .....	48
16.2	Permission to Use Bank Trademarks .....	50
16.3	Additional Requirements .....	50
16.4	Program Specific Marks .....	51
16.5	Changes to Intellectual Property or Brand Guidelines .....	52
16.6	Harmful Use of Trademarks; Revocation of Trademark Permission .....	52
16.7	Goodwill .....	52

fl

16.8	Combinations of Trademarks, Card Designs and Collateral.....	53
16.9	Logos on all Card Program Materials.....	53
16.10	Domain Names and URLs .....	54
16.11	Third Party Infringement.....	54
16.12	Bonus Miles Withholding.....	54
16.13	Termination Arrangements.....	54
<b>17.</b>	<b>Data Ownership, Confidentiality and Data Security.....</b>	<b>54</b>
17.1	American Data.....	55
17.2	Bank Data.....	56
17.3	Overlapping Data.....	56
17.4	Program Data .....	57
17.5	Bank Models.....	58
17.6	Specific Restrictions on Bank.....	58
17.7	Specific Restrictions on American.....	58
17.8	Privacy Policy and Notices.....	59
17.9	No Implied Rights .....	60
17.10	Bank Customer Marketing.....	60
17.11	Electronic Properties; Prohibited Internet Practices.....	61
17.12	Equitable Relief.....	61
17.13	Confidentiality.....	62
17.14	Permitted Data Uses.....	64
17.15	Data Termination Provisions .....	65
17.16	Use of AADVANTAGE List.....	65
17.17	Data Security for American Data and Program Data.....	68
17.18	Data Security for Bank Data and Program Data.....	68
17.19	Travel Agency Purchases .....	68
<b>18.</b>	<b>Representations and Warranties.....</b>	<b>68</b>
18.1	American Representations and Warranties.....	68
18.2	Bank Representations and Warranties.....	69
<b>19.</b>	<b>Indemnification; Procedures; Limitation of Liability and Damages.....</b>	<b>70</b>
19.1	Bank Indemnification.....	70
19.2	American Indemnification.....	71
19.3	Notice of Claim.....	72
19.4	Limitation of Damages .....	73

KF

19.5	Further Limitation .....	73
20.	Term, Termination .....	73
20.1	Term .....	73
20.2	[Intentionally Left Blank].....	73
20.3	Termination by American .....	73
20.4	Termination by Bank.....	75
21.	Rights Upon Termination.....	77
21.1	Joint Communication Plan .....	77
21.2	New Card Accounts .....	77
21.3	Continued Card Account Maintenance and Miles Offers.....	77
21.4	Use of Cardholder List .....	77
21.5	Rights not Exclusive .....	79
21.6	Termination Arrangements for Intellectual Property .....	79
21.7	Data Termination Provisions .....	79
21.8	Revenue Guarantee Payment.....	82
22.	Assignment; Successors and Assigns.....	83
23.	Force Majeure.....	84
24.	Notices .....	85
24.1	Standard Notice Procedure.....	85
24.2	Simplified Notice Procedure.....	85
24.3	Change of Contacts for Notice .....	85
25.	Miscellaneous.....	85
25.1	Severability .....	85
25.2	Waiver and Consent.....	85
25.3	Specific References, Liability and Relationships.....	86
25.4	No Third Party Beneficiaries; Delegation .....	86
25.5	Construction; Entire Agreement .....	86
25.6	Time is of the Essence.....	87
25.7	Captions .....	87
25.8	Amendments .....	87
25.9	Governing Law .....	87
25.10	Records; Audits .....	88
25.11	Survival .....	89

H

25.12 Counterparts .....89

Schedule 8.5	Card Program Metrics Report
Schedule 11.7.3	American Bank Account Information
Schedule 16.1(a)	American Permitted Marks
Schedule 16.2(a)	SIB Permission
Schedule 16.2(b)	Bank Permitted Marks
Schedule 16.4	Program Specific Marks
Schedule 16.10	Rights and Obligations re: URLs
Schedule 17.1	Illustrative Examples of uses of Other American Data
Schedule 17.16	Approved Vendor Minimum Undertakings
Schedule 17.17	Data Security for American Data
Schedule 17.18	Data Security for Bank Data
Schedule 21.1.1	Preapproved Notifications
Schedule 24	Notices



This AAdvantage Program Participation Agreement (this or the "Agreement"), dated December 9, 2016 (the "Effective Date") is entered into between American Airlines, Inc. ("American"), a corporation organized under the laws of the State of Delaware having its principal place of business at 4333 Amon Carter Blvd., Fort Worth, TX 76155 and Banco Santander (Brasil), S.A. (the "Bank", together with American, the "Parties" and each individually a "Party"), a *sociedade anônima* organized under the laws of the Federative Republic of Brasil having its principal place of business at Avenida Presidente Juscelino Kubitscheck, 2041 e 2235, Vila Olimpia, São Paulo, Brasil.

**RECITALS**

WHEREAS, American has developed the AADVANTAGE Program, under which Members are awarded AADVANTAGE Miles for travel on American, its airline Affiliates and certain other AADVANTAGE Participants, and for the purchase of goods or services from other AADVANTAGE Participants in association with the AADVANTAGE Program, and can obtain award travel and other AADVANTAGE Awards in exchange for AADVANTAGE Miles;

WHEREAS, Bank desires to participate in American's AADVANTAGE Program under the terms and conditions as set out forth below pursuant to which Bank will issue Cards with which Cardholders with postal mailing addresses in Brazil may accrue AADVANTAGE Miles for Net Purchase Sales made using these Cards; and

WHEREAS, American is willing to allow Bank to participate in the AADVANTAGE Program on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**1. Definitions**

Terms with their initial letters capitalized shall have the meanings ascribed to them in this Section or where they are elsewhere defined herein. The words "hereof," "herein" or "hereunder" as used in this Agreement refer to this Agreement as a whole and not to any specific portion or provision of this Agreement. The term "including" or "includes" means including without limiting the generality of any description to which such term relates. References to a Section shall include the subsections contained therein. Any reference to "days" that is not "Business Days" shall mean calendar days. The term "AADVANTAGE" may also be written as "AAdvantage" herein.

"AA Carrier" means an airline carrier within the carrier network of scheduled flights marketed (i.e., listed or held out to the public), and operated (including individual legs of a flight) under the code of American or US Airways, Inc. which currently includes (i) American, (ii) US Airways, Inc., (iii) Envoy Air, Inc., (iv) PSA Airlines, Inc., (v) Piedmont Airlines, Inc. and flights on certain other regional carriers designated by American that are operating under a trade name or logo owned by American or an Affiliate of American and that are using American's ticket stock, pursuant to a written licensing, marketing, operating or similar agreement. AA Carriers are subject to change from time to time.

**"AA Prior Transfer Notice"** shall have the meaning given that term in Section 22.2.

**"AADVANTAGE Account"** means the record created and maintained by American of a Member's AADVANTAGE Program activity, including, without limitation, the accrual and redemption of AADVANTAGE Miles by such Member.

**"AADVANTAGE Awards"** means the awards, benefits or other consideration (which may include, without limitation, air transportation, upgrades, other airline points or other travel or non-travel benefits or awards) that Members may receive from AA Carriers or AADVANTAGE Participants under the AADVANTAGE Program Rules provided wholly or in part in exchange for, or for the redemption of, accrued AADVANTAGE Miles or for other consideration.

**"AADVANTAGE List"** means American's proprietary and confidential information relating to Members that American has provided or may provide for Bank's use in accordance with the terms of this Agreement, including all interim, processed, compiled, summarized or derivative versions of the foregoing that may exist in any system, such as analysis files and reports.

**"AADVANTAGE Member"** or **"Member"** means generally, as of any date, any individual who is a member of the AADVANTAGE Program, and when referring to Members in Brazil, shall refer to those Members enrolled based on a postal mailing address in Brazil

**"AADVANTAGE Member Guide"** means American's publication available online at [www.aa.com](http://www.aa.com), as it may be modified from time to time by American in its sole discretion, or any successor publication that is made available by American to AADVANTAGE Members that includes the AADVANTAGE Program Rules.

**"AADVANTAGE Member Information"** means certain information regarding a Member obtained or assigned by American including AADVANTAGE Account Number, name, postal mail address, email address, AADVANTAGE tier status, Admirals Club membership, and any information identifying the AADVANTAGE Program including AADVANTAGE Miles

**"AADVANTAGE Mile(s)"** or **"Miles"** means the points or "Miles" that may be awarded and accrued under the AADVANTAGE Program Rules by Members for (i) travel on AA Carriers, (ii) travel on, the purchase of goods or services from, or other consideration to, AADVANTAGE Participants, or (iii) any other reason permitted by the AADVANTAGE Program Rules. AADVANTAGE Miles include, unless indicated otherwise, Base Miles and Bonus Miles.

**"AADVANTAGE Number"** means the unique AADVANTAGE Account number assigned by American to an individual who becomes a Member in the AADVANTAGE Program.

**"AADVANTAGE Participant"** means any Person who, pursuant to the AADVANTAGE Program Rules and an agreement between such Person and American or an Affiliate of American regarding such Person's participation in the AADVANTAGE Program: (i) provides goods services or other consideration in exchange for, or for the redemption of, AADVANTAGE Miles or (ii) offers

AADVANTAGE Miles in connection with the sale of its goods, services or other consideration and provides American with sufficient information so that American may post AADVANTAGE Miles to AADVANTAGE Accounts.

**"AADVANTAGE Program"** means the loyalty awards program established and governed by American, as such program may be in effect from time to time, pursuant to which currently, among other things, (i) Members may receive AADVANTAGE Miles for travel on American and certain AA Carriers, oneworld member carriers or certain codeshare partner carriers, or for the use or purchase of goods or services offered by, an AADVANTAGE Participant, or for any reason permitted by American, (ii) American posts AADVANTAGE Miles to Members' AADVANTAGE Accounts, and (iii) AADVANTAGE Miles may be redeemed or exchanged for AADVANTAGE Awards.

**"AAAdvantage Program Assignee"** shall have the meaning given that term in Section 22.2.

**"AAAdvantage Program Change"** shall have the meaning given that term in Section 6.3.

**"AADVANTAGE Program Database"** means the databases of American and its Affiliates including underlying, supporting or component systems, which are the databases from which the AADVANTAGE List is derived, and including the data and information related to the AADVANTAGE Program, included therein, including (i) AADVANTAGE Member Information and AADVANTAGE Awards information, (ii) the fact that a particular individual is a Member, (iii) the results and output from analysis of the information originating from the AADVANTAGE Program Database, and (iv) any information found in any successors to any such systems, which contains information relating to the AADVANTAGE Program or AADVANTAGE Members.

**"AAAdvantage Program Negative Impact"** shall have the meaning given that term in Section 6.3.

**"AADVANTAGE Program Rules"** means the rules, regulations, tariffs, terms and conditions established or modified, from time to time, by American, in its sole discretion, which govern the AADVANTAGE Program.

**"AADVANTAGE Termination Notice"** shall have the meaning given that term in Section 6.4.

**"AADVANTAGE Transaction Information"** means any information concerning the accrual or award of AADVANTAGE Miles or other benefits provided by American or its Affiliates, other than Cardholder purchase transaction data or charges incurred with the Card or Card Account that is customarily retained by an issuer of a credit card provided that any American Identifiers included therein continue to be American Data.

**"AA PNR Data"** means information contained within or associated with a passenger name record for a past, current or future itinerary that includes at least one flight operated or marketed by American, but for purposes of this definition

excluding the passenger's name, address and contact information to the extent such information is separately obtained by Bank from its business operations.

**"AA TCN Data"** means ticket information relating to flights either operated or marketed by American, including any information associated with a ticket control number for a flight operated or marketed by American, but for purposes of this definition excluding the passenger's name, address and contact information to the extent such information is separately obtained by Bank from its business operations.

**"Accelerated Bonus Miles"** shall have the meaning given that term in Section 9.3.4.

**"Actual Monthly Postings"** shall have the meaning given that term in Section 11.1.2.

**"Affiliate"** means, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under common control with such Person. For purposes of this definition, "control" (including, without limitation, "controlled by" and "under common control with") means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or by contract or otherwise.

**"Agreement"** shall have the meaning given that term in the preamble of this Agreement.

**"American"** shall have the meaning given that term in the preamble of this Agreement.

**"American Airlines Air Transportation Card"** means the current or any successor Bank Card identified as an American Airlines charge or credit card or a Universal Air Travel Plan card (or any charge account or credit account identified as an American Airlines charge or credit account or a Universal Air Travel Plan, whether or not associated with any such card) created, approved or issued by or on behalf of American or an Affiliate of American, or by any Person pursuant to any agreement with American, intended for use to purchase air transportation on American or other airlines or travel-related services.

**"American Brand Guidelines"** means the Brand Guidelines of American that are applicable to the use of American Permitted Marks which American may change from time to time in American's sole discretion. The current American Brand Guidelines are available to Bank at <https://brand.aa.com> website.

**"American Data"** means all data or information, in any form or format, including interim, Processed, compiled, summarized, or derivative versions of such data or information, that may exist in any system, database, or record that (i) is provided by or on behalf of American or its customers to Bank in connection with the relationship or arrangements established by this Agreement, (ii) is obtained in connection with the relationship or arrangements established by this Agreement, where such data or information identifies American or its Affiliates or their products or services, or identifies that an individual or legal entity or group of individuals are customers of American or its Affiliates, or (iii) is composed of

reports or analyses based solely on any of the data or information described in items (i) or (ii). Specific examples of American Data include the following to the extent that they meet the criteria in items (i), (ii) or (iii): American Identifiers, AADVANTAGE Account information, AADVANTAGE Awards information, AADVANTAGE Miles information, AADVANTAGE Program information, AADVANTAGE Transaction Information, the AADVANTAGE Program Database, AADVANTAGE Member Information, AADVANTAGE List information, Incremental Data, Current Cobrand List, AA TCN Data, AA PNR Data and American Transaction Pricing Details. Any successors, equivalents, compilations or derivatives of the foregoing, whether now known or hereafter devised, and in any medium or format, are also American Data. For example, copying or tracking of any portion of American Data to create a separate set of information or database constitutes a derivative and is within the definition of American Data. If it is unclear to Bank whether any particular information constitutes American Data and is subject to this definition or to any exceptions to the definition set forth in this Agreement, such information will be deemed to be American Data under this definition and not be subject to any such exception until such matter is resolved. American shall work with Bank in good faith to resolve such uncertainties. Notwithstanding the foregoing, the Cardholder List and Cardholder Identity does not constitute American Data and constitutes Program Data.

**"American Identifiers"** means any information or indicator that identifies and relates solely to American or its Affiliates or a product or service of American or its Affiliates (e.g., AADVANTAGE or Admirals Club® membership number or a designation of a passenger as an "EXP" or "Executive Platinum" member of the AADVANTAGE program) or a person or group of people as being customers of American or its Affiliates and any derivatives of such data (e.g., converting an AADVANTAGE Number or EXP status to a code or number that identifies an individual as an AADVANTAGE member or Executive Platinum level member). If American Identifiers are provided, obtained, developed, produced or Processed by Bank or Bank systems in connection with the relationship or arrangements established by this Agreement then those American Identifiers are a subcategory of American Data and if not, then they are a subcategory of Other American Data.

**"American Indemnified Parties"** shall have the meaning given that term in Section 19.1.

**"American Permitted Marks"** means those Trademarks of American set forth on Schedule 16.1(a).

**"American's Conditions of Carriage"** means the contract for transportation between an AA Carrier and each customer traveling on such AA Carrier as may be amended from time to time. International travel is regulated by the Warsaw Convention, as amended, or the Montreal Convention of 1999, as applicable, and by tariffs on file with the U.S. Department of Transportation and the country of origin, transfer, connection or destination.

**"American Transaction Pricing Details"** means, with respect to the purchase of any products or services of American or its Affiliates, the Transaction Pricing Details including any flight information (e.g., O/D, class of service, flight number),

information identifying the specific American product or service (e.g., in-flight Wi-Fi, in-flight movie) obtained in connection with the transaction, and any aggregated or compiled information based on the foregoing (e.g., the number of times an individual has purchased American in-flight Wi-Fi, the aggregate number of individuals purchasing American in-flight Wi-Fi).

**"Annual Fee"** means the fee Bank assesses annually on Cardholders to open or renew a Card Account.

**"Annual Spend Status Award"** shall have the meaning given that term in Section 15.5.2(ii).

**"Applicable Law"** means all applicable laws of any jurisdiction, including, without limitation, banking laws and regulations, consumer credit laws, data privacy laws, securities laws, tax laws, tariff and trade laws, ordinances, judgments, decrees, injunctions, writs and orders or like actions of any Competent Authority and the rules, regulations, orders, interpretations, licenses and permits of any Competent Authority, including Data Laws.

**"Application"** means the form of Card enrollment application for a Card Account.

**"Approved URLs"** shall have the meaning given that term in Schedule 16.10.

**"Approved URLs List"** shall have the meaning given that term in Schedule 16.10.

**"Approved Vendor"** has the meaning given that term in Section 17.16.2.

**"Authorized User"** means a person who is authorized by a Cardholder where permitted by the Credit Agreement to use a Card under the same Card Account.

**"Average Interchange Rate"** means, the average interchange fee charged by each Payment Network in Brazil applied to the consumer charges cleared through the Payment Networks. Where the Average Interchange Rate is determined for the Card portfolio, the calculation shall be the weighted average based on the Net Purchase Sales attributable to the Card products attributable to the specific Payment Networks. Debit Cards are excluded.

**"Bank"** shall have the meaning given that term in the preamble to this Agreement.

**"Bank Brand Guidelines"** mean the Brand Guidelines of Bank that are applicable to the use of Bank Permitted Marks which Bank may change from time to time in Bank's sole discretion. The current Bank Brand Guidelines shall be provided to American within sixty (60) of the Effective Date.

**"Bank Card"** means a charge card, Credit Card or Debit Card or similar payment device.

**"Bank Customer Database"** means the database maintained by Bank that contains information relating to Bank's customers, including the Cardholders to the extent such Cardholders are also customers of Bank's other products or

services, but excluding the Cardholder List, Cardholder Identity or American Identifiers.

**"Bank Data"** means all data or information, in any form or format, including interim, Processed, compiled, summarized, or derivative versions of such data or information that may exist in any system, database, or record that (i) is provided by or on behalf of Bank or its customers (other than in their capacity as Cardholders) to American in connection with the relationship or arrangements established by this Agreement, or (ii) is obtained in connection with the relationship or arrangements established by this Agreement, where such data or information identifies Bank or its Affiliates or their products or services (other than the Card), or identifies that an individual or legal entity or group of individuals are customers of Bank or its Affiliates (other than in connection with the Card) (iii) is composed of reports and analyses based solely on any of the data or information described in items (i) or (ii). Specific examples of Bank Data include the following to the extent that they meet the criteria in items (i), (ii) or (iii): the Bank Customer Database, Purchase Data for Bank Cards other than for the Cards, Transaction Pricing Details for any Bank products or services other than for the Cards, and Bank Identifiers. Any successors, equivalents, compilations or derivatives of the foregoing, whether now known or hereafter devised, and in any medium or format, are also Bank Data. For example, copying or tracking of any portion of Bank Data to create a separate set of information or database constitutes a derivative and is within the definition of Bank Data. If it is unclear to American whether any particular information constitutes Bank Data and is subject to this definition or to any exceptions to the definition set forth in this Agreement, such information will be deemed to be Bank Data under this definition and not be subject to any such exception until such matter is resolved. Bank shall work with American in good faith to resolve such uncertainties. Notwithstanding the foregoing, the Cardholder List, Cardholder Identity and Card Purchase Data are not Bank Data and shall constitute Program Data.

**"Bank Identifiers"** means any information or indicator that identifies and relates solely to Bank or a product or service of Bank or a person or group of people as being customers of Bank and any derivatives of such data. If Bank Identifiers are provided, obtained, developed, produced or Processed by American or American systems in connection with the relationship or arrangements established by this Agreement then those Bank Identifiers are a subcategory of Bank Data and if not, then they are a subcategory of Other Bank Data.

**"Bank Indemnified Parties"** shall have the meaning given that term in Section 19.2.

**"Bank Models"** means any algorithms and models used or developed by Bank for use with data (e.g., Program Data), but excluding the results and output of the Bank Models.

**"Bank Permitted Marks"** means those Trademarks of SIB used by Bank and included within the scope of the SIB Permission, as set forth on Schedule 16.2 (b).

**"Bank Points Program"** means Banks loyalty program where the loyalty currency generated by Bank is earned in connection with the use of Bank Cards issued by Bank or its Affiliates.

**"Bank Prior Transfer Notice"** shall have the meaning given that term in Section 22.3.

**"Bank Reports"** means each of the data reports and information contained therein required to be delivered by Bank pursuant to this Agreement, including pursuant to Section 8 and Section 9, which Bank Reports will contain such information, and will follow such procedures, as set forth therein and as American reasonably requires.

**"Bank Taxes"** shall have the meaning given that term in Section 11.8.

**"Base Miles"** means the base AADVANTAGE Miles to be offered and awarded by Bank to a Cardholder as referenced in Section 9.2 and excluding Bonus Miles.

**"Billing Period"** means the number of consecutive calendar days designated by Bank for which Bank will invoice a Cardholder for purchases of goods and services incurred by such Cardholder, which period is typically a calendar month.

**"Bonus Miles"** means AADVANTAGE Miles offered by Bank in addition to Base Miles, such as Enrollment Bonus Miles, or Promotional Miles where American has provided its prior written consent, as referenced in Section 9.3.

**"Brand Guidelines"** means any usage instructions, graphic standards, formats, fonts, specifications and similar criteria or directions by a Trademark owner regarding the correct use and presentation of a Trademark, as may be updated from time to time by the Trademark owner.

**"Brazil"** means the Republica Federativa do Brasil.

**"Business Day"** means any day other than a Saturday, Sunday or other day on which banks are required or authorized to be closed in Fort Worth, Texas, Dallas, Texas, or Brazil.

**"Card"** means (i) a Bank Card that is issued by Bank to individuals based on their postal mailing addresses in Brazil in accordance with the terms of this Agreement, the use of which may allow the authorized Cardholder(s) to earn AADVANTAGE Miles pursuant to the terms of this Agreement and (ii) a Commercial Card.

**"Card Account"** means (i) a Credit Card or Debit Card account authorized, established, and maintained by Bank in accordance with the terms of this Agreement for an individual or with respect to a Commercial Card, for the legal entity that is the employer of the individual cardholder, in connection with one or more Cards issued by Bank in accordance with this Agreement, and (ii) the record maintained by Bank of credit or charge activity with respect to any Card. Authorized Cardholders who have opened a Card Account may earn AADVANTAGE Miles for certain credit and charge activities in accordance with the terms of this Agreement.



**"Card Account Change"** shall have the meaning given that term in Section 3.5.

**"Card Account Negative Impact"** shall have the meaning given that term in Section 3.6.

**"Card Assignee"** shall have the meaning given that term in Section 22.3.

**"Card Designs"** shall have the meaning given that term in Section 16.8.2.

**"Cardholder"** means an individual, who is a Member with a postal mailing address in Brazil and who (i) is obligated under a Credit Agreement with Bank with respect to a Card issued and a Card Account opened by Bank, or (ii) with respect to a Commercial Card, is an employee of the legal entity that is obligated jointly or severally under a Credit Agreement with Bank with respect to a Card issued and Card Account opened by Bank.

**"Cardholder Identity"** means the fact that an individual is or was a Cardholder or an Authorized User.

**"Cardholder List"** means the names, postal mailing addresses, e-mail addresses, other electronic address, where applicable, and phone numbers of Cardholders, including any individual Cardholder.

**"Card Program"** means the card program established pursuant to the AADVANTAGE Program and this Agreement whereby American authorizes Bank to (i) participate as an AADVANTAGE Participant (ii) issue Cards to Members and establish Card Accounts for Cardholders in Brazil and (iii) award AADVANTAGE Miles in connection with the use of the Cards, all in accordance with the terms of this Agreement.

**"Card Program Metrics Report"** shall have the meaning given that term in Section 8.5

**"Card Program Performance Report"** shall have the meaning given that term in Section 2

**"Cardholder Privileges"** means any enhancements, benefits, goods or services offered to a Cardholder in connection with a Bank Card.

**"Cessation Notice"** shall have the meaning given that term in Section 11.2.1(ii)(c).

**"Commercial Card"** means a Credit Card that is issued by Bank to an individual with postal mailing addresses in Brazil in accordance with the terms of this Agreement, where such individual is an employee of a Permitted Commercial Entity, and the Bank Card is to be used for the commercial activity on behalf of such Permitted Commercial Entity, and the use of which may allow the individuals acting as authorized Cardholder(s) of such Commercial Card to earn AADVANTAGE Miles pursuant to the terms of this Agreement. The Permitted Commercial Entity shall designate the employees to whom the Commercial Card shall be issued. Notwithstanding the fact that a Commercial Card is issued to the individual, the Card Account may be in the name of the legal entity.

**"Competent Authority"** means any domestic or foreign national, federal, state, county, local, regulatory or municipal government body, bureau, commission, board, board of arbitration, instrumentality, authority, agency, court, department, inspector, minister, ministry, self-regulatory organization, official or public or statutory Person (whether autonomous or not) having jurisdiction over this Agreement, a Party to this Agreement or any of its activities contemplated pursuant to this Agreement.

**"Confidential Information"** has the meaning given that term in Section 17.13.1.

**"Contract Year"** means each twelve (12) month period during the Term starting from the first day of the month in which the Launch Date occurs. By way of illustration, if the Launch Date were to occur December 10, 2016, "Contract Year 1" or the "first Contract Year" would commence on December 1, 2016, and each Contract Year thereafter would commence on December 1 of the corresponding year.

**"Contracting Party"** shall have the meaning given that term in Section 16.3.4.

**"Conversion Methodology"** shall have the meaning given that term in Section 9.4.

**"Conversion Ratio"** means the rate of exchange on the closing date of the Card's Billing Period for the conversion of Reais to Dollars as applied by Bank to its other Credit Card and commercial/corporate card products issued by Bank, as applicable.

**"Credit Card"** means a general purpose consumer open end credit card, regardless of form factor, and including the underlying card account, with which the cardholder or authorized user may purchase goods and services, obtain cash advances or convenience checks, commonly known as a credit or charge card and including a corporate/commercial card; provided that the term does not include: (i) any gift card; (ii) any stored value card; (iii) a registered Bank Card platform in which a cardholder can register Bank Cards, the card account or other form of payment, and in which a third party other than a card issuer reads the Bank Card transaction files from participating merchants and awards AAdvantage Miles in connection with the transactions; or (iv) any other form of payment that is not a general purpose credit card commonly known as a credit or charge card.

**"Credit or Debit Agreement"** means the credit or debit agreement entered into between an individual or individuals and Bank or in the case of the Commercial Card, between a Permitted Commercial Entity or individual(s) and Bank, in each case which governs Card Accounts.

**"Cross-Reference Number"** means a unique alpha-numeric identifier or Participant Customer Account Number ("PCAN" number) assigned by Bank that can be used by American to cross-reference a Card or Cardholder with an AADVANTAGE Account.

**"Currency Event"** shall mean where it becomes commercially impractical or impossible for American or Bank to readily convert Reais to Dollars and

repatriate Dollars to the United States under terms and conditions at least as favorable as those currently available to American in Brazil (including the ability to avoid or minimize any exchange loss) or where a Competent Authority announces a policy or releases economic information (e.g., crisis of Dollar reserves at Central Bank) from which it is evident that any such activities described above will become commercially impractical or impossible. Further requirements for Bank to be deemed to have experienced a Currency Event include that (i) Bank has been paying American using American's account in the United States during the past consecutive three (3) months, and (ii) Bank is unable to make payment to American's account in Brazil.

**"Currency Event Notice"** shall have the meaning given that term in Section 11.2.1(i).

**"Current Cobrand End Date"** shall have the meaning given that term in Section 5.3.

**"Current Cobrand List"** means American's proprietary and confidential information relating to the then current cardholders of American's cobranding Credit Card under the AAdvantage Program in Brazil, which Credit Card is subject to wind down as described in Section 5.3. The Current Cobrand List does not constitute part of the Cardholder List, however, after the Solicitation using the Current Cobrand List, the relevant information of AAdvantage Members who become Cardholders will be part of the Cardholder List and any information surrounding AAdvantage Members who do not become Cardholders will be Incremental Data.

**"Data Law"** means, as in effect from time to time, any law, rule, regulation, declaration, decree, directive, statute or other enactment, order, mandate or resolution, which is applicable to either Bank or American, issued or enacted by any domestic or foreign, supra-national, national, state, county, municipal, local, territorial or other government or bureau, court, commission, board, authority, or agency, anywhere in the world, relating to data security, data protection and/or privacy.

**"Data Processor"** means a third party data processor contracted by Bank or American, as the case may be.

**"Debit Card"** means a general purpose consumer payment card, regardless of form factor, and including the underlying card account, with which the cardholder or authorized user may purchase goods and services, and where the amount of the purchase is deducted directly from the consumer's checking or savings account to pay for a purchase, and no extension of credit is offered.

**"Defensive Registration"** shall have the meaning given that term in Schedule 16.10.

**"Diio"** means Diio LLC or any successor.

**"Disclosing Party"** has the meaning given that term in Section 17.13.1.1(i).

**"Dollar"** "U.S.\$" and "\$" means United States Dollars.

**"Effective Date"** shall have the meaning given that term in the preamble of this Agreement.

**"Electronic Property"** means (i) the Party's main web site (for American this is the site located at the URL www.aa.com) and any other web site controlled by such Party or its Affiliates, (ii) the mobile device apps of the Party or its Affiliates, (iii) any other sites, apps, kiosks or other properties for consumer interaction that are owned or controlled by the Party or its Affiliates, including emails with linked content and mini-sites, and (iv) versions and successors of the foregoing, any form or format now known or later developed.

**"Elite Enrollment Period End Date"** shall have the meaning given that term in Section 15.5.1(i)(a).

**"Elite Enrollment Period Start Date"** shall have the meaning given that term in Section 15.5.2(ii)(a)

**"Enrollment Bonus Miles"** shall have the meaning given that term under Section 9.3.1

**"Force Majeure Event"** shall have the meaning given that term under Section 23.

**"Government Approvals"** means any and all governmental authorizations, licenses, approvals, registrations, permits, filings and other similar matters.

**"Granting Party"** shall mean each of American, in its capacity as grantor of the permission to use the American Permitted Marks listed on Schedule 16.1(a), and Bank, in its capacity as grantor of the permission to use the Bank Permitted Marks listed on Schedule 16.2(b).

**"Income Taxes"** means all U.S. (federal or state) or non-U.S. taxes imposed on any measure of "income" whether gross or net, including withholding taxes at source, as defined in the relevant tax code of the United States, Brazil or other jurisdiction or any political subdivision thereof, including all interest and penalties, which may not be expressly stated upon assessment or settlement in the event of a tax audit.

**"Incremental Data"** shall mean (i) any data resulting from Bank's or the Approved Vendors' access to the AADVANTAGE List, Current Cobrand List or campaigns if it relates to an individual or legal entity (A) who fails to qualify for the Card or the Card Program, (B) who has opted-out of a marketing campaign for Cards, or (C) who has otherwise failed to complete the application process (even if Bank has a separate relationship with the individual), and (ii) any interim, processed, compiled, summarized and derivative versions of data described in clause (i).

**"Intellectual Property"** means copyrights, Trademarks, patents, trade secrets, domain names, URLs and other forms of proprietary right anywhere in the world.

**"Interchange Decrease"** means any regulatory or market place change that causes a decrease in the Average Interchange Rate.

**"Joint Enforcements"** shall have the meaning given that term in Section 16.11.

**"Launch Date"** shall have the meaning given that term in Section 3.1.

**"Losses"** shall have the meaning given that term in Section 19.1.

**"Loyalty Program"** means a frequent flyer, frequent customer or other customer loyalty recognition program.

**"Material Adverse Change"** means (i) for purposes of Section 6.3, a change that is likely to result in a material adverse effect on the Cardholder's loyalty rewards under the AAdvantage Program or the value of such awards, and (ii) for purposes of Section 3.5 means a change that is likely to result in a material adverse effect on new Cardholder acquisitions, Cardholder retention or Miles earned by Cardholders.

**"Market Share"** means available seats on flights operated by American between Brazil and the United States divided by the sum of available seats on Delta, United and American between Brazil and the United States as reported by Diio.

**"Mileage Purchases"** means the total number of Base Miles and Accelerated Bonus Miles reported by Bank in accordance with Section 9.5 provided, however, that Mileage Purchases shall exclude any (i) Base Miles funded by American or any third party, (ii) Promotional Bonus Miles, (iii) Enrollment Bonus Miles and (iv) double Miles on American purchases.

**"Miles"** shall have the meaning given in the defined term "AADVANTAGE Miles."

**"Net Purchase Sales"** means, with respect to any particular period, the total value in Dollars of purchases of goods and services charged to a Card Account through the use of the Card or Card Account and billed by Bank to such Cardholder's Card Account (excluding cash advances, late fees, the Annual Fee and finance charges) reduced by credits related to such billings for refunds, merchandise returns, disputed charges and fraudulent charges. When determining Net Purchase Sales, Bank shall use the Conversion Methodology to calculate the Dollar value of purchases in Reais.

**"Network Rules"** means, with respect to a Party, the applicable bylaws, rules, regulations, orders and interpretations, as in effect from time to time, issued by Visa, MasterCard, American Express and any other Payment Network in which the Cards participate that are then binding on such Party with respect to (i) the Card Program, and (ii) the performance of such Party's obligations hereunder.

**"No Miles Date"** shall have the meaning given that term in Section 11.2.1(ii)(c).

**"Other American Data"** means any data or other information from any source that is not provided, obtained, developed, produced or Processed by Bank or Bank systems in connection with the relationship or arrangements established by this Agreement (and thus does not fall within the definition of American Data) but

that does identify or can be used to identify American or its Affiliates, American's or its Affiliates' products and services, or a person (or a computer or device of such person) as a customer of American or its Affiliates. Examples of Other American Data include (i) an Internet tracking device, such as a cookie or pixel, that is dropped onto a passenger's computer after visiting AA.com would be Other American Data if Processing of such cookies is not the subject of this Agreement and (ii) American Transaction Pricing Details using one of Bank's proprietary Bank Cards other than the Card.

**"Other Bank Data"** means any data or other information from any source that is not provided, obtained, developed, produced or Processed by American or American systems in connection with the relationship or arrangements established by this Agreement (and thus does not fall within the definition of Bank Data) but that does identify or can be used to identify Bank, Banks's products and services, or a person (or a computer or device of such person) as a Bank customer. For example, an Internet tracking device, such as a cookie or pixel, that is dropped onto a Bank customer's computer after visiting www.santander.com.br would be Other Bank Data if Processing of such cookies is not the subject of this Agreement.

**"Other Taxes"** means all taxes, assessments, fees, levies, imposts, duties or other charges of a similar nature based upon assets, capital, property or payroll, however denominated, including, without limitation, any franchise taxes or fees and payroll, employment, fringe benefit or social security taxes or fees now existing or which may hereafter be imposed by any Competent Authority, including interest and penalties, which may not be expressly stated upon assessment or settlement, in the event of a tax audit.

**"Overlapping Data"** shall have the meaning given that term in Section 17.3.1.

**"Party"** shall have the meaning given that term in the preamble of this Agreement.

**"Payment Network"** means any network through which payment for purchases of goods and services can be made by a holder of a Card and billed to the underlying Card Account, and in respect of which an interchange fee, or settlement fee or similar form of remuneration is charged by the network.

**"Payment Network Incentives"** means any assets or incentive support or consideration (including but not limited to physical or marketing assets, funds, financial subsidies, discounts, expense offsets, "soft dollar" support or marketing support or analytical/ advisory support), or other similar assets or incentive support or consideration that has or will be made available by a Payment Network to Bank where the determination of such support or consideration takes into account Cards that are issued under the Card Program, even where other business of such Party is also taken into account.

**"Permitted American Data Use"** has the meaning in Section 17.14.2.

**"Permitted Bank Data Use"** has the meaning in Section 17.14.1.

14

**“Permitted Commercial Entity”** means any corporation, partnership, association, joint stock company, non-profit corporation or any other form of business organization through which a Person may conduct business, where in each case such entity has a postal mailing address in Brazil.

**“Permitted Marks”** means the American Permitted Marks or the Bank Permitted Marks, collectively or as the case may be.

**“Person”** means any individual, corporation, company, partnership, joint venture, association, joint stock company, trust, entity, branch office, unincorporated organization, government or any group or political subdivisions, other entity or Competent Authority.

**“Personal Information”** shall mean information that identifies or could be used to identify an individual natural person.

**“Preapproved Notifications”** shall have the meaning given that term in Section 21.1.1.

**“Pre-Spend Status Award”** shall have the meaning given that term in Section 15.5.1(i).

**“Pre-Spend Status Award Process”** shall have the meaning given that term in Section 15.5.1(i)(b).

**“Pricing”** means the Annual Fee, annual percentage rates, variable rates, grace period for charges, minimum finance charge, method of computing the balance for purchases, late payment fee, non-sufficient funds fee, cash advance transaction fee, over the credit limit fee, foreign currency conversion fee, and any other income and service charges applied to Cardholders and related to the Cards or Card Accounts.

**“Primary Domains”** shall have the meaning given that term in Schedule 16.10.

**“Procedural Non-Compliance”** shall have the meaning given that term in Section 11.6(d).

**“Process”** or **“Processing”** means, with respect to data or information, to collect, access, use, process, modify, copy, edit, analyze, disclose, transmit, transfer, sell, rent, store, reproduce, display, reverse engineer, re-identify or retain or destroy such data or information in any form. For the avoidance of doubt, “Process” includes the compilation, combination or correlation of American Data, Program Data or Bank Data (as applicable) with information from other sources and the application of algorithmic analysis to create new or derivative data sets from the American Data, Program Data or Bank Data.

**“Program Data”** means (i) the Cardholder List, (ii) the Cardholder Identity, (iii) Purchase Data and any other data or information collected by Bank in connection with Cardholders, Cards, Card Accounts or Card Program including transaction spend category (i.e., “coffee”, “restaurant”, “hotel”), (iv) reporting provided by the Bank to American pursuant to Bank’s reporting obligations set forth in this

Agreement, (v) those Bank Models and output that are specified to be Program Data in this Agreement or Section 17, and (v) any other data or information that the Parties mutually agree is Program Data, but in all cases excluding any American Data or Bank Data.

**"Program Specific Mark"** means any trademark, trade name, service mark, logo, symbol, image, trade dress, domain name or URL that is mutually agreed by American and Bank to be used or developed for the Card Program. Once developed or used, any Program Specific Mark shall be listed and attached as Schedule 16.4.

**"Program Specific URL"** is defined in Schedule 16.10.

**"Promotional Bonus Miles"** shall have the meaning given that term under Section 9.3.2

**"PST Code"** means the code assigned by American to the category of Mile to be reported by Bank.

**"Purchase Data"** means, with respect to any Bank Card transaction, (i) the cardholder Personal Information, (ii) the Bank Card issuer identity (e.g., Santander) and type of card (e.g., Cards, the fact that the Bank Card used was a Card), (iii) the Bank Card number, CVV code, and expiration date, (iv) the merchant category code, and (v) the Transaction Total Amount for such transaction.

**"Reais"** means the Brazilian reais, the official currency of Brazil.

**"Receiving Party"** has the meaning given that term in Section 17.13.1.1(i).

**"Remediation Efforts"** means, with respect to a Security Incident, activities designed to remedy a Security Incident which may be required by an applicable Data Law or by a Party's policy or procedures, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident. Remediation Efforts may include: (i) development and delivery of legal notices to affected individuals or other third parties; (ii) establishment and operation of toll-free telephone numbers (or, where toll-free telephone numbers are not available, dedicated telephone numbers) for affected individuals to receive specific information and assistance; (iii) procurement of credit monitoring, credit or identity repair services and identity theft insurance from third parties that provide such services for affected individuals; (iv) provision of identity theft insurance for affected individuals; (v) cooperation with and response to regulatory, government and/or law enforcement inquiries and other similar actions; (vi) undertaking of investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics; (vii) public relations and other crisis management services; and (viii) cooperation with and response to litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each case of examples (i) through (vii), payment of legal costs, disbursements, fines, settlements and damages.



**"Renewal Status Award"** shall have the meaning given that term in Section 15.5.2(iii).

**"Representative"** means the employees, officers, directors, representatives, agents, third-party service providers and advisors including its accountants, consultants, independent auditors or attorneys of any Person.

**"Revenue Guarantee"** shall mean the total minimum Mileage Purchases Bank agrees to purchase from and pay to American during a corresponding measurement period as set forth in Section 13.1.

**"Schedule"** means the schedules expressly referenced and attached to this Participation Agreement, which Schedules shall form a part of this Agreement.

**"Security Incident"** means with respect to any American Data or Program Data that is Processed by Bank or Bank employees, agents or contractors or any Bank Data or Program Data that is Processed by American or American employees, agents or contractors: (i) the loss or misuse (by any means) of such American Data, Program Data or Bank Data; (ii) the inadvertent, unauthorized, and/or unlawful Processing, corruption, sale, or rental of such American Data, Program Data or Bank Data; (iii) any attempted or confirmed act or omission that would result in any of the events described in clause (i) or (ii); or (iv) a material failure to comply with the Security Requirements.

**"Security Policies"** means statements of direction for Security Requirements and mandating compliance with applicable Data Laws. Typically, Security Policies are high level instructions to management on how an organization is to be run with respect to Security Requirements.

**"Security Procedures"** means statements of the step-by-step actions taken to achieve and maintain compliance with Security Requirements.

**"Security Requirements"** applicable to each party is defined in the Data Security Attachment applicable to such party. Schedule 17.17 sets the Data Security Requirements applicable to Bank for American Data and Program Data and Schedule 17.18 sets the Data Security Requirements applicable to American for Bank Data and Program Data.

**"Security Technical Controls"** means any specific hardware, software or administrative mechanisms necessary to enforce the Security Requirements. Security Technical Controls specify technologies, methodologies, implementation procedures, and other detailed factors or other processes to be used to implement and maintain Security Policy elements relevant to specific groups, individuals, or technologies.

**"Shortfall Miles"** shall have the meaning given that term in Section 13.2.

**"SIB"** shall have the meaning given that term in Section 16.2

**"SIB Consent"** shall have the meaning given that term in Section 16.2.

**"Significant Event"** shall have the meaning given that term in Section 14.3.

**"Solicitation"** means any Application, offer or invitation, made by any means by Bank, to any individual or Permitted Commercial Entity to establish a Card Account or upgrade an existing Card Account.

**"Status Bounty"** shall have the meaning given that term in Section 15.5.4.

**"Taxes"** means any and all exactions by a Competent Authority based on the presence, activities, or business of a party, including, without limitation, Income Taxes, Transactional Taxes, and Other Taxes, each as defined herein.

**"Term"** means the period starting on the Effective Date and expiring on the last day of the 10<sup>th</sup> (tenth) Contract Year unless this Agreement is terminated earlier, or renewed for a longer period, as provided herein.

**"Termination Date"** means the earlier of (i) the day this Agreement terminates pursuant to the terms hereof or (ii) the day this Agreement expires.

**"Trademark(s)"** means a trademark, trade name, service mark, logo, trade dress, internet domain name, corporate name, social media name, or other source indicator or proprietary designation, whether registered or unregistered

**"Transaction Pricing Details"** means with respect to any individual transaction involving the use of a Bank Card, the isolated pricing component amounts (e.g., base prices, taxes, fees and discounts) but excluding the Transaction Total Amount.

**"Transactional Tax Discussion Period"** shall have the meaning given that term in Section 11.8.4.

**"Transactional Tax Increase"** shall have the meaning given that term in Section 11.8.4.

**"Transactional Tax Notice"** shall have the meaning given that term in Section 11.8.4.

**"Transactional Taxes"** means all taxes, assessments, fees, levies, imposts, duties, stamp taxes, transaction taxes, documentary taxes or other charges of a similar nature, including, without limitation, value added tax, sales tax, excise tax (including the U.S. Federal Excise Tax on the right to provide mileage awards as currently enacted or amended, including any successor or replacement provision thereto), exchange control taxes or fees or any other applicable tax (excluding Income Taxes or Other Taxes) now existing or which may hereafter be imposed by any Competent Authority, including interest and penalties, which may not be expressly stated upon assessment or settlement, in the event of a tax audit.

**"Transaction Total Amount"** means, with respect to an individual transaction involving the use of a Bank Card, the total dollar amount of the transaction.

“United States” or “U.S.” or “U.S.A.” means the 50 United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands and all other territories or possessions of the United States.

“US Carrier” means Delta Air Lines, United Airlines, Southwest Airlines, and JetBlue Airways, including their successors.

## 2. Card Program Administration

Unless another frequency is agreed to between them, the Parties shall review the ongoing performance of the Card Program on a quarterly basis. At least three months prior to the end of a Contract Year, the Parties shall hold a meeting, which may be held in person or via conference call or other electronic means to discuss overall Card Program performance as well as the next Contract Year’s marketing strategy, collaboration and expected growth. At least ten (10) Business Days prior to the annual meeting (i) Bank and American may provide to each other a proposed list of items to be discussed at the annual meeting, which lists will be combined to form the meeting agenda and (ii) Bank shall provide to American a report to also be discussed at the meeting, which up-to-date report shall include but not be limited to information related to the overall performance of the Card Program (the “**Card Program Performance Report**”). From time to time, American and Bank may reasonably request additional information relevant to the Card Program from each other, and the requested Party may share such information, if it so determines.

## 3. Approved Cards and Card Account Administration

3.1 Cards. Subject to the terms and conditions of this Agreement, Bank shall offer and issue Cards and establish new Card Accounts during the Term. Approved Cards shall include at a minimum the following Credit Cards: Gold, Platinum, and at least one Super Premium (Black or Infinite or equivalent). The Bank shall make available for issuance and shall offer the first Card (other than a Commercial Card) to potential Cardholders (the “**Launch Date**”) no later than June 30, 2017. As from the Effective Date, the Card Program will not include the issuance of Debit Cards; however, if Bank decides to issue Debit Cards, additional terms and conditions applicable to the issuance of Debit Cards within the Card Program shall be negotiated and launched at a date to be agreed between the Parties. New card products to be issued as Cards may be agreed upon in writing from time to time between the Parties. The specific names given to the Card product shall be subject to the terms of this Agreement and prior approval of American and Bank. Miles earned with respect to a Commercial Card may only accrue to the AAdvantage Account of the individual who actually used the Card. Spend on different Commercial Cards may not be pooled and transferred or attributed to one individual, regardless of whether or not such individual is a Cardholder. No Commercial Card shall have Authorized Users.

3.2 Administrator and Creditor. Bank shall be the sole administrator of the Cards and the sole creditor of the Card Accounts. All Credit or Debit Agreements relating to Card Accounts shall be between Bank and the Cardholder. Bank, at its expense, shall control (subject to the provisions herein)

and be solely responsible for the administration, credit approval, billing, collections, maintenance, Pricing and servicing of the Card Accounts, including, without limitation, the enforcement of Pricing, and preparation and distribution of Card Account agreements, billing statements, collection letters and customer service material. At no time shall any Party represent to the public or any Person that American or any Affiliate of American, or any entity other than Bank, is the Person issuing or administering the Card or extending credit to any Cardholder. All credit decisions of Bank with respect to actual or potential Cardholders including, without limitation, credit approvals, denials, renewals, and terminations shall be made by Bank.

3.3 Compliance and Approvals. During the Term and for such additional period after the termination during which Bank has not completed full performance of its obligations hereunder, Bank shall, at its expense, comply with all Applicable Law and Network Rules that apply to the AADVANTAGE Program, the Cards, the Cardholders, the Card Accounts, the Card Program, its performance under this Agreement, and the products and services provided hereunder and under the Credit or Debit Agreements, including, without limitation, Applicable Law pertaining to credit applications, finance charges, Card transactions, Solicitations and related promotional materials and other Pricing, Card Account transactions and collections, consumer protection, laws protecting the privacy of Members and Cardholders, advertising, antitrust, tax and foreign exchange controls. Bank shall, at its sole expense obtain and maintain all Governmental Approvals that may be required under Applicable Law or Network Rules to offer and maintain the Cards and the Card Accounts and relating to the Card Program in Brazil, and shall comply with, and be solely responsible for, all obligations thereunder. In connection with this Section 3.3, American shall cooperate with Bank as and when reasonably requested by Bank; provided, however, Bank shall continue to be solely responsible for its own obligations hereunder.

3.4 Credit Risk. American shall bear no credit risk, risk of loss or other responsibility or liability with respect to any Card Account, Card Account transaction or other aspect of the banking relationship between Bank and any Cardholder or potential Cardholder. American shall have no responsibility to Bank or to any Person for any debts, chargebacks, claims or defenses with respect to goods or services purchased, leased or otherwise acquired through use of a Card (except to the extent that American is the merchant with respect to such goods or services and to the extent of any indemnification obligation arising under Section 19.2).

3.5 Changes to Pricing and Cardholder Privileges. Bank shall use commercially reasonable efforts to give American written notice prior to implementing a change to the Pricing or Cardholder Privileges (i) that would reasonably be viewed as a Material Adverse Change by a Cardholder (a "**Card Account Change**"), and (ii) any notice of change that is required by Applicable Law, Bank policies, or the Cardholder's Credit or Debit Agreement.

3.6 Impact of Changes Where a Card Account Change has been implemented, then upon at least two (2) weeks' prior written notice to Bank, American may schedule a discussion with Bank on a date that is between four

(4) and six (6) months after the implementation of the Card Account Change. As part of the discussion the Parties shall determine whether the Card Account Change has (A) made the Card Accounts less competitive in the Brazilian Credit Card and commercial/corporate card marketplace, and (B) has had a Material Adverse Change on the Card Program in terms of new Card acquisitions, Cardholder retention, and Miles earned by Cardholders (collectively the "**Card Account Negative Impact.**") Such determination shall also take into account (i) any other changes impacting the Card Program such as changes to the AAdvantage Program, (ii) whether the Card Account Change was made in response to similar changes made by another Brazilian bank to its Credit Cards or commercial/corporate card products, as applicable, and (iii) whether as a result of the Card Account Change, another Brazilian Bank makes a similar change to its Credit Cards and commercial/corporate card products, as applicable. In light of the above, where it is determined that a Card Account Negative Impact has occurred, the Parties shall discuss for a period of sixty (60) days possible ways to mitigate the lack of competitiveness and negative impact. Where the Parties cannot reach agreement during such sixty (60) day period, then American shall have a right within the following ninety (90) day period to terminate this Agreement upon at least ninety (90) days prior written notice to Bank.

3.7 Billing Statements. Bank shall list on all billing statements distributed to Cardholders the Base Miles and Bonus Miles (if any) earned by such Cardholder in the prior Billing Period to which such billing statement relates. All billing statements shall also show the Conversion Ratio, if applicable. The Conversion Ratio used by Bank at any time shall comply with Applicable Law.

3.8 Costs. Bank shall be responsible for the payment of all costs of establishing new Card Accounts and maintaining all Card Accounts including, without limitation, all expenses of Solicitations, selecting, screening, Card related costs, mailings, and fulfilling and administering all Card Accounts.

#### 4. Applications, Credit or Debit Agreements and Credit Approvals

##### 4.1 Applications and Credit or Debit Agreements.

4.1.1 As part of a Card enrollment application form or process for a Card Account ("**Application**") Bank shall not display to such individual other Credit Cards or commercial/corporate card products issued by Bank or its Affiliates along with the Cards from which such individual can choose.

4.1.2 Unless otherwise requested by American, Bank shall include space on Applications for an applying Member's existing AADVANTAGE Number. Without American's prior approval, Bank shall not include on any Applications any other information related directly to the relationship between a potential Cardholder and American, including but not limited to questions relating to preferred destinations or number of flights a year. Bank shall also include in the Applications or the Credit or Debit Agreement, as appropriate, and obtain from Cardholders, authorizations appropriate and sufficient under Applicable Law so that the Bank

may provide to American a Cardholder's name, postal mailing address, e-mail address, phone number, AADVANTAGE Number, Cross-Reference Number, and Base Mile and Bonus Mile accrual information, and other information relating to such Cardholder's Card Account that is necessary for American (i) to enroll such Cardholder in the AADVANTAGE Program, where applicable, and (ii) to post AADVANTAGE Miles to the Cardholder's AADVANTAGE Account in accordance with the terms of this Agreement. Bank shall not list any Member's AADVANTAGE Number anywhere on mailings to Members or Cardholders under this provision or otherwise.

4.1.3 Bank shall include in all Applications and Credit or Debit Agreements a statement that Banco Santander (Brasil), S.A. issues the [Full name of Card].

4.1.4 Applications and Credit or Debit Agreements shall not include any restrictions on a Person's ability to carry out business or communicate with American or its Affiliates during the Term or thereafter, or otherwise contain terms or conditions that are inconsistent with Bank's obligations or American's rights under this Agreement.

4.2 Evaluation and Response Time. Bank shall evaluate all Applications, and approve applicants and establish such credit lines as it deems appropriate in its sole discretion, subject to Applicable Law. Bank shall respond to all inquiries from applicants or Cardholders, as applicable, concerning the denial or other status of their Application for a Card Account or requests to increase credit lines under the existing Card Account(s) within a reasonable period but no greater than the period established by Applicable Law.

4.3 Credit Decisions; Credit Criteria. Bank has no obligation to deliver notice to American of any credit decision for any particular applicant or Cardholder concerning the approval or denial of his or her Application or credit line increase request. American acknowledges that the Bank's credit criteria and underwriting policies are solely and exclusively managed by the Bank in its sole and absolute discretion; provided, however, Bank's credit criteria, credit decisions and underwriting policies shall comply with Applicable Law.

## 5. Exclusivity

For purposes of, Sections 5.1 and 5.2 the language "based on a postal mailing address in Brazil" means that the Credit or Debit card is issued using that Brazilian address of the individual or legal entity, and would not include any Credit Card or Debit Card that is issued to that same individual or legal entity based on a postal mailing address outside of Brazil.

5.1 American Exclusivity. Except for the Cards and the American Airlines Air Transportation Card, and subject to Section 5.3, American shall not, and shall ensure that its Affiliates do not, offer any AAdvantage Miles in connection with the use of a Credit Card or Debit Card that is issued to individuals or legal entities based on their postal mailing address in Brazil.

5.2 Bank Exclusivity. Except for Cards, Bank shall not, and shall ensure that its Affiliates that are incorporated or formed under the laws of Brazil (e.g., a branch office) do not issue a Credit Card or Debit Card that offers the loyalty currency of a US Carrier Loyalty Program in connection with the use of the Credit Card or Debit Card that is issued to individuals or legal entities based on their postal mailing address in Brazil. The Bank shall not and shall ensure that its Affiliates that are incorporated or formed under the laws of Brazil do not offer a cobranded Credit Card to (i) a Cardholder based on its postal mailing address in Brazil, or (ii) a potential Cardholder that would qualify for a Card on the basis of such potential Cardholder's income and has completed an Application for a Card pursuant to this Agreement using its postal mailing address in Brazil, provided that in the case of (i) above, American has not terminated the Cardholder as a Member and in the case of (ii) above, American has not declined to enroll such potential Cardholder in the AADVANTAGE Program. American and the AAdvantage Program shall be Bank's preferred airline/frequent flyer program, and Bank shall include as appropriate in media, advertising and Cardholder communications, language to the effect that "American Airlines is Santander's preferred airline partner in Brazil" or "the AAdvantage Program of American Airlines is Santander's preferred airline frequent flyer program in Brazil".

5.3 Wind Down of Current Cobrand Program. American shall wind down its current cobranded Credit Card under the AAdvantage Program in Brazil. Except for Cards, no promotion, sales or new card issuance of a Bank Card issued in Brazil for which AAdvantage Miles can be earned in connection with its use shall be permitted from and after the last day of the wind down, which last day of wind down shall be the earlier of (i) December 31, 2017, and (ii) three Business Days after the closing of the sale to ITAU Unibanco, S.A of the current cobranded Credit Card portfolio under the AAdvantage Program in Brazil (the "**Current Cobrand End Date**"). During this wind down period American shall not be restricted from allowing AAdvantage Miles to be awarded in connection with any Bank Cards issued by American's current cobranded Credit Card issuer or its Affiliates in Brazil. American also shall be entitled after the Current Cobrand End Date to award and allow to be awarded AAdvantage Miles in connection with outstanding and future installments that are or will become payable by any such Bank Card cardholders in respect of purchases made on or before the end of the wind down period and post those Advantage Miles duly earned during such wind down period. Any changes made to the Bank Cards issued by American's current cobranded Credit Card issuer or its Affiliates in Brazil and any AAdvantage Miles or awards associated therewith shall not be deemed modifications to the AAdvantage Program.

5.4 Restrictions Imposed on Third Parties.

5.4.1 If American's AAdvantage Program discusses with or otherwise enters into an arrangement with an Affiliate of Bank for such Affiliate to participate as an AAdvantage Participant, American shall not restrict the ability of Bank and such Affiliate to share information about the economics and terms and conditions of their respective arrangements or restrict them from discussing the possibility of benefitting from regional negotiations. Likewise,

Bank shall not restrict American from sharing the relevant terms of this Agreement with any Bank Affiliate where such Bank Affiliates asks for similar treatment.

5.4.2 Bank shall not restrict or otherwise penalize any Cardholder or potential issuer of an American Bank Card from (i) communicating directly with American; provided, that, any Card Account inquiries will always be directed to Bank and not American, or (ii) participating in any card program with American, subject in each instance to the provisions of this Agreement, and provided that such third party shall not be obligated to share Bank confidential information with American.

## 6. AADVANTAGE Program and Operations

6.1 Enrollment. Subject to the terms and conditions of this Section 6.1, American shall enroll in the AADVANTAGE Program those Cardholders identified by Bank pursuant to Section 8.1, in accordance with the AADVANTAGE Program Rules and American's procedures then in effect. No AADVANTAGE Miles will be posted to a Cardholder's AADVANTAGE Account until he or she has enrolled in the AADVANTAGE Program and American has established an AADVANTAGE Account and assigned an AADVANTAGE Number for such Cardholder.

6.2 Membership Criteria. Subject to the terms of Section 6.3, American may from time to time in its sole discretion modify or establish criteria for AADVANTAGE Program membership. Current criteria include but are not limited to the following:

6.2.1 Only Cardholders who are individuals are eligible for membership in the AADVANTAGE Program and for earning AADVANTAGE Miles as a Cardholder.

6.2.2 Subject to compliance with Applicable Laws to the extent applicable to the AAdvantage Program, American reserves the right, in its sole discretion and at any time, to refuse to enroll or to terminate the enrollment or membership in the AADVANTAGE Program of any individual, including any individual who has applied for a Card Account or is already a Cardholder. In such event, American shall notify the Cardholder directly. American shall also have the right to directly contact such individual with respect to AADVANTAGE Program matters.

6.2.3 Fraud or abuse in relation to AADVANTAGE mileage credit or award usage is subject to appropriate administrative or legal action by American including, without limitation, the forfeiture of all travel tickets awarded and any accrued mileage in a Member's AADVANTAGE Account, and cancellation of the AADVANTAGE Account and Member's current and future participation in the AADVANTAGE Program. To the extent permitted by Applicable Law, Bank shall cooperate with all reasonable requests of



American concerning any investigation or prosecution of anyone engaging in or suspected of engaging in AADVANTAGE Program abuse or fraud, including, without limitation, assisting American in verifying any purported Member's AADVANTAGE Program or Card Program membership status and cooperating with any civil or criminal prosecution.

6.2.4 American shall notify Bank where a Bank potential Cardholder referral is refused enrollment in the AAdvantage Program or a Cardholder's membership in the AAdvantage Program is terminated pursuant to Section 6.2.2 and Section 6.2.3 subject to any confidentiality or privacy restrictions.

6.3 Modification to AADVANTAGE Program. Subject to compliance with Applicable Laws to the extent applicable to the AAdvantage Program, American may, in its sole discretion, and from time to time, cancel or modify the AADVANTAGE Program or implement changes affecting the AADVANTAGE Program without any liability, obligation or additional compensation of any kind to Bank (including, without limitation, any liability pursuant to Section 19), and may establish or modify policies, rules or regulations affecting: AADVANTAGE Program Rules; criteria for membership in the AADVANTAGE Program; AADVANTAGE Awards; the number of AADVANTAGE Miles required for any AADVANTAGE Award; availability of AADVANTAGE Awards; accrual and redemption of AADVANTAGE Miles; restricted dates for AADVANTAGE Awards availability; and, subject to any exclusivity expressly set forth in this Agreement, participation by AADVANTAGE Participants. American shall use commercially reasonable efforts to give Bank prior written notice of any such modification of the AADVANTAGE Program (including the AAdvantage Program Rules) that would reasonably be viewed as a Material Adverse Change by a Cardholder ("**AAdvantage Program Change**") Upon at least two (2) weeks' prior written notice to American, Bank may schedule a discussion with American on a date that is between four (4) and six (6) months after the implementation of the AAdvantage Program Change. As part of the discussion the Parties shall determine whether the AAdvantage Program Change has (A) made the AAdvantage Program less competitive in the US Carrier Loyalty Program marketplace, and (B) has had a Material Adverse Change on the Card Program in terms of new Card acquisitions, Cardholder retention, and Miles earned by Cardholders (collectively the "**AAdvantage Program Negative Impact.**" Such determination shall also take into account (i) any other changes impacting the Card Program such as changes in promotions, Cardholder Privileges or Pricing, (ii) whether the AAdvantage Program Change is in response to similar changes made by another US Carrier to its Loyalty Program, and (iii) whether as a result of the AAdvantage Program Change, another US Carrier makes a similar change to its Loyalty Program. In light of the above, where it is determined that an AAdvantage Program Negative Impact has occurred, the Parties shall discuss for a period of sixty (60) days possible ways to mitigate the lack of competitiveness and negative impact. Where the Parties cannot reach agreement during such sixty (60) day period, then Bank shall have a right within the following ninety (90) day period to terminate this Agreement upon at least ninety (90) days prior written notice to American. All AADVANTAGE Program Rules as they exist from time to time shall apply to Bank's participation in the AADVANTAGE Program, to

each Cardholder's participation in the AADVANTAGE Program and all AADVANTAGE Miles accrued by Cardholders through the use of or in connection with their Cards and their Card Accounts.

6.4 Termination of AADVANTAGE Program. American reserves the right to terminate the AADVANTAGE Program upon six (6) months prior notice (the "**AADVANTAGE Termination Notice**"), without any liability, obligation or additional compensation of any kind to Bank (including, without limitation, any liability pursuant to Section 19), except for failure to comply with the following sentence, and such termination will automatically terminate this Agreement with respect to the Parties without liability on the part of American as provided in Section 20.3.7. During the period starting on the date the AADVANTAGE Termination Notice is delivered to Bank and until this Agreement terminates, American shall not disclose the Cardholder List to any third party.

6.5 Administration of AADVANTAGE Program. American shall be solely responsible, at its expense and in accordance with the AADVANTAGE Program Rules and American's procedures as they exist from time to time, for administering the AADVANTAGE Program and issuing any related AADVANTAGE Program materials.

6.6 Systems Document. In connection with the Card Program, Bank, as an AADVANTAGE Participant, shall comply, where applicable, with the requirements and procedures set forth in the AADVANTAGE Program Systems Document, which American has provided to Bank.

6.7 Account Mergers. Where American has notified Bank that a Cardholder's AADVANTAGE Accounts have been merged, Bank will update the Card Account with the new AADVANTAGE Number as soon as possible.

6.8 Other Provisions American shall sell Miles to Bank for Bank to award Miles to Cardholders in accordance with this Agreement, but American shall not be considered to be providing Cardholder Privileges or any other benefits to Cardholders in connection with Cards or Card Accounts. American shall not be deemed to have made any representation, warranty or covenant or have assumed any obligation or indemnification to Bank under this Agreement with respect to flight activity, including any suspension, reduction or termination of flights by an AA Carrier.

## 7. Customer Servicing, Support and Training

7.1 Card Account Inquiries. Bank, at its expense, shall be solely responsible for responding to Cardholder inquiries and complaints relating to Card Accounts (including, without limitation, the calculation, accrual, record keeping or reporting of AADVANTAGE Miles in connection with the use of a Card, and other Card Account administration matters), and American shall refer all such inquiries it receives to Bank's customer service department. American shall not respond to Cardholder inquiries relating to Card Accounts unrelated to the AADVANTAGE Program. Bank will use commercially reasonable efforts to respond to such questions, complaints and referrals within thirty (30) Business Days of receipt, but in no event within a greater period of time as that Bank uses with its other proprietary cards of a similar portfolio value. Bank shall use

commercially reasonable efforts to address such questions, complaints and referrals in an effective manner. Bank will report the appropriate number of AADVANTAGE Miles (if any) to be funded by Bank and posted to a Cardholder's AADVANTAGE Account in connection with the resolution of any Cardholder inquiry or dispute on the next Bank Report to be transmitted to American pursuant to Section 9.5.

7.2 AADVANTAGE Program Inquiries. Bank shall not respond to Cardholder inquiries relating more generally to the AADVANTAGE Program. Bank shall refer Cardholders' general inquiries concerning the AADVANTAGE Program, including inquiries concerning AADVANTAGE Program Rules and accrual and redemption of AADVANTAGE Miles in connection with the AADVANTAGE Program, to American's AADVANTAGE customer service department. American shall use commercially reasonable efforts to address any such inquiries in a timely and effective manner.

7.3 Customer Service. Bank shall ensure that the quality of Bank's products and customer service provided to Cardholders in connection with the Card Program shall be no less favorable to Cardholders and prospective Cardholders than that offered by Bank in connection with similar Credit Cards issue by Bank or its Affiliates in Brazil. Bank shall use commercially reasonable efforts to timely notify American of any information known to it that may affect American's ability to timely and effectively address customer service issues.

7.3.1 Bank shall provide, at its expense, one or more customer service contacts who can communicate effectively in English and will be available during its normal business hours to assist American's AADVANTAGE customer service department in resolving all issues regarding Bank's offering, and awarding of AADVANTAGE Miles and reporting of AADVANTAGE Miles attributable to Card or Card Account usage.

7.3.2 American shall provide, at its expense, one or more customer service contacts who will be available during its normal business hours in its Fort Worth, Texas U.S.A. office to assist Bank's customer service department in resolving all issues regarding American's posting of AADVANTAGE Miles attributable to Card or Card Account usage.

7.4 Decision Responsibilities. Notwithstanding anything to the contrary in this Section 7, American shall be solely responsible for decisions related to the Cardholders' AADVANTAGE Accounts, and Bank will be solely responsible for decisions related to the Cardholders' Card Accounts.

7.5 Telephone Customer Service. Bank shall offer a customer service telephone number in Brazil, at Bank's expense that will service the Card Program and is maintained in accordance with Bank's current customer services in place for a portfolio of this size and value. Additionally, the Bank shall offer an international and long distance (within Brazil) toll-free customer service telephone number in Brazil at Bank's expense, it being understood that such international

toll-free telephone number shall not be required to be exclusive to the Card Program.

7.6 Customer Service Scripts. Bank shall make reasonable efforts to ensure that American has knowledge of current or future customer service policies, scripts and form correspondence relating to servicing Card Accounts, provided that Bank shall make reasonable efforts to consider input from American with respect to such customer service policies, scripts and form correspondence.

7.7 Bank Employees. Subject to Bank's confidentiality obligations contained herein, Bank shall ensure that all appropriate Bank employees are adequately informed of Bank's participation in the AADVANTAGE Program and the terms of this Agreement relevant to their positions. Bank shall adequately train its customer service representatives to minimize the number of calls referred by Bank to American related to the features of or disputes concerning the Cards and Card Accounts. Bank shall produce and distribute up-to-date training material as necessary to comply with this Section 7.7.

7.8 American Employees. Subject to American's confidentiality obligations contained herein, American shall ensure that all appropriate AADVANTAGE Program employees are adequately informed of Bank's participation in the AADVANTAGE Program and the terms of this Agreement relevant to their positions. American shall produce and distribute up-to-date training materials where necessary to comply with this Section 7.8.

## 8. Bank Reporting

In addition to the Card Program Performance Report and the Bank Reports referenced in Section 9 and other reporting to be provided by Bank described in this Agreement, Bank shall deliver, in each case at Bank's expense, the following reports to American, it being understood that all such reports provided by Bank to American hereunder (with the exception of the Enrollment File or AAdvantage Miles award information) shall be in aggregate rather than individualized form other than where such Cardholder has consented to the dissemination of such information to American:

8.1 Enrollment File. At regular intervals, but at least once per month, Bank shall provide to American, via the Enrollment File defined in the AADVANTAGE Program Systems Document a list of all the names, postal mail address, e-mail and other electronic address (if applicable), and, where applicable, existing AADVANTAGE Numbers of individuals who are approved by Bank for a Card Account.

8.2 Card Account Cancellations. At regular intervals and at least one (1) time per month, Bank shall provide to American a Bank Report listing all Cross-Reference Numbers, names, addresses and, where applicable, existing AADVANTAGE Numbers of individuals who have cancelled a Card Account.

8.3 Service Levels. From time to time, American may request for Bank to provide information about Bank's customer service related to the Card Program and Bank shall (i) provide such information to American as it relates to

the Card Program to the extent Bank has compiled such information for the Card Program specifically and to the extent such information has not been aggregated for specific segments of Credit Cards issued by the Bank or (ii) provide American with aggregated information for specific segments of Credits Cards issued by Bank where such information is not readily available with respect to the Card Program only.

8.4 Campaign Reporting. From time to time, but no more often than four times per calendar year, American may request, and Bank shall provide to American, in a format and on a medium agreed to by the Parties, such agreement not to be unreasonably withheld or delayed, information regarding the performance metrics and campaign details related to promotional campaigns for the Card Program that were carried out during the period since the last such campaign report was provided, which at a minimum would include the following:

- 8.4.1 13-month rolling acquisition, attrition and purchase sales data
- 8.4.2 Pre-acquisition campaign data
- 8.4.3 Post-acquisition campaign data
- 8.4.4 Post-acquisition campaign vintage tracking data
- 8.4.5 Existing Cardholder (ECM) Metrics
- 8.4.6 Pre-ECM campaign data
- 8.4.7 Post-ECM campaign data.

The Parties shall discuss and agree to the metrics for each promotional campaign. All information reported in campaign reports shall be in aggregate rather than individualized form.

8.5 Card Program Metrics Report. At the times set forth below, Bank shall deliver to American (i) a report with general Card Program Metrics information, including the information described in Schedule 8.5 (the "**Card Program Metrics Report**"), in addition to (ii) a current Cardholder List for such Card Program (to be sent electronically in a secure manner): (a) within thirty (30) calendar days of the conclusion of each calendar year, (b) upon the delivery to American of any Agreement termination notice by Bank, and (c) within ten (10) calendar days of American's delivery of a notice of termination of this Agreement. In the event a notice of termination of this Agreement or any notice of non-renewal of this Agreement has been delivered, and in addition to any other rights that American may have under this Agreement, American may share with a third party (provided that such third party has entered into a written confidentiality agreement with American prior to such disclosure) the number of Cardholders and Card Accounts in the cobrand portfolio and the average number of Miles earned by AAdvantage Members per Card product.

8.6 Additional Information. Bank shall be under no obligation to provide additional Card Program performance reporting to American, but shall consider reasonable requests by American for additional information.

8.7 Accuracy of Reports. Bank shall provide all reporting contemplated hereunder in a complete and accurate manner. Bank shall be solely responsible for the completeness and accuracy of the reports delivered to American hereunder, and Bank acknowledges and agrees that American shall be entitled to rely on such reports to discharge its obligations under this Agreement, including but not limited to the posting of AADVANTAGE Miles into AADVANTAGE Accounts and the invoicing of Bank for amounts due.

9. Miles Awarded by Bank and Miles Reporting

9.1 Miles Awarded by Bank. Bank shall offer and award AADVANTAGE Miles to Cardholders who have opened a Card Account for certain Card and Card Account related activities as set forth below, and in accordance with the terms of this Agreement:

9.2 Base Miles. The number of Base Miles to be offered and awarded by Bank in connection with the Cards and Card Accounts during the Contract Years shall be as set forth below:

9.2.1 Classic/Gold/Commercial/ Credit Cards: At least one (1) Base Mile per one (1) Dollar of Net Purchase Sales

9.2.2 Platinum Credit Cards: At least one point three (1.3) Base Miles per one (1) Dollar of Net Purchase Sales

9.2.3 Super Premium Credit Cards: (Black/Signature): At least one point five (1.5) Base Miles per one (1) Dollar of Net Purchase Sales.

9.3 Bonus Miles. In addition to Base Miles, Bank may also award Bonus Miles to Cardholders, as set forth below:

9.3.1 Enrollment Bonus Miles. Bank may in its discretion award Bonus Miles to Cardholders in connection with the opening of a new Card Accounts, ("**Enrollment Bonus Miles**").

9.3.2 Promotional Bonus Miles. Bank may also where approved in advance by American, which approval shall not be unreasonably withheld offer and award Bonus Miles to Cardholders for certain promotions or the purchase of certain goods and services using their Card Accounts or Cards or for other activity so approved, which Bonus Miles may also include an incremental Miles percentage above the Base Miles offer in connection with an approved promotion (e.g., offering 1.5 Miles in connection with purchases on a Platinum Card for a given period of time) ("**Promotional Bonus Miles**"). American shall reasonably attempt to provide broad approvals where warranted so that Bank has flexibility to implement any such promotions.

9.3.3 Double Miles on American Purchases. Bank shall offer and award double Miles on American purchases as follows: for each Base Mile Bank offers in the normal course Bank shall offer and award an additional Bonus Mile where the Card or Card Account activity that gave rise to the awarding of the Base Mile was a product or service billed by American Airlines as merchant of record. American shall provide to Bank the merchant codes that are to be used for these purposes. Certain items may be excluded from this double Miles promotion offer (e.g., duty free purchases, car rentals, American Airlines, AAVacations® packages, or AA Cargo® products or services) or as notified by American to Bank from time to time.

9.3.4 Accelerated Bonus Miles. For each Base Mile, Bank may also where approved in advance by American, which approval shall not be unreasonably withheld, offer and award Bonus Miles to Cardholders that pay a fee to be awarded additional Miles ("**Accelerated Bonus Miles**").

9.4 Conversion Methodology. When determining Net Purchase Sales attributable to a Billing Period, if purchases with the Card or Card Account for which Miles are to be awarded were made in Reais during such period, Bank shall apply the Conversion Ratio in effect on the closing date of such Card's monthly Billing Period to determine the Dollar value of such purchases made in Reais (the "**Conversion Methodology**").

9.5 Miles Reporting to American. Bank shall deliver to American at regular intervals and at least once per month, at Bank's sole cost and expense, a Bank Report that accurately sets forth (i) the Base Miles and Bonus Miles, as described in this Section 9 to be awarded to each Cardholder's AADVANTAGE Account for those Card Accounts with a Billing Period that closed during such period. Bank shall support such reports with appropriately detailed information as specified in the AADVANTAGE Program Systems Document. Bank shall make and report all such calculations without regard to whether a particular Card Account is current in payment or otherwise in good standing.

9.5.1 Each Bank Report shall indicate at a minimum (i) the number of total AADVANTAGE Miles to be posted to each AADVANTAGE Account for the applicable Billing Period, broken out by PST Codes assigned by American for Base Miles, Enrollment Bonus Miles, and Promotional Miles and broken out (e.g., where Promotional Miles were awarded as double Miles on American purchases), (ii) the Cardholder's Cross-Reference Number, (iii) the Cardholder's associated AADVANTAGE Number, and (iv) any other data mutually agreed upon by the Parties.

9.5.2 For any Card Account that generates negative Net Purchase Sales in any Billing Period, the negative Net Purchase Sales balance will be carried forward and applied by Bank against positive Net Purchase Sales on such Card Account in future

Billing Periods in calculating the number of Base Miles or, if applicable, Bonus Miles reported to American for such periods.

9.6 Gold Elite Status Requests. At any time Bank requests the awarding of AADVANTAGE Gold elite status to a Cardholder in accordance with the terms of Section 15.5, Bank shall deliver to American a Bank Report that accurately sets forth the Cardholders that have obtained AADVANTAGE Gold elite status broken out by Pre-Spend Status Awards, Annual Spend Status Awards and Renewal Status Awards. The Bank Report shall contain sufficient information to enable American to award such Cardholder AADVANTAGE Gold elite status.

## 10. AADVANTAGE Miles Posting and American Reporting

10.1 Posting of AADVANTAGE Miles. American shall post Base Miles and Bonus Miles contemplated by Section 9 to a Cardholder's AADVANTAGE Account as reported by Bank in the corresponding Bank Report delivered pursuant to Section 9.5.

### 10.2 Additional Conditions.

10.2.1 American shall post AADVANTAGE Miles hereunder only if a Member is enrolled in accordance with Section 6.1 and in good standing in the AADVANTAGE Program. In order for a Member to be in good standing, such Member must not engage in activity that is contrary to AADVANTAGE Program Rules as they exist from time to time. There will be no refunds to Bank for AADVANTAGE Miles posted by American to a Member's AADVANTAGE Account that are subsequently canceled or voided by American due to such Member's failure to be in good standing as of the date such AADVANTAGE Miles were posted or due to the circumstances described in Section 6.2.

10.2.2 American shall use commercially reasonable efforts to post AADVANTAGE Miles reported by Bank to Cardholders' AADVANTAGE Accounts within thirty (30) calendar days after receipt of each Bank Report, subject to any adjustments required or permitted to be made to such AADVANTAGE Accounts by this Agreement (including adjustments resulting from errors in any Bank Reports).

10.2.3 In addition to any other remedies that American may have by contract or under law, at American's option, American may choose not to post AADVANTAGE Miles in connection with the Card Program Bank's accounts with American show any unpaid amount that is due.

10.3 Customer Disputes. If a Cardholder who is a Member asserts that he or she is entitled to credit for Base Miles or Bonus Miles arising out of the use of his or her Card but did not receive credit for such AADVANTAGE Miles (as reported on his or her statement from American), and provided that at least sixty (60) calendar days have elapsed from the date of the relevant transaction, and



provided further that the Cardholder applies to American for such credit within twelve (12) months after the date of the Bank's billing statement, then upon receipt by American of Bank's request to post such AADVANTAGE Miles or of documents from such Cardholder verifying entitlement to such AADVANTAGE Miles, including, without limitation, the relevant Card Account billing statement, American shall have the right, at its option, to post the relevant number of AADVANTAGE Miles to the Cardholder's AADVANTAGE Account and invoice Bank for the number of Base Miles and Bonus Miles to which American reasonably determines the Cardholder is entitled.

10.4 Accuracy of Reporting Information. American shall provide all reporting contemplated hereunder in a complete and accurate manner. American shall be solely responsible for the completeness and accuracy of the reports delivered to Bank hereunder, and American acknowledges and agrees that Bank shall be entitled to rely on such reports to discharge its obligations under this Agreement. American will be under no obligation to provide additional information or reporting, but American will consider reasonable requests by Bank for additional information.

## 11. Payments, Invoicing and Taxes.

### 11.1 Miles Prepayments.

11.1.1 No earlier than sixty (60) days prior to the Launch Date, American shall invoice Bank and Bank shall prepay the amount of [REDACTED], which amount equals the value of the number of Miles that is forecasted will be awarded by Bank during the first two (2) months of the first Contract Year.

11.1.2 On a monthly basis thereafter, American shall (i) apply the pre-payments made by Bank against actual Miles postings during the prior month (the "**Actual Monthly Postings**") and (ii) invoice Bank for the next monthly prepurchase of Miles, which amount shall also be based on the Actual Monthly Postings in addition to American's growth forecast based on the current Miles posting trend.

11.1.3 If upon the application of any prepaid amount pursuant to Section 11.1.2(i), the pre-paid amount was not sufficient to cover such Actual Miles Postings (plus any applicable Taxes and fees) then the value of the next monthly invoice issued pursuant to Section 11.1.2(ii) may be increased by the amount of the deficit.

11.1.4 Upon termination of this Agreement, the amounts prepaid pursuant to this Section 11.1 that have not yet been applied to outstanding Miles postings shall be refunded to Bank; provided however, American may, in its sole discretion, use the refund amount to first offset amounts owed by Bank as part of the final reconciliation before refunding any surplus to Bank. In the event that American elects to use the refund amount or any portion

thereof to offset amounts owed by Bank during final reconciliation, American shall provide written notice to Bank of such election as promptly as practicable.

## 11.2 Currency Event.

11.2.1 Upon the occurrence of a Currency Event, the Parties shall have the following rights and obligations:

(i) either Party may deliver to the other Party, a notice that a Currency Event impacting such Party has occurred (the "**Currency Event Notice**");

(ii) upon delivery of a Currency Event Notice by either Party to the other party, the Parties shall discuss the Currency Event in good faith for a period of thirty (30) calendar days including, but not limited to, possible alternative payment arrangements or compensatory adjustments to this Agreement that would allow the Card Program to continue in Brazil. Notwithstanding the above, a Party, as applicable, may exercise any or all of the following rights after the delivery of a Currency Event Notice:

- a. American may use any Bank prepaid amounts to pay any amounts due to American;
- b. American may cease posting Miles to Cardholders accounts upon five (5) Business Days' notice to Bank, but in any event, no earlier than the No Miles Date;
- c. American may deliver notice to Bank to cease offering and awarding Miles to Cardholders (the "**Cessation Notice**"), but in any event, no earlier than thirty-five (35) days after the delivery of a Currency Event Notice, and within five (5) Business Days, Bank shall notify Cardholders of its suspension or cessation of Miles awards, which suspension or termination shall take effect no later than thirty (30) days after the date of American's delivery of the Cessation Notice to Bank; (the "**No Miles Date**"); and
- d. Either Party may no earlier than thirty one (31) days and no later than ninety (90) days after the delivery of a Currency Event Notice, terminate this Agreement by delivering to the other Party at least ninety (90) days prior notice of termination of this Agreement.

11.2.2 Upon any termination of this Agreement pursuant to this Section 11.2.1, Bank shall be responsible for payment of the Revenue Guarantee attributable to such Contract Year as

determined on a pro rata basis until and including the date that American delivers to Bank the Currency Event Notice.

11.2.3 American shall not be liable to Bank, including pursuant to Section 19.2 for any exercise of its rights under this Section 11.2.

11.3 Miles Payments. Bank shall pay American for Base and Bonus Miles reported to American in the Bank Reports Bank provided to American pursuant to Section 9.5 and posted by American to AADVANTAGE Accounts. Bank shall pay to American at the applicable rate per Mile when invoiced. Mileage payments shall be due and payable by Bank within ten (10) calendar days of American's delivery of the corresponding invoice. Bank shall pay to American at the applicable rate per Mile when invoiced.

11.4 Miles Invoicing. American's invoices delivered to Bank pursuant to Section 11.1 shall include the amount to be paid by Bank for Miles and include any applicable Taxes to be collected by American or fees as separate line items.

11.5 Other Invoicing. Except where otherwise provided herein (e.g., invoicing for Revenue Guarantee payments), American shall invoice the Bank directly on a monthly basis for all amounts that American is to invoice Bank hereunder. American shall provide to Bank the Revenue Guarantee invoice, as set forth in Section 13.2.

11.6 Fee for Procedural Non-Compliance. American shall not charge Bank for the processing of mileage transactions in accordance with the AADVANTAGE Program Systems Document or for the reporting of AADVANTAGE Miles through American's systems except as follows: Where American determines that Bank

- a. is failing to follow processing requirements, data integrity procedures or transmission protocol, which failure warrants American's intervention,
- b. is converting a Card portfolio or taking any other action that warrants testing to avoid any negative impact on the Card Program,
- c. is taking any action without coordinating with American that negatively impacts data integrity or otherwise warrants American's intervention, or
- d. is failing to follow the automated process to post AADVANTAGE Miles, which failure requires American to manually post records or otherwise warrants American's intervention, then American shall give Bank notice in writing or via the automated AAdvantage Program system communications with AAdvantage Participants (each of (a) – (d) an event of "**Procedural Non-Compliance**").

Bank shall remedy its Procedural Non-Compliance as soon as reasonably practicable. If Bank does not remedy its Procedural Non-Compliance within

ninety (90) days after the delivery of American's non-compliance notice, then American may assess a fee of U.S.\$150/hour for American's time required to intervene or take corrective action. Where Bank remedies its Procedural Non-Compliance after American notifies Bank, and Bank subsequently repeats the same Procedural Non-Compliance, then no ninety (90) day remedy period shall apply to any such subsequent Procedural Non-Compliance prior to American's right to assess the U.S.\$150/hour non-compliance fee.

11.7 Payments and Bank Accounts.

11.7.1 For payments subject to an invoice, Bank shall pay such amounts within ten (10) Business Days after receiving the invoice, unless a different payment arrangement is set forth herein. For all payments that are not subject to an invoice from American (such as the payment of Status Bounties pursuant to Section 15.5.4), Bank shall timely make such payments, without offset, in accordance with the corresponding provisions establishing such payments. Subject to the prepurchase provisions of Section 11.1, in the event Bank ever overpays American, American shall credit subsequent amounts due by the amount of the overpayment.

11.7.2 In no event will Bank have any unilateral right to reduce or setoff any amount payable hereunder unless Bank and American have entered into a separate written agreement that permits reduction or setoff.

11.7.3 Bank shall make payment to American of the amount on such invoice in one of two manners: (i) in U.S. Dollars, in immediately available funds, via wire transfer into American's bank account in the United States or (ii) in Reais, in immediately available funds, via a deposit into the bank account of American's branch office. Details of the two bank accounts are listed on Schedule 11.7.3. Where payment is made in Reais, the Dollar value in Reais to be deposited shall be determined as the amount required by American to purchase the amount of \$US referenced on the invoice on the date of the deposit using the official exchange rate for such purpose as published by Banco Central do Brasil, or its successor. Bank will notify American via transmittal letter by 16:00 hrs, New York time, on the day of each such deposit that such deposit has been made. Any amount that is not paid when due shall bear interest from its due date until paid at a rate per annum equal to the lesser of (i) twelve percent (12%) per annum or (ii) the highest non-usurious rate of interest permitted by Applicable Law. The accounts to which payments shall be made may be changed from time to time by American by providing advance written notice to Bank.

11.8 Taxes. Bank shall be responsible for the payment of all Income Taxes (except for such taxes imposed or assessed on American's income, the payment of which shall be the responsibility of American), Transactional Taxes, Other Taxes (except for such taxes imposed or assessed on American's assets,

capital, property or payroll, the payment of which shall be the responsibility of American), assessments, fees, levies, imposts, duties, deductions or other charges of a similar nature now or hereafter imposed by a Competent Authority with respect to the payments made by Bank (whether in cash or otherwise) to American hereunder, and the award of AADVANTAGE Miles under this Agreement (collectively, "**Bank Taxes**"). Bank shall not deduct or withhold any Taxes from its payments to American except as expressly required by a Competent Authority; provided that where such deduction or withholding is required, Bank shall pay to American such additional amounts as are required to cause the net amount received by American after such deduction or withholding to be equal to the amount American would have received hereunder had such deduction or withholding not been imposed. Bank shall promptly forward to American copies of official receipts or other evidence that the full amount of such deduction or withholding has been paid over to the proper Competent Authority.

11.8.1 American shall have the exclusive obligation to timely make to any Competent Authority, as required by Applicable Law: (i) all tax or other reports and payments with respect to any sums paid or remitted to it; and (ii) any tax or other reports with respect to the AADVANTAGE Accounts, including redemption of AADVANTAGE Miles for AADVANTAGE Awards. Bank shall have the exclusive obligation to timely make to any Competent Authority, as required by Applicable Law: (i) all tax or other reports and payments with respect to any sums paid or remitted to it; and (ii) any tax or other reports with respect to the Card Accounts. Moreover, the Parties shall indemnify each other against, and reimburse each other for, any tax obligations that a Party is directly assessed but is payable by the other Party under this Section 11.8 within thirty (30) days of receiving written demand with accompanying official receipts or other evidence of such taxes.

11.8.2 Bank and American agree to reasonably cooperate to minimize the Taxes payable in relation to amounts paid under this Agreement, including the contest or objection to the application, imposition, computation or assessment of such Taxes where permitted under Applicable Law; provided, however, that for any Tax that American is required to collect from Bank and remit to a Competent Authority under Applicable Law, American retains the exclusive right to determine the applicability of such Tax to the amounts paid by Bank under this Agreement. Bank will not request a ruling, determination or other advice, whether formal or informal, from any Competent Authority with respect to the application of such Tax. As of the Effective Date, American represents that the US Federal Excise Tax is the only tax included on a Mile invoice from American to AAdvantage Participants for the purchase of AAdvantage Miles under the AAdvantage Program, but this may be subject to change.

11.8.3 As between American and Bank, if a Party receives a refund, offset, deduction or is otherwise credited an amount of Tax

14

for which the other Party is responsible and has paid under this Agreement, the Party receiving the refund, offset, deduction or credit shall reimburse to the other Party the amount of such refund, offset, deduction or credit, including any interest received thereon, and provide the other Party with official receipts or other evidence of such refund, offset, deduction, or credit.

11.8.4 If after the Effective Date, any Competent Authority enacts a rule or law or issues an order that imposes a substantial increase in Transactional Taxes (the incremental amount of such increase in Transactional Taxes, the "**Transactional Tax Increase**") to be paid by Bank with respect to the purchase of AADVANTAGE Miles, a Party who becomes aware of the increase shall immediately notify the other Party ("**Transactional Tax Notice**"), and the Parties agree to discuss in good faith for a period of ninety (90) calendar days after the deliver of the Transactional Tax Notice (the "**Transactional Tax Discussion Period**") possible ways to mitigate the additional cost to Bank. Bank shall continue to be liable for the Transactional Tax Increase during such period. The Transactional Tax Discussion Period may be extended for ninety (90) days upon American's delivery of written notice to Bank of such extension, provided that American shall be solely responsible for payment of the amount of such Transactional Tax Increase during such ninety (90) day extension period without any right to seek indemnity or contribution from Bank in respect of such payment, including, but not limited to, under Section 11.8.1 hereof. If upon completion of the Transactional Tax Discussion Period (as extended, as the case may be) the Parties cannot reach agreement, then this Agreement shall terminate on the last day of the discussion period. As of the date this Agreement terminates pursuant to this Section 11.8.4, no Revenue Guarantee shall be applicable.

11.9 Reconciliation. Bank and American shall conduct reconciliation no later than forty-five (45) calendar days following (i) the end of each Contract Year during the Term, and (ii) the termination of this Agreement. The reconciliation shall reflect (a) status of payments by Bank, including payments made pursuant to Section 11.1, (b) the determination of the Mileage Purchases attributable to the Card Program, (c) Status Bounty payments, and (d) payment of Revenue Guarantees and Shortfall Mile status. Amounts owed by Bank shall be adjusted accordingly in the succeeding calendar month to reflect the reconciliation, and if the reconciliation occurs in connection with a termination, any amounts owed by one Party to the other shall be paid within thirty (30) calendar days of such reconciliation.

## 12. Rate Per Mile and Interchange Decrease Adjustments

12.1 Rate Per Base Mile and Bonus Mile. The rate per Base Mile and Bonus Mile to be charged by American and paid by Bank in connection with the Card Program shall be as set forth below for the corresponding Contract Year:

Contract Year	Rate Per Mile	Contract Year	Rate Per Mile
1	██████	6	██████
2	██████	7	██████
3	██████	8	██████
4	██████	9	██████
5	██████	10	██████

12.1.1 All rates per Base Mile and Bonus Mile, including where discounted, do not include the U.S. Federal Excise Tax and are net of any other Tax

12.1.2 During the Term, American shall apply a discount of ██████ on the rate per Bonus Mile for Enrollment Bonus Miles, Promotional Bonus Miles, and the Bonus Miles awarded on American purchases, in each case awarded by Bank and posted by American. No discount shall be provided for Accelerated Bonus Miles.

12.2 Interchange Decrease. If a significant change in the Average Interchange Rate causes a substantial diminution in Bank's reasonably expected economic benefits under this Agreement, then Bank may propose in writing for American's review and approval a necessary or appropriate reasonable change in the Mile accrual and a proportionate change in the Revenue Guarantee so that both Parties continued interest remains economically viable and maintains the balance of the commercial interests of the Parties. American shall not unreasonably refuse approval to any such changes.

12.3 Reversal of Adjustment. For so long as the Mile accrual for the Cards has been adjusted downward from the Mile accrual established as of the Effective Date pursuant to Section 12.2, Bank shall deliver to American a report every six (6) months on the status of the Average Interchange Rate and its continued impact. If, after a Mile accrual adjustment is made, the events that gave rise to the Interchange Decrease are fully or partially repealed or reversed, then (i) the Mile accrual adjustment and Revenue Guarantee adjustment shall be modified or reversed on a *pro rata* basis effective no later than thirty (30) Business Days after the repeal or reversal for the Mile accrual, and retroactively to the date of the repeal or reversal for the Revenue Guarantee; and (ii) Bank shall notify American of such repeal or reversal, in whole or in part, as soon as reasonably practicable; provided however, that no failure by Bank to notify shall affect the requirement that the Mile accrual adjustment and Revenue Guarantee be modified or reversed as described above.

KH

**13. Revenue Guarantees**

13.1 Amount of Revenue Guarantee. Bank's Revenue Guarantee is set forth in the table below. The number in the Revenue Guarantee column represents the number of Base Miles plus Accelerated Bonus Miles to be purchased by Bank during the corresponding Contract Year. Within forty-five (45) calendar days following the end of each Contract Year and in accordance with Section 11.9, Bank and American shall compare the Mileage Purchases made by Bank with the corresponding Revenue Guarantee for such Contract Year. Mileage Purchases attributable to one Contract Year cannot carry forward to the following Contract Year. If this Agreement terminates prior to the conclusion of the expiration date of the Term, where applicable, then the calculation and payment of the Revenue Guarantee payment shall be carried out as set forth in Section 21.8.

Contract Year	Revenue Guarantee in Miles (in Millions)	Contract Year	Revenue Guarantee in Miles (in millions)
1	█	6	█
2	█	7	█
3	█	8	█
4	█	9	█
5	█	10	█

13.2 Reconciliation and Shortfall Miles. If based on the reconciliation referenced in Section 13.1, the Mileage Purchases purchased and paid by Bank are less than the applicable Revenue Guarantee for the Contract Year, then American shall (i) calculate the number of Base Miles that constitute the shortfall (the "**Shortfall Miles**"), (ii) multiply the number of Shortfall Miles by the rate per Base Mile applicable to the Contract Year for which the shortfall occurred, and (iii) invoice Bank for this shortfall amount plus Taxes in accordance with Section 12.1. For all Contract Years other than the tenth (10<sup>th</sup>) Contract Year Ten, upon payment by Bank of the shortfall invoice, such Shortfall Miles shall be immediately available for use by Bank subject to the following restrictions:

13.2.1 Shortfall Miles may only be used by Bank as Bonus Miles.

13.2.2 Shortfall Miles shall expire on the earlier to occur of (i) the termination of this Agreement, and (ii) eighteen (18) months after the Shortfall Miles are available for use. Expired Shortfall Miles shall be forfeited without any refund or amounts paid in connection therewith.

*KF*



#### 14. AADVANTAGE Program Support and Bank Approvals

14.1 Participant Support. During the first three Contract Years, American (i) shall make available to Bank one full page placement in American's Nexos magazine, or successor publication, per Contract Year to promote the Card Program, and (ii) shall fund a pool of Ten Million (10,000,000) Miles each such Contract Year to be used as Promotional Bonus Miles awarded to Cardholders, which Promotional Bonus Miles shall be available for use during the entire Contract Year as of the first day of the corresponding Contract Year, for promotions carried out in accordance with the terms of this Agreement. Promotional Bonus Miles in this pool shall expire on the earlier to occur of (a) the last day of the corresponding Contract Year, and (b) upon notice of termination of this Agreement. Expired Promotional Bonus Miles from this pool shall be forfeited without any refund or amounts paid in connection there with. During the Term, American shall also provide, at no additional cost to Bank, the following support of Bank's participation in the AADVANTAGE Program which shall be solely through AADVANTAGE Program advertising channels:

14.1.1 Announcement of Bank's participation in the AADVANTAGE Program in an AADVANTAGE Program newsletter article that may be sent to Members from time to time with mailing addresses in Brazil. The content of the AADVANTAGE Program newsletter will be determined solely by American, but use of Bank Permitted Marks shall be subject to any applicable Bank approval rights in Sections 14.2 and 16.2.

14.1.2 A website link from American's website to Bank's websites. American at its sole option may feature Bank's special promotions on its "AADVANTAGE Participant Index" and "Specials" website pages subject to any applicable Bank approval rights in Sections 14.2 and 16.2 and

14.1.3 Listing of Bank as an AADVANTAGE Participant in an AADVANTAGE Member Guide or successor publication.

#### 14.2 Bank Approval Requirements.

14.2.1 Except where Bank's approval is not required by the express provisions of this Agreement, American will not distribute, publish, circulate or otherwise communicate to the public any art work, copy, advertising, promotional material, direct mail, press release, newsletter or other communication that specifically references this Agreement, Bank or any of its Affiliates or the Card, or that uses any Bank Permitted Marks, unless Bank has given its prior consent and has approved the content of such communication. All use of Bank Permitted Marks shall be subject to the additional requirements regarding Bank Permitted Marks as described in Section 16 and shall conform to the requirements of the Bank Brand Guidelines.

14.2.2 American agrees to submit to Bank for approval a final proof of all parts of a communication in which Bank Permitted

Marks is depicted. Bank shall approve or disapprove the content of such proposed communication within ten (10) Business Days following receipt of the proposed communication. Once Bank provides its approval, American shall not make any changes to the approved communication. American agrees that Bank may revoke its approval of the use of Bank Permitted Marks in a communication if it reasonably believes that Bank Permitted Marks is being used in such communication in a manner that may harm the Bank Permitted Marks or Bank. American agrees that it shall have a five (5) day period in which to cure any such issue, after which if the issue cannot be cured, as determined in Bank's sole discretion, American agrees that upon receiving written notice that Bank has revoked its approval of the use of the Bank Permitted Marks in a specific communication, American will immediately cease using the Bank Permitted Marks in such communication in any form, including, without limitation, refraining from distributing any form of such communication. American shall not be obligated to make actual use of a communication once approved. American does not require approval from Bank to advertise or refer to (i) the name of Bank or the Cards merely as part of a list of AADVANTAGE Participants, or (ii) the Card as part of a list of ways AADVANTAGE Miles may be earned in the AADVANTAGE Program.

14.3 Marketing Suspension. Upon the occurrence of any Significant Event (as defined below), American will have the right in its reasonable discretion to suspend any direct or indirect marketing or advertising produced by or associated with American and its Affiliates, AADVANTAGE Miles, and the AADVANTAGE Program, including, without limitation, online and offline direct mailings, newsletter articles, telemarketing and any authorized use of the AADVANTAGE List, but excluding Section 14.1(ii). American's suspension under this Section 14.3 may continue for a reasonable period, as determined by American in its reasonable discretion, with such period determined by, among other factors, (i) whether or not the Significant Event involved American or its Affiliates, or any of their employees, property or contractors; (ii) industry practices; and (iii) the severity of the Significant Event. American will notify Bank as soon as practical after any such suspension that may affect marketing or advertising rights of Bank under this Agreement. American will not be responsible for any printing or other costs that Bank may have incurred prior to or as a result of this suspension. Any suspension by American pursuant to this Section 14.3 will not relieve Bank of any payment obligations that would otherwise be due and payable under the terms of this Agreement. For purposes of this paragraph, a "**Significant Event**" will mean any significant incident, including, without limitation, any incident, accident or hijacking or attempted hijacking, involving any aircraft of (i) American or any of its Affiliates, or (ii) any other airline carrier.

14.4 Modification or Cancellation. American may, from time to time, modify or cancel any of the advertising channels listed in this Section 14 or any other advertising channels used or offered by American without any liability or compensation to Bank under this Agreement.

14.5 Use of AADVANTAGE List. American shall provide to Bank the opportunity to carry out direct mail Solicitations to AADVANTAGE Members through American or a third party vendor at least once a year, as described in Section 17.16.

**15. Bank Support and American Approvals**

15.1 Bank Solicitations.

15.1.1 Subject to the terms and conditions of this Agreement, Bank shall, at its sole expense, and solely within Brazil, conduct Solicitations using the most effective Solicitation channels for the Card's target segments, including by way of example solo mailings, and pre-approved mailings after pre-screening of names through credit bureaus.

15.1.2 Bank shall, at its own expense, create, produce and distribute all Solicitation materials, including, without limitation, Applications and other pre-approved materials, subject to American's prior written approval (which approval shall not be unreasonably delayed, conditioned or withheld). In any given calendar year, if American fails to respond with feedback to Bank's request for approval pursuant to this Section 15.1.2 within ten calendar days, then after the third time of such failure, American shall make available to Bank a pool of one million (1,000,000) Miles that may be awarded by Bank to Cardholders in accordance with the provisions of Section 9 and such pool of Miles shall expire on the earlier of (i) eighteen months from the date they were made available and (ii) the termination or expiration of this Agreement.

15.1.3 Bank may, at its expense and where permitted by Applicable Law, conduct Solicitations targeted to Cardholders who Bank deems likely to request other categories of Card Accounts. Such Solicitations shall invite Cardholders to convert to the applicable category of Card Account on a pre-approved basis.

15.1.4 Potential customers that are forwarded to Bank by American via American's website or other software operated by American shall not be redirected by Bank to other Credit Cards or commercial/corporate card products issued by Bank or its Affiliates appearing on Bank's website or via other software.

15.1.5 The Solicitation rights of Bank pursuant to this Section 15.1.1 also will be subject to any additional restrictions in Section 17.

15.2 Bank Advertising. Bank shall at its expense, directly or through its designee:

15.2.1 provide for American's use at least two (2) times per year the message area on periodic statements sent by Bank to

Cardholders or on the Cardholders home banking portals; provided, however, that American provide Bank with forty-five (45) calendar days' prior notice of the content of such messages, which will be subject to Bank's reasonable approval and reasonable space, production and regulatory limitations; and

15.2.2 maintain a link between Bank's website and American's website and promote American's website via statement, or Cardholders home banking portals.

15.3 American Approval Requirements and Disclosures.

15.3.1 Except where American's approval is not required by the express provisions of this Agreement, Bank shall not distribute, circulate or otherwise communicate to the public, directly or indirectly, or use or publish any Solicitation, art work, script, copy, advertising, promotional material, direct mail, press release, newsletter, online or offline promotion, collateral material or other communication, or any other publicity published (including any official rules for any contemplated sweepstakes) that specifically references this Agreement, the AADVANTAGE Program, any AA Carrier, American or any of its Affiliates, or that uses any American Permitted Marks, unless American has given its prior written consent to Bank and has approved the content of any such communication. Bank agrees to use only the appropriate digital renditions of the American Permitted Marks, and American will, from time to time, provide Bank with limited access to the American Airlines brand center website at <https://brand.aa.com>, or such other website that American may designate, to obtain the appropriate digital renditions of the American Permitted Marks. All such use shall also be subject to the additional requirements regarding American Permitted Marks as set forth in Section 16.1 and conform to the requirements of the American Brand Guidelines.

15.3.2 Bank agrees to submit to American for approval a final proof of all parts of a communication in which the American Permitted Marks is depicted. American shall approve or disapprove the content of such proposed communication within ten (10) days following receipt of the proposed communication. Once American provides its approval, Bank shall not make any changes to the approved communication. Bank agrees that American may, in its sole discretion, revoke its approval of the use of the American Permitted Marks in a communication if it reasonably believes that the American Permitted Marks is being used in a manner that may harm the American Permitted Marks or American. Bank acknowledges that it shall have a five (5) day period in which to cure any such issue, after which if the issue cannot be cured, as determined in American's sole discretion, Bank agrees that upon receiving written notice that American has revoked its approval of the use of the American Permitted Marks

in a specific communication, Bank will immediately cease use of the American Permitted Marks in such communication in any form, including, without limitation, refraining from distributing any form of the communication. Bank shall not be obligated to make actual use of a communication once approved. No approval from American is required when Bank correctly uses the name "American Airlines" as part of a list of affinity card participants or a list of its Bank Card programs.

15.3.3 Bank shall include in all Cardholder communications and advertising or promotion of the Card, a statement that "Banco Santander (Brasil), S.A. issues the [Full name of Card]," as such; provided, however, that communications to Cardholders that are collection letters, adverse actions or similar notices shall not be branded with American Permitted Marks and shall refer to the Card and Card Account number without reference to American or American Permitted Marks unless otherwise agreed by American in advance.. Bank shall include in all communications regarding Card Accounts that contain American Permitted Marks the appropriate AADVANTAGE Program disclosures and tag lines as set forth on the American Brand Guidelines, including, without limitation, notices of American's right to change or terminate the AADVANTAGE Program. Bank shall also append the appropriate trademark symbol as designated by American to every use in any American Permitted Mark in any communication. All promotional or informational material distributed or electronically transmitted by Bank using the name "AADVANTAGE," "American Airlines" or any other American Permitted Mark will require the tag line "American Airlines", "AADVANTAGE" (and all other American Trademarks used in the communication) are Trademarks of American Airlines, Inc. American Airlines is not responsible for products or services offered by other participating companies"

15.4 Payment Network Incentives. Bank shall use reasonable efforts to secure Payment Network Incentives to promote the Card Program.

15.5 AADVANTAGE Program "Gold" Elite Status. During a given Contract Year, Bank may request, and American shall award the AADVANTAGE Program's "Gold" elite status (as described in the AADVANTAGE Program Terms and Conditions and as may be replaced by any successor status or benefit) to select Cardholders (but excluding Authorized Users) of a Super Premium Card who meet certain requirements and subject to the conditions described below.

15.5.1 First Contract Year: During the first (1<sup>st</sup>) Contract Year of the Term, anytime after November 1, 2017 (unless American notifies Bank that an earlier date can be implemented):

(i) Pre-Spend Status Awards. On a monthly basis before the fifteenth (15<sup>th</sup>) of any month during Contract Year One, Bank may request that AADVANTAGE Gold

elite status be granted to Cardholders regardless of their spend (each a “**Pre-Spend Status Award**”):

(a) Provided that Bank’s request is accompanied by a complete Bank Report, as described in Section 9.6, American shall grant the Gold elite status to the Cardholder commencing on the first of the following month and continuing until the end of the annual elite status membership cycle under the AAdvantage Program (the “**Elite Enrollment Period End Date**”), which currently is the last day of January.

(b) American shall confirm that Gold elite status was granted to the Cardholder per the Bank’s Pre-Spend Status Award request via e-mail to Bank at the e-mail address provided by Bank to American for this purpose, and to the e-mail address of the Cardholder if American has the Cardholder’s e-mail address. (The process described in paragraphs (a) and (b) of this Section 15.5.1 shall be referred to as the “**Pre-Spend Status Award Process**”).

(ii) Limit on Awards. No more [REDACTED] Cardholders can be granted the Pre-Spend Status Award in the first (1<sup>st</sup>) Contract Year.

**15.5.2 Second Contract Year and Beyond:** In any Contract Year after the first (1<sup>st</sup>) Contract Year:

(i) Pre-Spend Status Awards. Bank may request Pre-Spend Status Awards for Cardholders on or before the fifteenth (15<sup>th</sup>) of any month during any such Contract Year, subject to the terms of the Pre-Spend Status Award Process described above. No more than [REDACTED] Cardholders can be granted the Pre-Spend Status Award in any such Contract Year.

(ii) Annual Spend Status Awards. Bank may also request once during any such Contract Year, no later than January 15 of such Contract Year, that Cardholders be granted Gold elite status based on their Net Purchase Sales on their Super Premium Card (the “**Annual Spend Status Award**”), where Net Purchase Sales were equal to at least [REDACTED] during the prior twelve (12) months that the individual was a Cardholder.

(a) Provided that Bank’s request is accompanied by a complete Bank Report, as described in Section 9.6, American shall grant the Gold elite status to

the Cardholder commencing on the beginning of the annual elite status membership cycle under the AAdvantage Program (the "**Elite Enrollment Period Start Date**"), which currently is the first day of February, and continuing through the Elite Enrollment Period End Date.

(b) American shall confirm that Gold elite status was granted to the Cardholder per the Bank's Annual Spend Status Award request via e-mail to Bank at the e-mail address provided by Bank to American for this purpose, and to the e-mail address of the Cardholder if American has the Cardholder's e-mail address.

(iii) Renewal Status Awards. Bank may also request once during such Contract Year, no later than January 15 of such Contract Year, that a renewal of AADVANTAGE Gold elite status be granted to a Cardholder ("**Renewal Status Award**") who had been granted a Pre-Spend Status Award or Annual Spend Status Award the prior Contract Year, but only where the Net Purchase Sales on the Card equaled a monthly average of [REDACTED] or more during the number of months that the individual was a Cardholder.

(a) Provided that Bank's request is accompanied by a complete Bank Report, as described in Section 9.6, American shall grant the Gold elite status renewal to the Cardholder commencing on the Elite Enrollment Period Start Date and continuing through the Elite Enrollment Period End Date.

(b) American shall confirm that Gold elite status renewal was granted to the Cardholder per the Bank's Renewal Status Award request via e-mail to Bank at the e-mail address provided by Bank to American for this purpose, and to the e-mail address of the Cardholder if American has the Cardholder's e-mail address.

(iv) Awards Limits. Unless otherwise agreed by American, no more than [REDACTED] Cardholders can be granted Gold elite status under paragraphs (i)-(iii) above during any Contract Year after the first (1<sup>st</sup>) Contract Year.

15.5.3 Additional Terms. A Cardholder may be eligible for the Pre-Spend Status Award only once during the Term. The granting of AADVANTAGE Gold elite status is not an automatic or permanent benefit of the Super Premium Cards and shall be

provided by Bank by invitation only. No Cardholder shall be required to participate. Bank shall be responsible for any liability or claims by a Cardholder where the number of Cardholders invited by Bank who otherwise would qualify for participation is greater than the maximum number of Cardholders who are allowed to be granted Gold elite status under this Section 15.5 and as a result are unable to participate. Terms and conditions of elite status, including the benefits afforded to Gold elite status and the elite status membership cycle periods are subject to change without notice. In addition to the requirements described herein, only AAdvantage Members in good standing qualify for elite status. Failure to comply with applicable terms and conditions (e.g., fraud) may result in forfeiture of status without liability to the Cardholder, including indemnification liability under Section 19.2.

15.5.4 Status Bounties. Commencing with the second (2<sup>nd</sup>) Contract Year and thereafter during the Term, Bank shall pay to American the amount of [REDACTED] per each Cardholder who was granted a Pre-Spend Status Award, Annual Spend Status Award or Renewal Status Award during such Contract Year (each payment a "Status Bounty").

(i) American shall waive the Status Bounty payment for any Cardholder that also obtained Gold elite status through activities other than use of the Super Premium Card (e.g., lifetime Gold status, flight activity).

(ii) For Pre-Spend Status Awards, if the Cardholder has Net Purchase Sales using the Super Premium Card equal to a monthly average of at least [REDACTED] for the twelve consecutive months following enrollment with Gold elite status, then American shall pro-rate the Status Bounty paid based on the period of time between the date the Pre-Spend Status Award was granted until the Elite Enrollment Period Start Date and shall credit Bank for the applicable amount.

(iii) The payment credit referred to in Section 15.5.4(ii) does not impact or reduce Bank's obligation to pay the full Status Bounty applicable to any Renewal Status Award.

(iv) Bank shall submit payment of the applicable Status Bounty each time it submits its request for Pre-Spend Status Awards, Annual Spend Status Awards or Renewal Status Awards.

## 16. Intellectual Property

16.1 Permission to Use American Trademarks. During the Term, and solely in connection with promoting the Cards, Program and AADVANTAGE Program, American grants Bank limited, royalty free, non-transferable, non-



assignable, non-sublicenseable (except as provided in Section 16.3 below), non-exclusive permission to use the American Permitted Marks in Brazil, provided that Bank shall obtain American's express written authorization prior to any such use, and that such use is in accordance with the terms and conditions of this Agreement. Bank acknowledges and agrees that American owns the American Permitted Marks and the goodwill associated therewith, and that Bank does not have the right to alienate the American Permitted Marks. Bank agrees that, unless permitted under this Agreement or a separate signed writing between the Parties, Bank shall not permit any third party to use the American Permitted Marks. Bank agrees that it shall in no way, and shall not, directly or indirectly, encourage or assist others to contest or deny the validity, or the right or title, of American in or to the American Permitted Marks at any time. Bank understands that it has no right or permission to use the American Permitted Marks for any purpose not expressly stated in this Agreement and that any unauthorized use of the American Permitted Marks shall constitute a material breach of this Agreement, and an infringement of American's rights in and to the American Permitted Marks. Bank acknowledges that any harm suffered by American due to a breach or alleged breach of this Section 16.1 cannot be quantified and that American does not waive its rights to equitable or injunctive relief to enforce its rights upon the occurrence of such breach. Bank acknowledges that upon termination of this Agreement, Bank will cease use of the American Permitted Marks and of the Program Specific Marks. Bank agrees to comply with the American Brand Guidelines. Bank acknowledges it may only use the appropriate digital renditions of the American Permitted Marks in its marketing and promotional materials and American will, from time to time, provide Bank with access to the extent relevant and necessary to the American Brand Guidelines applicable to Bank at the <https://brand.aa.com> website, or such other website that American designates, to obtain the appropriate digital renditions of the American Permitted Marks. Bank agrees that no image or content may be superimposed upon the American Permitted Marks. Bank agrees to place the appropriate trademark symbol as designated by American with the American trademark each time it is displayed in advertising, communications or documents. Bank further acknowledges and agrees that it has no right or permission pursuant to this Agreement to use any other Intellectual Property of American not listed in Schedule 16.1(a) that is owned by American, nor does Bank have permission to use or distribute the American Permitted Marks for any purpose other than that stated in this Agreement. No right, property, license, permission or interest of any kind in or to the American Permitted Marks is or is intended to be given or transferred to or acquired by Bank upon the execution, performance or non-performance of this Agreement or any part hereof except as expressly set forth herein. Bank further agrees, during the Term that (i) Bank will not register or use any intellectual property confusingly similar to the American Permitted Marks; (ii) Bank will take no actions that are adverse to American's ownership rights in or that may be harmful to the American IP; (iii) Bank shall not use the American Permitted Marks in any manner that would diminish its value or harm the reputation of American; (iv) Bank shall not use or register any domain name that is identical to or confusingly similar to any of the American Permitted Marks; and (v) Bank agrees that it will not create, acquire, license or support any internet keyword or search term that contains any American Permitted Marks.

16.2 Permission to Use Bank Trademarks. During the Term, and solely in connection with promoting the Cards, Card Program and AADVANTAGE Program, Bank shall cause **SANTANDER INVESTMENT BANK LIMITED** ("**SIB**"), an Affiliate of the Bank and the legal owner of the Bank Permitted Marks, to grant to American a limited, royalty free, non-transferable, non-assignable, non-sublicenseable (except as provided in Section 16.3 below), non-exclusive permission to use the Bank Permitted Marks (i) in Brazil (ii) via the Internet, and (iii) in the United States exclusively for advertising, promotional and informational purposes regarding the Card Program, and in each of items (i) – (iii) above only with respect to the activities contemplated in this Agreement; provided that American shall obtain Bank's express written authorization in accordance with this Agreement prior to any such use, and that such use will be in accordance with the terms and conditions of this Agreement (the "**SIB Permission**"). A copy of the SIB Permission is attached to this Agreement as Schedule 16.2(a). American agrees to place the appropriate trademark symbol as designated by Bank with the Bank Permitted Marks every time it is displayed in advertising, communications or documents. American further acknowledges and agrees that it has no right or permission pursuant to this Agreement to use any other Intellectual Property of Bank not listed in Schedule 16.2(a) owned by Bank, nor does American have permission to use or distribute the Bank Permitted Marks for any purpose other than that stated in this Agreement. No right, property, license, permission or interest of any kind in or to the Bank Permitted Marks is or is intended to be given or transferred to or acquired by American by the execution, performance or non-performance of this Agreement or any part hereof. American further agrees, during the Term, that (i) American will not register or use any intellectual property confusingly similar to the Bank Permitted Marks; (ii) American will take no actions that are adverse to Bank's ownership rights in or that may be harmful to the Bank Permitted Marks; (iii) American shall not use the Bank Permitted Marks in any manner that would diminish its value or harm the reputation of Bank; (iv) American shall not use or register any domain name that is identical to or confusingly similar to any of the Bank Permitted Marks; and (v) American agrees that it will not, without Bank's prior written permission (e-mail shall suffice), create, acquire, license or support any internet keyword or search term that contains any Bank Permitted Marks.

16.3 Additional Requirements.

16.3.1. Each Party covenants and agrees that it has the authorizations and rights necessary for the granting of the Trademark permissions set forth herein. (Each Party, in its capacity as a Party granting such permission or causing the grant of such permission, shall be hereinafter referred to as a "**Granting Party**".) The foregoing Trademark permissions do not include any right to grant subpermissions, except as set forth in this Section 16.3. In addition Bank represents that it has the authorizations and rights with respect to the Bank Permitted Marks necessary for Bank to perform Bank's obligations with respect to the Bank Permitted Marks.

16.3.2. American as Granting Party grants to Bank the permission to grant a subpermission to use American Permitted Marks to

Bank's Data Processors that are necessary for Bank to meet its obligations under this Agreement and have been approved in writing by American; provided, that each such Data Processor agrees in writing to comply with the same terms and conditions to which Bank is obligated under this Agreement.

16.3.3. Bank as Granting Party grants to American the permission to grant a subpermission to use the Bank Permitted Marks to American's Data Processors that are necessary for American to meet its obligations under this Agreement and have been approved in writing by Bank; provided, that each such Data Processor agrees in writing to comply with the same terms and conditions to which American is obligated under this Agreement.

16.3.4. Where a Party (the "**Contracting Party**") negotiates agreements with any third parties which relate to the products and services of the other Party as a "Granting Party" in which the Card Program will be a part, including any agreement that could reasonably be expected to result in a third party request to be granted a sub-license to use the Granting Party's Trademarks or other Intellectual Property, the Contracting Party agrees not to enter into agreements regarding the Granting Party or the Granting Party's rights as established under this Agreement that are less favorable than those to be enjoyed by the Contracting Party. The Contracting Party shall provide the Granting Party copies of all draft terms in any such agreements with third parties affecting the Card Program. The Contracting Party's right to the Granting Party's Trademarks and other Intellectual Property to any third party shall be subject to the Granting Party's express written authorization, which shall be obtained by the Contracting Party prior to such use.

#### 16.4 Program Specific Marks.

16.4.1 American and Bank may mutually agree to develop new Program Specific Marks to be used in connection with a Card Program during the Term. American shall be entitled to register the Program Specific Marks in its name and upon the termination of this Agreement shall have exclusive ownership rights in and to all Program Specific Marks. No Program Specific Marks shall contain any Bank Permitted Marks.

16.4.2 All Program Specific Marks and any changes or updates to Program Specific Marks shall require the prior written approval of American and Bank. Program Specific Marks and applicable Brand Guidelines developed by the Parties for Program Specific Marks shall be listed and included on a Schedule 16.4 that will be attached to this Agreement, which Schedule shall be updated from time to time during the Term.

16.4.3 Any use of the Program Specific Marks by a Party shall be subject to the approval of American and Bank. Except where

otherwise expressly agreed in writing by American and Bank, the restrictions and requirements applicable to Bank with respect to American Permitted Marks under this Section 16.4 shall also apply to Bank with respect to the Program Specific Marks.

16.5 Changes to Intellectual Property or Brand Guidelines.

16.5.1 Following written notice by a Granting Party to the other Parties of a change to a Granting Party's Permitted Marks, such updated Permitted Marks shall be the Granting Party's Permitted Marks used for all purposes, as applicable, associated with this Agreement and deemed to be referenced in this Agreement upon creation of a new schedule. If Card Program collateral needs to be changed to take into account a change to a Party's Permitted Marks, the Parties shall reasonably cooperate with each other to transition to replacement collateral that includes the updated Permitted Marks as soon as possible, but in no event later than (i) nine (9) months for any collateral that require systems changes involving more than coding changes, and (ii) thirty (30) days for any online or digital collateral, and (iii) three (3) months for all other collateral. Each Party in changing collateral shall give equivalent treatment and priority to implementing changes to the Granting Party's Permitted Marks as it gives when implementing changes to its own Trademarks.

16.5.2 Subject to Section 16.5.1, a Granting Party may change its Brand Guidelines at any time and in its sole discretion during the Term, and upon written notice to the other Party and after receipt of such notice, the other Party shall comply with the requirements of the updated Brand Guidelines; provided, however, that changes to any Brand Guidelines for Program Specific Marks shall require the prior written consent of both Bank and American.

16.6 Harmful Use of Trademarks; Revocation of Trademark Permission. Each Party agrees that the Granting Party can, in its sole discretion revoke its permission to use the Granting Party's Permitted Marks in any specific instance in which the Granting Party reasonably believes that the Granting Party's Permitted Marks are being used in a manner that may harm the Granting Party's Permitted Marks or the Granting Party. Each Party acknowledges that it shall have a five (5) day period in which to cure any such issue, after which if the issue cannot be cured, as determined by the Granting Party in its sole discretion, each Party agrees that upon receiving written notice that the Granting Party has revoked this permission to use the Granting Party's Permitted Marks in such instance, the other Party will immediately cease such use of the Granting Party's Permitted Marks in any form. Continued use of the Granting Party's Permitted Marks after such permission has been revoked shall be deemed a material breach of this Agreement.

16.7 Goodwill. Each Party hereby agrees that any goodwill arising out of any use by it of the Granting Party's Permitted Marks inures exclusively to the benefit of the Granting Party.

16.8 Combinations of Trademarks, Card Designs and Collateral.

16.8.1 Except as expressly provided herein or otherwise consented to by the Party with the ownership interest in the Trademarks, neither Bank nor American will (i) combine the Trademarks of the other (whether used pursuant to a license or otherwise) with any Trademarks of any other Person, or (ii) use the other Party's Trademarks (whether used pursuant to a license or otherwise) in any corporate or trade name.

16.8.2 During the Term, but not thereafter, Bank shall, at Bank's sole expense, develop Card designs prominently featuring the AADVANTAGE and AMERICAN AIRLINES Trademarks. (the "Card Designs"). Card designs may also feature Bank Permitted Marks or Program Specific Marks as may be mutually agreed between the Parties. The Card Designs shall conform to the applicable rules and guidelines of each Payment Network, and Bank shall be solely responsible for such compliance.

16.8.2.1 Such Card Designs and any proposed changes thereto by Bank shall be subject to American's prior written approval. All words, symbols and combination of words and symbols or any changes thereto that are to appear in conjunction with the American Permitted Marks and are proposed for use in connection with any Card Program shall be subject to the prior approval of American.

16.8.2.2 Subject to Section 16.1, Section 16.2 and Section 16.4, and a Party's ownership rights in and to its Intellectual Property, Bank and American will jointly own all rights, title and interest in (i) the Card Designs; and (ii) any collateral using both the American Permitted Marks and Bank Permitted Marks; provided, however, that each Party will not acquire and hereby disclaims any rights, title or interest in or to any Intellectual Property of any other Party or any Payment Network appearing in the Card Designs or collateral. Bank may not use such Card Designs or collateral following the termination of this Agreement, nor license, assign or transfer such Card Designs during the Term or following termination of this Agreement to any Person for any purpose without the prior written consent of the American. No Party may use, transfer, or otherwise exploit for any purpose such collateral following the termination or expiration of this Agreement without the prior written consent of the other Party. The restrictions set forth in this Section 16.8.2.2 shall survive the termination or expiration of this Agreement indefinitely.

16.9 Logos on all Card Program Materials. Subject to the approval requirements described herein, Bank and American shall include the approved Bank logo and American AADVANTAGE logo on all applicable brand specific

materials sent to Cardholders or prospective Cardholders in connection with the Cards, except for adverse action, collection and customer service letters.

16.10 Domain Names and URLs. Notwithstanding any other provision of this Agreement, the Parties' respective rights and obligations regarding "Approved URLs" shall be as set forth and defined in Schedule 16.10.

16.11 Third Party Infringement. A Party shall notify the other Party if it becomes aware of any infringement by a third party of any of the following: (i) American Permitted Marks or Bank Permitted Marks as used in the AADVANTAGE Program or Card Program (including where the infringing use of such American Permitted Marks or Bank Permitted Marks are part of a domain name or a website that is being used for unauthorized or fraudulent purposes), or (ii) Permitted Marks of American or Bank that are presented in combination in the Card Program or in Card Designs, or (iii) any Card designs or Program Specific Marks. For infringements that relate solely to one Party's Permitted Marks, the Party that is the owner of such Permitted Marks shall have the sole right, but not the obligation, to pursue any enforcement of its rights against the third party infringements. The other Parties shall reasonably cooperate with any such enforcement action. For infringements that relate to both Bank Permitted Marks and American Permitted Marks, or any Intellectual Property combinations or Card Designs or Program Specific Marks ("**Joint Enforcements**"), Bank and American shall cooperate on such Joint Enforcements. If Bank and American decide to commence litigation in relation to such Joint Enforcement, then such litigation shall be promptly commenced using counsel acceptable to both American and Bank and they shall share equally in the expenses and costs of such litigation, and in any eventual award from such litigation (after deducting all unpaid and non-recouped expenses and costs). If one Party (but not other Parties) decides to commence litigation in relation to the Joint Enforcement, then such litigation may be promptly commenced solely in respect of such Party's Permitted Marks, using counsel acceptable to such Party and such Party shall bear all expenses and costs of such litigation, and shall be entitled to any eventual award from such litigation.

16.12 Bonus Miles Withholding. If Bank breaches any terms of this Section 16 or otherwise carries out any solicitation or campaign in connection with the Card Program that has not been approved by American in writing, and if the violation is curable and has not been cured by Bank within fifteen (15) days of notice by American, then, in addition to any other rights that American may have under this Agreement or at law, American may, in its sole and absolute discretion, withhold the issuance of any portion of any Bonus Miles that American agreed to contribute to the promotion or revoke the discount applicable to the Bonus Miles with respect to which the violation occurred.

16.13 Termination Arrangements. Termination arrangements applicable to rights and obligations of the Parties under this Section 16 are set forth in Section 21.6.

## 17. Data Ownership, Confidentiality and Data Security

American, Bank and their respective Affiliates have invested extensive time, money and specialized resources into developing, collecting and establishing their

respective data and data assets. This Section 17 identifies and acknowledges the parties' respective rights in and to their data and data assets, and establishes baseline commitments regarding confidentiality, data usage and security. In the event of a conflict between the terms of this Section 17 and the rest of this Agreement, or in the event of any duplication in terms or definitions in this Section 17, the terms of this Section 17 will override and only the definitions in this Section 17 will be used in interpreting this Section 17. Each of American and Bank are responsible for ensuring compliance with the terms of this Section 17 by its employees, agents and contractors. All of the restrictions and obligations in this Section 17 that apply to either Bank or American, including all confidentiality and security obligations, should be read as also applying to Bank's or American's respective employees, agents and contractors. All references to contractors in this Section 17 will include subcontractors, but each party is still required to comply with any limitations on delegation and subcontracting that may be contained in this Agreement.

17.1 American Data. As between Bank and American (i.e., without addressing rights of third parties), American Data is solely owned by American, including all rights, title and interest in and to American Data. Bank hereby irrevocably assigns, transfers and conveys to American without any requirement of further consideration all of its right, title and interest in the American Data, including any Intellectual Property Rights thereto to the extent held by Bank or its Data Processor. Upon request by American, Bank shall execute and deliver any documents that may be necessary or desirable under Applicable Law to perfect, protect, preserve, or enable American to enforce, its rights with respect to American Data. Except for any Permitted American Data Uses, Bank shall not Process (including, by way of example, edit, modify, use, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose or sell), any American Data. Bank is not authorized to agree to third party terms and conditions which would assign, transfer, or license American Data or Other American Data or American's proprietary rights in American Data or Other American Data to a third party or is otherwise intended or known by Bank to negatively impact American's proprietary rights to American Data or Other American Data, unless such third party arrangements are identified as being Permitted American Data Uses or have otherwise been approved by American in a separate written instrument. In consideration of the business relationship being established by this Agreement, Bank agrees not to use American Data or Other American Data in a manner that is intended or known by Bank to be harmful to American. Illustrative examples of uses of Other American Data that would or would not be harmful to American are included in Schedule 17.1, but such list of examples is not exhaustive. American defines American Data as a trade secret and is American's Confidential Information. Bank acknowledges that American Data is provided subject to the confidentiality and security provisions of this Agreement. American agrees that Bank's use of Other American Data in connection with Bank's investment banking business will not be regarded as "harmful" for the term of this Agreement and for purposes of this Section 17.1 so long as bank does not:

17.1.1 Purport to assign or license Other American Data or American's proprietary rights in Other American Data, to any third party;

17.1.2 Use any Other American Data in connection with any promotions for the benefit of (i) a travel intermediary such as a travel agency, or (ii) an air carrier other than American; or

17.1.3 Knowingly or willfully use or permit the use of Other American Data in advertising or promotions that are libelous, defamatory, or disparaging to American or its Affiliates.

17.2 Bank Data. As between American and Bank (i.e., without addressing rights of third parties), Bank Data is solely owned by Bank, including all rights, title and interest in and to Bank Data. American hereby irrevocably assigns, transfers and conveys to Bank without any requirement of further consideration all of its right, title and interest in the Bank Data, including any Intellectual Property Rights thereto to the extent held by American. Upon request by Bank, American shall execute and deliver any documents that may be necessary or desirable under Applicable Law to perfect, protect, preserve, or enable Bank to enforce, its rights with respect to Bank Data. Except for any Permitted Bank Data Uses in this Agreement, American shall not Process (including, by way of example, edit, modify, use, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, or sell) any Bank Data. American is not authorized to agree to third party terms and conditions which would assign, transfer, or license Bank Data or Other Bank Data or Bank's proprietary rights in Bank Data or Other Bank Data to a third party or is otherwise intended or known by American to negatively impact Bank's proprietary rights to Bank Data or Other Bank Data, unless such third party arrangements are identified as being Permitted Bank Data Uses or have otherwise been approved by Bank in a separate written instrument. In consideration of the business relationship being established by this Agreement, American agrees not to use Bank Data or Other Bank Data in a manner that is intended or known by American to be harmful to Bank. Bank defines Bank Data as a trade secret and is Bank's Confidential Information. American acknowledges that Bank Data is provided subject to the confidentiality and security provisions of this Agreement.

17.3 Overlapping Data.

17.3.1 American and Bank recognize that Personal Information (excluding American Identifiers and Bank Identifiers) relating to American's customers that American obtained in connection with its own business operations and that is proprietary to American may be the same information as that Personal Information (excluding American Identifiers and Bank Identifiers) relating to Bank's customers that Bank obtained in connection with its own business operations and that is proprietary to Bank (such same information the "**Overlapping Data**"). For example, American and Bank may have in their databases the same name, address and email address for each customer that is both a Member of the AADVANTAGE Program and a customer of Bank's own proprietary products or services. The restrictions on use in this Agreement in relation to the other Party's data (including, in the



case of Bank, the Other American Data, and in the case of American, the Other Bank Data), or the Program Data, do not apply to such overlapping Personal Information (excluding American Identifiers and Bank Identifiers) which a Party has obtained from its own business operations and which do not permit or enable a Party to reconstitute the Cardholder List or to obtain the Cardholder Identity. Notwithstanding the foregoing, each Party agrees that it shall not combine such Party's own Personal Information with other data elements for the purpose of duplicating Program Data within its own proprietary databases or otherwise reverse engineering or reconstituting Program Data. Program Data elements shall not be appended to Personal Information for a Bank customer in the Bank Customer Database.

17.3.2 The Transaction Total Amount for an American customer's purchase of an American product or service is either American Data or Other American Data. The Transaction Total Amount for a Bank customer's purchase of a Bank product or service is either Bank Data or Other Bank Data. However, a copy of any Transaction Total Amount included in the Purchase Data for Card purchases will be deemed and treated as Program Data, because such Transaction Total Amounts are required for operation of the Program.

17.3.3 However, Bank acknowledges and agrees that Transaction Pricing Details and other information that is specific to American's flights, products and services including fares, schedules, inventory, AADVANTAGE Account numbers, AADVANTAGE Miles balances, AADVANTAGE Member tier status, AA PNR Data and AA TCN Data, are unique to American's business, are not part of Bank's proprietary data and remain American Data or property even if such data elements are collected in the course of Bank's operations.

17.4 Program Data. Program Data (including, for purposes of clarity, the Cardholder List) shall be jointly owned by the Parties and shall be considered Confidential Information of both Parties. Bank hereby irrevocably assigns, transfers and conveys to American without any requirement of further consideration a joint ownership interest in the Cardholder List, including a joint ownership interest in the Intellectual Property Rights therein, if any, to the extent held by Bank or its Data Processor. Upon request by American, Bank shall execute and deliver any documents that may be necessary or desirable under any law to perfect, protect, preserve, or enable American to enforce, its rights with respect to the Cardholder List. American and Bank each agree that they shall only exercise their respective rights as joint owners of the Cardholder List in accordance with the terms and conditions of this Agreement. Bank may use the Program Data as is reasonably required for Bank to provide and operate the Card Program and as is authorized by this Agreement. American may use the Program Data as is reasonably required for American to conduct its role in the operation of the Program and as is authorized by this Agreement. Each Party may also use Program Data to the extent expressly permitted by this Agreement

or where it obtains the other Party's prior written consent in a separate instrument prior to such use, and then only to the extent so permitted. This Agreement does not restrict Bank's right to use the Cardholder List to offer other products or services, except for Credit Cards, as long as American Data, American Trademarks or other Program Data are not used. During the Term, Bank shall be permitted to use Purchase Data and any other data of information collected by Bank in connection with Cardholders, Cards, Card Accounts or Card Program, including transaction spend category (i.e. "coffee", "restaurant", "hotel") to perform internal analysis in an aggregate manner with other data as long as (i) American Data, American Trademarks or other Program Data are not used and (ii) it is not used to help the solicitation or marketing of other Credit Cards. Notwithstanding the above, American shall have the right to use the Card Program Metrics Report in accordance with Section 8.5.

17.5 Bank Models. Bank Models are property of Bank and solely owned by Bank, unless such Bank Models are used or developed in conjunction with or derived from the Card Program. If Bank uses or develops any Bank Model independently of the Card Program, but uses such model in connection with the Card Program, then such Bank Model shall be owned by the Bank, but the output shall be deemed part of Program Data. If Bank uses or develops any Bank Models in conjunction with or derived from the Card Program, then such Bank Models and any results and output from the use of such Bank Models will be deemed part of Program Data.

17.6 Specific Restrictions on Bank. Except for the uses described in Section 17.4 and for purposes of promoting Bank's products and services where approved by American, Bank shall not use the Program Data, including making contact with Cardholders, without obtaining American's written approval for such use; specifically, and without limiting the prior sentence, and subject also to Section 17.3 (Overlapping Data) Bank agrees that: (i) Bank shall not use Program Data or Bank Data in a manner where the Cardholder Identity or the fact that an individual (or a group of individuals) is a customer of American is disclosed to a third party or is used to target such individual or group of individuals; and (ii) Program Data or data provided to American by Bank pursuant to the Bank's reporting obligations set forth in this Agreement shall not be disclosed to any third party, except that it may be disclosed to third parties with American's prior written consent if it is aggregated with other similar data from Bank's other Bank Card programs, subject to this Section 17.6. Bank shall suppress the Cardholder List from any solicitations or promotions that Bank may carry out with respect to any other Bank Card, airline or other Loyalty Program. Bank Models developed or used in connection with the Program, including any output therefrom, shall only be used by the Bank for purposes of the Card Program.

17.7 Specific Restrictions on American. Except for the uses described in Section 17.4 and for purposes of promoting American's products or services, American shall not use the Program Data without obtaining Bank's written approval for such use. In addition, American shall not use Program Data or American Data to make contact with Cardholders without obtaining Bank's written approval for such use, except in connection with the promotion of American's products or services. Specifically, and without limiting what is

permitted in the prior two sentences, and in addition to the permissions set forth in Section 17.3 (Overlapping Data), American agrees that: (i) American shall not use Program Data it receives or American Data in a manner where the Cardholder Identity or the fact that an individual (or a group of individuals) is a customer of Bank is disclosed to a third party (e.g. other contractors supporting American's promotion of American products or services) or is used to target such individual or group of individuals; and (ii) the data provided to American by Bank pursuant to the Bank's reporting obligations set forth in this Agreement shall not be disclosed to any third party without Bank's prior written consent, except that it may be disclosed to third parties with Bank's written consent if it is aggregated with other similar data from American's AADVANTAGE Program, subject to this Section 17.7.

17.8 Privacy Policy and Notices. Bank shall collect, manage, process, use and store the Current Cobrand List and the AADVANTAGE List in compliance with Applicable Law (including, for the avoidance of doubt, any Applicable Law related to Brazilian financial institutions or consumer or commercial products or services offered by Brazilian financial institutions)) and the requirements of this Agreement. American and Bank each acknowledges and agrees that the Program Data, AADVANTAGE List and Current Cobrand List contain non-public Personal Information. Any American Data regarding Members provided by American to Bank must be Processed by Bank in a manner that is consistent with American's privacy policy (which is available at [www.aa.com](http://www.aa.com) and which may change from time to time). Bank's Card offers to new applicants shall include disclosures and authorizations which permit, to the fullest extent permitted under Applicable Law, the disclosure to and use by American (including American's Representatives) of any and all Card application data, as reasonably determined by American is needed to perform its obligations and exercise its rights under this Agreement. Bank shall provide such application data to American and shall maintain a privacy policy that permits such disclosure. In addition, Bank shall provide American with copies of Bank's most recent privacy policy promptly following a request for copies of such policy. Bank will provide Cardholders with privacy notices pursuant to Applicable Law and will from time to time upon American's request provide American with a copy of the then-current version of such privacy notice. Bank represents that the privacy notice that it provides to Cardholders during the Term as part of the Program is substantially similar to the privacy notice that it provides to cardholders of Bank's other Credit Cards, including Bank's other co-branded Credit Cards (other than private label cards, which may contain customized terms). Bank will further provide American with a copy of any proposed changes to the privacy notice. Bank shall maintain, and shall require that its Data Processors maintain, an effective information security program (including a written information security plan), keep the AADVANTAGE List and Current Cobrand List confidential and take appropriate administrative, technical and physical measures to secure and protect such personal information against unauthorized, unlawful or accidental access, disclosure, transfer, destruction, loss or alteration. Without limiting the foregoing, Bank further covenants, warrants and represents with respect to the AADVANTAGE List and Current Cobrand List:

17.8.1 Bank's information security program (including the information security program maintained by Bank's Data

Processors) shall comply with Applicable Law with respect to the security of the Current Cobrand List and AADVANTAGE List and protect against anticipated threats or hazards to such data, including protecting against unauthorized, unlawful, or accidental access, disclosure, transfer, destruction, loss or alteration;

17.8.2 Bank's information security program (including the information security program maintained by Bank's Data Processors) shall include data safeguards that meet or exceed Applicable Law;

17.8.3 Bank and Bank's Data Processors shall limit access to such Personal Information to a need-to-know basis and shall inform personnel who have access to such Personal Information of its highly confidential nature and the limitations and procedures that apply to access and use of such Personal Information;

17.8.4 Bank shall promptly notify American when it becomes aware of any unauthorized access to such Personal Information or if Bank or a Bank Data Processor becomes the subject of any government, other enforcement or private proceeding relating to its data handling practices;

17.8.5 Bank and Bank's Data Processors shall use and process such Personal Information in accordance with applicable privacy and data protection legislation, and in the case of any legal or regulatory obligation to disclose such Personal Information, it shall notify and co-operate with American, to limit any disclosure to the minimum required by Applicable Law and, to the extent possible, request that such information be kept confidential; and

17.8.6 Bank has no reason to believe that any legislation or ruling prevents it from fulfilling its obligations under this Agreement, and it shall promptly notify American of any adverse change in any such legislation or ruling applicable to its obligations under this Agreement.

17.9 No Implied Rights. No right, license, permission, or ownership or other interest of any kind in or to the Intellectual Property of American, American Data, Other American Data, Intellectual Property of Bank, Bank Data or Other Bank Data is or is intended to be given or transferred to the other Party or acquired by the other Party except as expressly stated in writing in this Agreement.

17.10 Bank Customer Marketing. Bank shall not be prohibited from independently compiling information regarding its customers so long as (i) American Data (e.g., the status of being an AADVANTAGE® Member, AADVANTAGE® Account numbers, or any reference to or other association with American) or Program Data (e.g. Cardholder Identity or Cardholder List) is not identified in, or used as a factor or criteria in compiling, such information, (ii) any promotions or communications directed at such customers, or any partial

grouping thereof, by Bank or by Bank jointly with another Person or Persons, are not directed exclusively to such individuals, and will not reference such individuals, as Members or travelers on American and/or its Affiliates or oneworld Alliance partners, or Cardholders without American's prior written consent, and (iii) Bank complies with Section 17.6.

17.11 Electronic Properties; Prohibited Internet Practices.

17.11.1 Each Party agrees that its privacy policy shall be prominently displayed on its website(s) and will provide Cardholders with adequate notice, disclosure and choice as to the collection, use and disclosure of Personal Information by such Party's Electronic Properties.

17.11.2 Bank's Electronic Properties and Bank's use, storage, processing, transfer and disposal of Personal Information in connection with its participation in the AADVANTAGE Program will comply with (i) American's privacy policy as set forth on American's website, (ii) Bank's internal privacy policies and (iii) Applicable Law.

17.11.3 Each Party agrees that it shall not, and shall not authorize or encourage any third party to, directly or indirectly: (i) use any automated, deceptive or fraudulent means to generate impressions, click-throughs, or any other actions in relation to advertisements or Internet promotions on the other Party's Electronic Properties or in relation to advertisements or Internet promotions of the other Party (or the other Party's products or services) on third party websites; or (ii) collect or Process data from the other Party's Electronic Properties other than as has been expressly authorized by the other party in this Agreement or another written agreement with the other Party. Neither Party generally authorizes so called "screen-scraping" of their respective Electronic Properties. Any automated extraction of data from the other party's Electronic Properties or tracking of activity on the other Party's Electronic Properties may only be conducted with the prior written consent of the other Party. Bank shall not use information gained from a Card Program campaign's landing page to retarget for any purpose other than promoting the Card Program without the prior written consent of American.

17.12 Equitable Relief. Each Party agrees that the non-breaching Party will have no adequate remedy at law if there is a breach or threatened breach of any of the restrictions or limitations in this Agreement or a breach or threatened breach of privacy or security obligations and, accordingly, that the non-breaching Party (in addition to any legal or other remedies available to it) may seek injunctive or other equitable relief to prevent or remedy such breach without requirement of a bond or notice and each Party agrees not to object or defend against such action on the basis that monetary damages would provide an adequate remedy.

17.13 Confidentiality.

17.13.1 General Confidentiality Obligations.

17.13.1.1 For purposes of this Agreement, "**Confidential Information**" means:

(i) subject to Section 17.13.6, all information provided by or on behalf of either American or Bank (the "**Disclosing Party**") to the other Party or its Affiliates or Representatives (the "**Receiving Party**") in connection with the Card Program or in connection with the transactions contemplated by this Agreement;

(ii) subject to Section 17.13.6, all information about American or Bank or about either Party's Affiliates or their respective businesses, customers and employees that is otherwise obtained by the other Party in connection with the Card Program, including, in each case of (i) or (ii): (A) information concerning marketing plans, objectives and financial results, (B) information regarding business systems, methods, processes, financing data, programs and products and the terms and features of any tests of such items, (C) proprietary technical information including source codes, (D) American Data, (E) Bank Data, (F) Program Data, (G) American's Intellectual Property, and (H) Bank's Intellectual Property; and

(iii) the terms and conditions of this Agreement and the Cardholder List subject to Section 17.13.1.2.

17.13.1.2 Confidential Information of both American and Bank shall include (i) the terms and conditions of this Agreement; provided, however, a Party may disclose to a third party that an obligation of confidentiality exists, and (ii) the Cardholder List.

17.13.2 Non-Disclosure. Without the prior written consent of the Disclosing Party, or except as expressly permitted by the terms of this Agreement (e.g., disclosure of the Cardholder List pursuant to Section 21.4), the Receiving Party shall not disclose or provide access to any Confidential Information of the other Party, with the exception of:

17.13.2.1 disclosure to any of its Affiliates or Representatives that has a need to know the specific Confidential Information as reasonably required in connection with providing advice to the Receiving Party,

including with respect to the Receiving Party's exercise of its rights or performance of its obligations under this Agreement, but only where such Person to whom the information is so disclosed is bound by obligations consistent to this Section 17.13.2,

17.13.2.2 disclosure where the Receiving Party is under a legal obligation to disclose such Confidential Information, in which case, such Receiving Party shall, if reasonably possible, give the Disclosing Party prompt notice thereof and permit the Disclosing Party to seek a protective order and/or waive the duty of confidentiality. Any resulting disclosure shall be permitted only to the extent legally required;

17.13.2.3 for due diligence purposes as required in connection with any financing or corporate transaction, provided that the individuals to whom the information is required to be disclosed are bound by obligations consistent to this Section 17.13.2;

17.13.2.4 disclosure that is necessary for a Party to enforce a right or remedy under this Agreement.

17.13.3 Use Restrictions. A Receiving Party may use the Confidential Information of the Disclosing Party only for (i) the purpose for which the such Confidential Information was disclosed, or (ii) if no such purpose was specified in advance of the receipt of the information, then only for the purpose of performing the Receiving Party's obligations or enforcing its rights with respect to the Card Program, or as otherwise expressly permitted by the terms of this Agreement.

17.13.4 Safeguards. The Receiving Party shall (i) take reasonable measures, using at least the same care taken by such Party to safeguard its own confidential and proprietary information, to prevent unauthorized use or disclosure by it and its Affiliates, and Representatives of any Confidential Information of the Disclosing Party, and (ii) implement and maintain commercially reasonable physical, electronic, administrative and procedural security measures with respect to such Confidential Information, provided that these requirements shall not modify or limit any obligations of a Party under Section 17.17 or Section 17.18.

17.13.5 Flow Down. The Receiving Party agrees that it will cause its Affiliates and Representatives who may gain access to Confidential Information, whether or not such access is permitted hereunder, to comply with Receiving Party's obligations and restrictions under this Agreement.

17.13.6 Exceptions. Confidential Information does not include information that is (i) already rightfully known by the

Receiving Party and not subject to other similar confidentiality restrictions, (ii) independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party, (iii) obtained from a third party, which to the knowledge of the Receiving Party is not subject to a confidentiality restriction or (iv) is or becomes generally known or available to the public through no fault of the Receiving Party; provided, however, even where American Data, Bank Data or Program Data is or becomes publicly available through no fault of either Party, or is received by a Party on a non-confidential basis from a third party, this does not change its status as proprietary information and the restrictions on use, disclosure and distribution of American Data, Bank Data and Program Data, as applicable, as set forth in Section 17 shall continue to apply to such information.

17.13.7 Press Releases. Except where expressly permitted by the terms of this Agreement (e.g., Section 21.1.1 regarding Preapproved Notifications), and except as may be required by Applicable Law (including public filings with the US Securities and Exchange Commission) the Parties shall consult with each other before either Party or any its Affiliates or Representatives of the Party issues any press release or public statement with respect to this Agreement or the Card Program, and neither Party shall issue such press release or public statement prior to receiving the express approval of the other Party.

17.13.8 Confidential Information Termination Provisions. Confidential Information permissions, restrictions and destruction after the termination of this Agreement are set forth in Section 21.7.

17.14 Permitted Data Uses.

17.14.1 Permitted Bank Data Uses. American may only possess, and Process Bank Data obtained in connection with the Card Program as is reasonably required for American to support the Card Program and AADVANTAGE Program and as authorized by this Agreement, including to fulfill its obligations hereunder or in defense of its rights hereunder, and for no other purpose unless otherwise subsequently agreed to by Bank in writing and only to the extent of the permissions expressly granted in such writing ("**Permitted Bank Data Uses**").

17.14.2 Permitted American Data Uses. Bank may only possess, and Process American Data obtained in connection with the Card Program as is reasonably required for Bank to provide and operate the Card Program and as is authorized by this Agreement, including to fulfill its obligations hereunder or in defense of its rights hereunder, and for no other purposes unless otherwise subsequently agreed to by American in writing and only



to the extent of the permissions expressly granted in such writing (“Permitted American Data Uses”).

17.15 Data Termination Provisions. Data permissions, restrictions and destruction after the termination of this Agreement shall be subject to the provisions of Section 21.7.

17.16 Use of AADVANTAGE List and Current Cobrand List. Provided that an advertising campaign has been approved by American and Bank for the relevant time period, to the extent permitted by Applicable Law, American’s privacy and other AADVANTAGE Program policies, Member preference and any contractual obligations that American may have in place, and subject to the terms and conditions set forth herein, American shall provide to Bank, via an Approved Vendor (defined below), with access to the AADVANTAGE List for purposes of promoting the Card in Brazil as follows:

17.16.1 The AAdvantage List would include certain data elements as determined by American, but that would be anticipated to include at least the name and postal and e-mail addresses, telephone number in Brazil of the AADVANTAGE Member target audience selected by American.

17.16.2 Access to the AADVANTAGE List would be granted to Bank via a Data Processor contracted exclusively by Bank, where such Data Processor(s) have been approved in advance by American (said approval of such third party vendor(s) not to be unreasonably withheld) and that have signed American’s standard non-disclosure and security agreement, which shall include the minimum undertakings as set forth in Schedule 17.16 attached hereto (“Approved Vendor”). American may withdraw approval of the Approved Vendor, without liability to Bank or such Approved Vendor (i) at any time upon no less than sixty (60) days’ notice to Bank and the Approved Vendor, provided that American provide to Bank material grounds for its withdrawal (which for purposes of this provision means: (a) a breakdown of the business relationship between American and the Approved Vendor; (b) a force majeure event, change of Applicable Law or other situation that makes the data transfer to or processing by the Approved Vendor no longer feasible; or (c) publicity or other indication of a security breach or other material issue with respect to the Approved Vendor) or (ii) immediately for cause, upon notice to Bank and the Approved Vendor. Bank acknowledges and agrees that the AADVANTAGE List and all data elements therein are American’s Confidential Information and American Data and that Bank will not access or obtain or attempt to access or obtain all or any part of the data contained therein from such Approved Vendor(s). Bank shall be responsible for the Approved Vendor’s compliance with the terms and conditions of this Agreement that are applicable to Bank or the AADVANTAGE List.

17.16.3 Bank and Approved Vendors shall only use the AADVANTAGE List for the promotion of Cards and the Card Program in Brazil at Bank's full cost and expense. Bank shall not solicit a Member using any AADVANTAGE List more than four times per calendar year without American's prior approval. Access to the AADVANTAGE List is subject to Bank and its Approved Vendors continued compliance with non-disclosure and use restrictions set forth in this Agreement.

17.16.4 Any solicitation campaign for which the AADVANTAGE List is to be utilized by Bank is subject to the prior written approval of American. The applicable dates for the execution of the campaign shall be subject to the approval of American. Any approval for the use of the AADVANTAGE List shall be applicable only for the specific campaign and date or date range for such campaign.

17.16.5 Each initiative or campaign approved by American is limited to the use of a single iteration of the AADVANTAGE List. Upon request by American, Bank shall provide to American an overview and explanation of the then-current data flow process in connection with its use of American Data in connection with solicitations and analysis thereof. In the absence of an express permission, Bank shall not have any right to combine, link, associate or append data to the AADVANTAGE List data or AADVANTAGE List data to any other data.

17.16.6 Bank shall use, and will cause Approved Vendors to use, appropriate forms of encryption or other secure technologies at all times in connection with the Processing of the AADVANTAGE List, including in connection with any transfer, communication, remote access or storage (including back-up storage) of the AADVANTAGE List, as authorized or permitted under this Agreement.

17.16.7 Approved Vendors shall purge each iteration of the AADVANTAGE List and any resulting mailing lists and within thirty (30) days after the conclusion of the specific campaign for which the AADVANTAGE List was provided. Notwithstanding any other provision herein, Bank shall purge the Incremental Data within sixty (60) days after the conclusion of the specific campaign for which the AADVANTAGE List was provided.

17.16.8 American shall provide to Bank the Current Cobrand List through an Approved Vendor for purposes of Bank's direct solicitation for American's current cobrand cardmembers to become Cardholders no later than the Current Cobrand End Date. The campaign details for the Solicitation shall be subject to the prior written approval of American, which approval will not be unreasonably withheld. Bank may only use an Approved Vendor in connection with the campaign. The Current Cobrand List shall

contain at a minimum the first and last names, e-mail address, postal addresses and phone numbers in Brazil of the current cobrand cardholders that American has within its records. Notwithstanding the above, American cannot guarantee the completeness or accuracy of the information included on the Current Cobrand List and may be required to suppress certain Cardholders based on American's privacy policy, Member preference or Applicable Law. Bank and any Approved Vendor shall only be permitted to use the Current Cobrand List for purpose of the approved Solicitation campaign for the Cards. Bank acknowledges and agrees that the Current Cobrand List and all data elements therein are American's Confidential Information and American Data. Bank shall purge the Current Cobrand List and related Incremental Data within twelve (12) months of the Launch Date, which period may be extended upon American's written approval. Bank shall suppress the individuals included on the Current Cobrand List from any other new Credit Card offers carried out by Bank during a period of six (6) months from the Launch Date.

17.16.9 Where approved by American, telephone solicitations may be made by Bank or Approved Vendors to Members as part of an approved campaign. Any telephone solicitation will follow a written script, which is subject to prior written approval by American. Bank shall maintain a "Do Not Call List" of individuals who have indicated to Bank that they do not want to receive telemarketing calls and will not call any such individual appearing on its "Do Not Call" list or any individual who has notified American that he or she does not wish to receive calls. Notwithstanding the above, if American determines in its reasonable discretion that a particular Member shall not receive telemarketing calls or telephone solicitations, Bank shall cease telephone contact with the customer upon written notice from American

17.16.10 Offer codes and other data elements that are linked to identity may only track which offer was made to the recipient and may not be used to track or indicate characteristics or attributes of the recipient. The obligation to purge Incremental Data applies to the original data received by Bank and any subsequent copies of the data or analysis that Bank obtains or develops in relation to the individuals that are the subject of Incremental Data. Bank shall not use any Incremental Data for purposes of offering a different Bank product or any other purpose other than as expressly stated in this Agreement without the prior approval of American.

17.16.11 No permission or approval is given or should be implied by this Section 17, other than the permissions and approvals explicitly described above.

17.17 Data Security for American Data and Program Data. Additional Data Security Requirements applicable to Bank are attached as Schedule 17.17.

17.18 Data Security for Bank Data and Program Data. Additional Data Security Requirements applicable to Bank are attached as Schedule 17.18

17.19 Travel Agency Purchases. Notwithstanding anything to the contrary in this Agreement, all data or information related to Bank's purchases of American products or services via a travel agency remains subject to the terms and conditions of (i) such travel agency's Agent Reporting Agreement with the Airlines Reporting Corporation, or Passenger Sales Agency Agreement with the International Air Transport Association, as applicable (collectively, the "**Governing Travel Agency Agreements**"), and (ii) American's Addendum to the Governing Travel Agency Agreements.

## 18. Representations and Warranties

18.1 American Representations and Warranties. American represents and warrants to Bank as of the Effective Date as follows:

18.1.1 It is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated and has full power and authority to own, lease and operate its respective properties and assets, including but not limited to rights to the American Permitted Marks, and to conduct its business as it has been, is now being and is proposed to be conducted, except as would not reasonably result in a material adverse effect on its ability to perform its obligations hereunder.

18.1.2 It is licensed and qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing and qualification necessary or advisable, except as would not reasonably result in a material adverse effect on its ability to perform its obligations hereunder.

18.1.3 The execution and delivery by American of this Agreement, and the contemplated performance by American of its obligations hereunder have been duly and validly authorized and approved by all requisite action on the part of American.

18.1.4 This Agreement has been duly and validly executed and delivered by American and (assuming due authorization, execution and delivery by Bank), this Agreement constitutes a legal, valid and binding obligation of American, and (assuming due authorization, execution and delivery by Bank) constitutes or will constitute a legal, valid and binding obligation of American enforceable against American in accordance with its terms.

18.1.5 Neither the execution, delivery or performance of this Agreement by American as contemplated on the Effective

Date shall (i) conflict with, result in the breach of, constitute a default under, require the consent of any other Person under, or accelerate the performance provided by the terms of any contract, instrument or commitment to which American is a party or by which it is bound, (ii) conflict with or result in a violation, or breach of, or default under, any provision of the certificate of organization or bylaws, or any other equivalent organizational document of American, (iii) conflict with or result in a violation of any Applicable Law, or give any Competent Entity the right to challenge any of the transactions contemplated hereby or exercise any remedy or obtain any relief under any law or order applicable to American or (iv) infringe or violate the rights of any third party (including, without limitation, Intellectual Property rights or rights of publicity).

18.1.6 It is solvent and able to meet its debts and obligations in the ordinary course and possesses adequate capital, assets and financial resources to fulfill its obligations under this Agreement.

18.1.7 No actions, suits or proceedings exist or are pending against or affecting American before any Competent Authority that would have a material adverse effect on its ability to perform its obligations hereunder.

18.2 Bank Representations and Warranties. Bank represents and warrants to American as of the Effective Date as follows:

18.2.1 It is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated and has full power and authority to own, lease and operate its respective properties and assets, including the Bank's rights to use Bank Permitted Marks, and to conduct its business as it has been, is now being and is proposed to be conducted, except as would not reasonably result in a material adverse effect on its ability to perform its obligations hereunder.

18.2.2 It is licensed and qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing and qualification necessary or advisable, except as would not reasonably result in a material adverse effect on its ability to perform its obligations hereunder.

18.2.3 The execution and delivery by Bank of this Agreement, and the contemplated performance by Bank of its obligations hereunder have been duly and validly authorized and approved by all requisite action on the part of Bank.

18.2.4 This Agreement has been duly and validly executed and delivered by Bank and (assuming due authorization, execution and delivery by American), this Agreement constitutes a legal,

valid and binding obligation of Bank, and (assuming due authorization, execution and delivery by the other party or parties thereto) constitutes or will constitute a legal, valid and binding obligation of Bank enforceable against Bank in accordance with its terms.

18.2.5 Neither the execution, delivery or performance of this Agreement by Bank as contemplated on the Effective Date shall (i) conflict with, result in the breach of, constitute a default under, require the consent of any other Person under, or accelerate the performance provided by the terms of any contract, instrument or commitment to which Bank is a party or by which it is bound, (ii) conflict with or result in a violation, or breach of, or default under, any provision of the certificate of organization or bylaws, or any other equivalent organizational document of Bank, (iii) conflict with or result in a violation of any Applicable Law, or give any Competent Entity the right to challenge any of the transactions contemplated hereby or exercise any remedy or obtain any relief under any law or order applicable to Bank or (iv) infringe or violate the rights of any third party (Intellectual Property rights and rights of publicity).

18.2.6 It is solvent and able to meet its debts and obligations in the ordinary course and possesses adequate capital, assets and financial resources to fulfill its obligations under this Agreement.

18.2.7 No actions, suits or proceedings exist or are pending against or affecting Bank before any Competent Authority that would have a material adverse effect on its ability to perform its obligations

**19. Indemnification; Procedures; Limitation of Liability and Damages**

**19.1 Bank Indemnification. Bank shall indemnify, defend and hold harmless American, and its Affiliates and each of their officers, directors, employees and agents (herein collectively referred to as "American Indemnified Parties") from and against any and all third-party liabilities, obligations, losses, damages, claims, demands, suits, actions, deficiencies, penalties, taxes, levies, fines, judgments, settlements, costs, expenses, legal fees (including litigation cost, expenses and reasonable attorney's fees) and disbursements, and accountants' fees and disbursements (collectively, "Losses") incurred by, borne by or asserted against any of the American Indemnified Parties in any way relating to, arising out of or resulting from the following:**

**(i) Bank's failure to perform or improper performance of its obligations under this Agreement;**

**(ii) the gross negligence or willful misconduct of Bank or its Affiliates, or their respective officers, directors, employees or agents in their performance or non-performance under this Agreement;**

(iii) breach of any representation or warranty of Bank contained herein; including, but not limited to, any representation or warranty or obligation regarding Bank's compliance with Applicable Law;

(iv) actual or alleged infringement of any Intellectual Property right by any goods, services or other performance provided and delivered by Bank pursuant to this Agreement;

(v) breaches of security in relation to systems or processes operated by Bank, its Affiliates or their respective service providers;

(vi) the marketing of any product or service provided by or through Bank as provided herein (other than use by American of advertising materials referring to Bank's products and services that has not been approved by Bank or that is in conflict with the terms of this Agreement);

(vii) any claims or statements made by Bank in its solicitation, advertising or promotional activities that are in conflict, or inconsistent, with the terms of this Agreement or fail to comply with Applicable Law, except where such materials were provided by American;

(viii) use of advertising materials related to American's products or services that have not been approved by American; and

(ix) the SIB Permission, including any claims made by SIB in relation to the SIB Permission or resulting from a termination of the SIB Permission (other than those express termination clauses provided for in the SIB Permission or in connection with an actual and adjudicated breach of the SIB Permission by American).

**19.2 American Indemnification.** American shall indemnify, defend and hold harmless Bank, and its Affiliates and each of their officers, directors, employees and agents (herein collectively referred to as "Bank Indemnified Parties") from and against any and all Losses incurred by, borne by or asserted against any of the Bank Indemnified Parties in any way relating to, arising out of or resulting from the following:

(i) American's failure to perform or improper performance of its obligations under this Agreement;

(ii) the gross negligence or willful misconduct of American or its Affiliates, or their respective officers, directors, employees or agents in their performance or non-performance under this Agreement;

(iii) breach of any representation or warranty of American contained herein; including, but not limited to, any representation warranty or obligation regarding American's compliance with Applicable Law;

(iv) actual or alleged infringement of any Intellectual Property right by any goods, services or other performance provided and delivered by American pursuant to this Agreement;

(v) breaches of security in relation to systems or processes operated by American, its Affiliates or their respective service providers;

(vi) the marketing of any product or service provided by or through American as provided herein (other than use by Bank of advertising materials referring to American's products and services that has not been approved by American or that is in conflict with the terms of this Agreement);

(vii) any claims or statements made by American in its solicitation, advertising or promotional activities that are in conflict, or inconsistent, with the terms of this Agreement or fail to comply with Applicable Law, except where such materials were provided by Bank; and

(viii) use of advertising materials related to Bank's products or services that have not been approved by Bank.

**19.3 Notice of Claim.**

**19.3.1** In connection with any claim or action described in this Section 19, the Party seeking to be indemnified will deliver to the other Party prompt written notice of the claim to the extent permitted by Applicable Law, and will cooperate with the indemnifying Party (at the indemnifying Party's expense) in connection with the defense and settlement of the claim.

**19.3.2** Subject to Section 19.3.3, the indemnified Party will permit the indemnifying Party to control the defense and settlement of the claim, *provided that* the indemnifying Party may not settle the claim without the prior written consent (which shall not be unreasonably withheld or delayed) of the party to be indemnified. Further, the party to be indemnified may, at its expense, participate in the defense and settlement of the claim. If the indemnifying Party does not wish to assume the defense of the claim, it shall promptly notify the indemnified Party

**19.3.3** If an indemnified claim relates to (i) Data, Intellectual Property or trade secrets, (ii) claims for injunctive relief, or (iii) claims related to criminal charges, or



otherwise where separate counsel is needed by the indemnified Party because a direct conflict of interest would arise from the indemnifying Party's assumption of the defense, then the indemnified Party may handle the claim, and both the indemnified Party and indemnifying Party agree to cooperate with each other in connection with the defense of the claim.

19.3.4 A party's use of counsel in connection with a claim for which an indemnified Party seeks indemnification shall be subject to the approval of the other Party, which approval shall not be unreasonably withheld.

19.3.5 The indemnifying Party shall be subrogated to any claims or rights of the indemnified Party as against any other third party with respect to any amount paid by the indemnifying Party under this Section 19. The indemnified Party shall reasonably cooperate with the indemnifying Party, at the indemnifying Party's expense, in the assertion by the indemnifying Party of any such claim against such third party.

19.4 Limitation of Damages. Except for (i) the indemnification obligations set forth in this Section 19, (ii) fraud, and (iii) the obligations under Section 16 and Section 17 (including any damages or losses arising in connection therewith), and subject in each case to Section 19.5, no Party shall be liable for any punitive or exemplary damages, or for any incidental or consequential damages (including lost revenues, lost profits or lost prospective economic advantage) arising from or in connection with any performance or failure to perform under this Agreement, even if such party knew or should have known of the existence of such damages, and each Party hereby releases and waives any claims against the other Party for such damages.

19.5 Further Limitation. No liability of American or indemnification as stated in Section 19 will extend to include any liability that is governed by American's conditions of carriage, as may be amended from time to time, the Warsaw Convention, as amended, the Montreal Convention of 1999, as applicable.

20. Term, Termination

20.1 Term. This Agreement shall take effect on the Effective Date and unless terminated earlier as provided herein shall continue in full force and effect during the Term. Except where a specific termination scenario is expressed, use of a reference to the "termination" of this Agreement shall also include the "expiration" of this Agreement.

20.2 [Intentionally Left Blank].

20.3 Termination by American. The captions in the parentheses below are provided for convenience and have no binding effect.

In addition to termination of this Agreement pursuant to Section 11.8.4 (Tax Increase) and American's right to terminate this Agreement pursuant to Section 3.6 (Changes to Pricing or Cardholder Privileges), and Section 11.2 (Currency Event) American shall have the following termination rights:

20.3.1 Breach. If Bank breaches any material term, condition, representation, warranty or undertaking hereunder, and such failure remains uncured after thirty (30) calendar days' prior written notice delivered by American, and ten (10) calendar days' prior written notice in case of Bank's failure to pay American amounts due herein, then American may terminate this Agreement by providing written notice of termination to the Bank. Notwithstanding the above, American shall not be required to give Bank a cure period in respect of a breach of (a) Section 16 substantially similar to a prior breach of Section 16, of which the breaching Party was previously notified, or (b) Section 17.

20.3.2 Viability Event. (i) If Bank elects to be wound up and dissolved, (ii) becomes insolvent or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment of substantially all of its assets for the benefit of creditors, (iv) ceases to do business as a going concern, (v) files for or declares bankruptcy or seeks a protective order from creditors, or is declared bankrupt, or (vi) has an involuntary petition filed in bankruptcy to have a receiver or trustee over its affairs appointed under Applicable Law of its domicile, and such appointment is made and not terminated or discharged within sixty (60) days, then American may seek assurances from Bank of future performance, and if adequate assurances (where requested) are not received by American within thirty (30) calendar days then American may terminate this Agreement by providing written notice of termination to Bank.

20.3.3 Legislative Impact. American may terminate this Agreement by providing written notice of termination to Bank in accordance with this Section 20.3.3 (i) if any Competent Authority with legislative, rulemaking or judicial authority enacts a rule or law or issues an order that will prevent American from engaging in any material activity required under this Agreement in Brazil, or (ii) if American receives any complaint or other objection from any Competent Authority that this Agreement, whether considered by itself or taken together with other agreements to which American or its Affiliates are a party, places American or its Affiliates in breach of any regulatory requirements of the U.S. Department of Transportation or of any other Competent Authority that regulates air transportation. American shall use commercially reasonable efforts to provide to Bank, at least sixty (60) days prior written notice of such termination; provided, however, if an earlier date of termination is required for American to avoid liability under such

rule, law or order, then the shorter period of advance notice that is so required shall be acceptable.

20.3.4 Material Change in Bank Business Structure. Subject to the provisions of Section 22.1, if Bank has controlling interest in its equity shares transferred to or obtained by (directly or beneficially) any Person other than an Affiliate of Bank, then American may terminate this Agreement by providing at least sixty (60) days written notice of termination to Bank.

20.3.5 Force Majeure Event of Bank. If pursuant to Section 23, Bank delays performance or fails to perform due to a Force Majeure Event, and such delay continues for a period of ninety (90) days, then American may terminate this Agreement by providing written notice of termination to Bank.

20.3.6 [Intentionally left blank]

20.3.7 Termination of AADVANTAGE Program. If American terminates the AADVANTAGE Program, American shall give Bank six (6) months prior written notice as provided in the AADVANTAGE Program Rules without liability, obligation or additional compensation of any kind to Bank (including, without limitation, any liability pursuant to Section 19) and such termination of the AADVANTAGE Program shall automatically terminate this Agreement with respect to all Parties and without any liability on the part of American.

20.3.8 Termination of SIB Permission. If the rights granted to American pursuant to the SIB Permission are restricted or terminated for any reason, American shall be relieved of any promotions or other obligations under this Agreement that require American to use the Bank Permitted Marks, and anytime thereafter American may terminate this Agreement upon ninety (90) days' prior written notice to Bank.

20.4 Termination by Bank. The captions in the parentheticals below are provided for convenience and have no binding effect. In addition to termination of this Agreement pursuant to Section 11.8.4 (Tax Increase), Section 6.3 (Changes to AAdvantage Program), and Section 11.2 (Currency Event) Bank shall have the following termination rights:

20.4.1 Breach. If American breaches any material term, condition, representation, warranty or undertaking hereunder, and such failure remains uncured after thirty (30) calendar days' written notice by Bank, then Bank may terminate this Agreement by providing written notice of termination to American. Notwithstanding the above, Bank shall not be required to give American a cure period in respect of a breach of (a) Section 16 that is substantially similar to a prior breach by American of Section 16, of which American was previously notified, or (b) Section 17.

20.4.2 Viability Event. If American (i) elects to be wound up and dissolved, (ii) becomes insolvent or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment of substantially all of its assets for the benefit of creditors, (iv), ceases to do business as a going concern, (v) files for or declares bankruptcy or seeks a protective order from creditors, or is declared bankrupt, or (vi) has an involuntary petition filed in bankruptcy to have a receiver or trustee over its affairs appointed under Applicable Law of its domicile, and such appointment is made and not terminated or discharged within sixty (60) days, then Bank may see assurances from American of future performance, and if adequate assurances from American are not received by Bank within thirty (30) calendar days, then Bank may terminate this Agreement by providing written notice of termination to American.

20.4.3 Legislative Impact. If any Competent Authority with legislative, rulemaking or judicial authority enacts a rule or law or issues an order that will prevent Bank from engaging in any significant activity required under this Agreement in Brazil, then Bank may terminate this Agreement by providing written notice to American. Bank shall use commercially reasonable efforts to provide to American at least sixty (60) days' prior written notice of such termination; provided, however, if an earlier date of termination is required for Bank to avoid liability under such rule, law or order, then the shorter period of advance notice that is so required shall be acceptable. Notwithstanding the above, no change in the value of the Reais or the value of a Dollar, or any controls imposed on currency exchange or repatriation shall give rise to a termination right of Bank under this Section 20.4.3.

20.4.4 Material Change in Business Structure. Subject to the provisions of Section 22.1, if American has controlling interest in its equity shares transferred to or obtained by (directly or beneficially) any Person other than an Affiliate of American, then Bank may terminate this Agreement by providing at least sixty (60) days written notice of termination to American.

20.4.5 Force Majeure Event of American. If pursuant to Section 23 American delays performance or fails to perform due to a Force Majeure Event, and such delay continues for a period of ninety (90) days, then Bank may terminate this Agreement immediately by providing written notice to American.

20.4.6 Cessation of Services. If American's Market Share during a during a calendar year is reduced by 50% or more relative to the 2016 calendar year, then Bank shall have the right to terminate this Agreement upon no less than one hundred twenty (120) days prior written notice delivered to American. No Revenue Guarantee shall be applicable as of the date of delivery of the termination notice or thereafter.

**21. Rights Upon Termination**

**21.1 Joint Communication Plan.**

21.1.1 If a Party gives the other Party notice of termination of this Agreement, and in any event, no later than one hundred (100) days prior to the scheduled expiration of this Agreement, the Parties shall diligently cooperate in good faith to mutually agree on a joint communication plan within seven (7) days to advise Members, Cardholders and the general public of the impending termination of the Card Program. The joint communication plan should include a timeline as well as approved communications to the affected Cardholders. Notwithstanding the above, each Party hereby preapproves the termination notifications attached hereto as Schedule 21.1.1 ("**Preapproved Notifications**") and each Party shall be entitled to publish on their websites and send to the affected Cardholders the Preapproved Notifications no earlier than ninety (90) days prior to the Termination Date. No alternative offer by a Party shall be included or attached to any Preapproved Notification that is sent. Without prejudice to a Party's rights under Section 21.4, any communication with such Cardholders (including, without limitation, any communication regarding conversion of a Card Account) after notice of termination is given by a Party is subject to the terms and conditions of this Section 21, and the terms of any mutually agreed joint communication plan.

21.1.2 The Parties shall cooperate in good faith to minimize disruption and Cardholder confusion surrounding the termination of the Card Program and the future choices that may be made available to the Cardholders. The Parties shall conduct themselves in a manner that preserves a positive relationship with the Members and Cardholders. No Party shall make disparaging remarks about the other, the AADVANTAGE Program or this Agreement in any public announcement or communication to Cardholders.

21.2 New Card Accounts. Unless agreed to by American, Bank shall not issue new Cards or establish new Card Accounts on or after receipt of notice from American of any termination of this Agreement, and, in any event, after the termination of this Agreement.

21.3 Continued Card Account Maintenance and Miles Offers. Notwithstanding the provision of any notice of termination of this Agreement, and subject to the AADVANTAGE Program continuing in effect, Bank shall not close Card Accounts and shall permit Cardholders to use their Cards and continue to earn AADVANTAGE Miles and to renew their cards in accordance with the provisions of this Agreement until the termination of this Agreement.

21.4 Use of Cardholder List. Notwithstanding anything else contained in this Agreement, this Section 21.4 will apply to the Cardholder List, and Section 5 shall no longer be applicable, at the times set forth herein, unless another arrangement has been agreed to by the Parties in writing. At the times set forth

below Bank and American (each a "User") shall have the right to use the Cardholder List, or to transfer such Cardholder List to any third party for such third party to use it to solicit Cardholders to apply for another Bank Card and open another bank account whether or not co-branded with the AADVANTAGE Program or American or Bank; provided that any proposed third-party use is carried out in accordance with the other applicable provisions of Section 17 and Applicable Law to the extent applicable to the Party providing or using the list, however, the User shall not be required to obtain any further permission of the other Party and no non-disclosure agreement shall be required between the User's third party and such other Party. No actual conversion of a Card or Card Account to a different bank product or any balance transfer from the Card Account to any other bank product shall occur until the date of termination of this Agreement. (Captions in the parentheses below are provided for convenience and have no binding effect.):

21.4.1 Sixty (60) calendar days prior to the scheduled expiration of this Agreement pursuant to Section 20.1 (Term); provided that if a Party intends to use or transfer the Cardholder List, it has delivered prior written notice to the other Party of its intent to do so.

21.4.2 In the event of any termination pursuant to Section 20.3.1 (Bank Breach) or Section 20.4.1 (American Breach) then the applicable date for the non-breaching Party shall be the date it provides notice of termination to the breaching Party, and the applicable date for the breaching Party shall be sixty (60) calendar days following such notice of termination.

21.4.3 No earlier than sixty (60) calendar days prior to the date of termination in the event of termination pursuant to Section 20.3.2 (Bank Viability Event); Section 20.3.3 (American Legislative Impact); Section 20.3.4 (Bank Material Change in Business Structure); Section 20.3.5 (Force Majeure Event of Bank);; Section 20.4.2 (American Viability Event); Section 20.4.3 (Bank Legislative Impact); Section 20.4.4 (American Material Change in Business Structure); or Section 20.4.5 (Force Majeure Event of American).

21.4.4 No earlier than thirty (30) calendar days prior to termination with respect to a termination pursuant to Section 11.2.1 (Currency Event).

21.4.5 With respect to Section 22.2 and 22.3, as set forth therein.

21.4.6 With respect to Section 20.3.7 (Termination of AADVANTAGE Program), no earlier than sixty (60) calendar days prior to the date of termination subject to the restrictions on American as set forth in Section 6.4.

21.4.7 For any termination scenario that was not referenced in this Section 21.4, then no earlier than sixty (60) calendar days prior to termination.

21.5 Rights not Exclusive. Except where expressly stated herein, the rights of a terminating Party to terminate this Agreement in accordance with Section 20, and the rights of the Parties upon termination provided in this Section 21, will be in addition to, and not in lieu of, any other rights or remedies the Parties may possess at law or in equity for money damages or other relief (other than punitive and exemplary damages), provided that a terminating Party that rightfully exercises its termination rights under this Agreement will not be liable for any damages of the non-terminating Party that may arise from the terminating Party's exercise of its termination rights. No Party shall be relieved of an outstanding obligation under this Agreement existing prior to termination of this Agreement.

21.6 Termination Arrangements for Intellectual Property. The permissions to use the American Permitted Marks and Bank Permitted Marks granted in Section 16 and use of the Program Specific Marks shall continue until the termination of this Agreement to the extent necessary to carry out the Parties' intent with respect to the rights and obligations of the Parties set forth in Section 20 and Section 21. Promptly following the date of termination, or as otherwise subsequently agreed to in writing by the Parties, a Party shall cease use of the other Party's Intellectual Property and all materials that bear one or more of the Parties' Trademarks shall be treated as follows:

21.6.1 All materials in Bank's possession or control that solely contain American Permitted Marks shall be destroyed or returned to American;

21.6.2 All materials in American's possession or control that solely contain Bank Permitted Marks shall be destroyed or returned to Bank;

21.6.3 All materials in a Party's possession or control that contain both American Permitted Marks and Bank Permitted Marks shall be destroyed in a manner mutually acceptable to American and Bank; and

21.6.4 All Approved URLs shall be handled in accordance with Schedule 16.10.

21.7 Data Termination Provisions. Upon and after termination of this Agreement, the following provisions shall be applicable:

21.7.1 A Party's Own Data. Any contractual restrictions applicable to American's use of American Data and Bank's use of Bank Data shall no longer be applicable, and Bank shall continue to own Bank Data and American shall continue to own American Data.

21.7.2 Program Data.

21.7.2.1 Subject to Section 21.7.2.3, within five (5) Business Days of termination Bank shall erase and destroy Program Data that was developed in conjunction with

information in the AADVANTAGE List or Current Cobrand List, or derived from American Data, and any results and output derived therefrom. Bank will certify to such destruction within five (5) Business Days of request by American.

21.7.2.2 Subject to Section 21.7.2.3, within five (5) Business Days of termination Bank shall erase and destroy all Program Data and Bank will certify to such destruction within five (5) Business Days of request by American. If destroying any part of Program Data is technologically and commercially impossible, then the parties agree to reach a resolution that ensures protection and nonuse of such Program Data following termination of this Agreement. Bank shall ensure that Bank's Affiliates, and Representatives who have received the subset of Program Data referred to above shall destroy and cease all further use of such data. Notwithstanding the above, Bank may retain Program Data (i) only to the extent required for purposes of final reconciliation pursuant to this Agreement, and only until the final reconciliation, including payment, is complete, or (ii) to the extent and for as long as Bank is required to retain such data by Applicable Law and only for the purposes and use prescribed by such law (e.g., if data has to be retained for tax reporting purposes, then such data will only be retained for the period of the tax reporting obligation and only retained and used for purposes of tax reporting). Bank shall not retain or use this subset of Program Data post-termination other than pursuant to the prior sentence. Once Bank is no longer required to retain such data, Bank shall destroy it as provided herein. Obligations surrounding the confidentiality and security of this of Program Data shall continue to apply for so long as such Program Data is retained by Bank.

21.7.2.3 Unless otherwise agreed by the Parties, the restrictions and requirements set forth in Section 21.7.2, shall not apply to:

- (i) the Cardholder List and Cardholder Identity. The Parties shall each own the Cardholder List and Cardholder Identity after the termination of this Agreement, and any contractual restrictions on the use of the Cardholder List and Cardholder Identity shall no longer be applicable;
- (ii) Program Data referenced in clauses (iii) – (v) of the definition of Program Data so long as (for the avoidance of doubt) no American Data (including American Identifiers) or American Permitted Marks are used, and such Program Data (a) is only used



in an aggregated manner with other Bank Data, and (b) is not flagged or identified as Program Data; and

(iii) Bank Models other than those that were developed based on or derived from the AADVANTAGE List (including any output from such Bank Models based on or derived from the AADVANTAGE List.)

21.7.3 Bank Data and Confidential Information Obligations of American. American will have no rights in relation to Bank Data or Bank Confidential Information after termination of this Agreement and will ensure that American's Affiliates, and Representatives who have received such Bank Data will cease all further use of such Bank Data. At Bank's option, American shall either return such Bank Data to Bank and/or destroy such Bank Data and certify to such destruction within five (5) Business Days of request by Bank. If returning or destroying any part of such Bank Data is technologically and commercially impossible, then the Parties agree to reach a resolution that ensures protection and nonuse of such Bank Data following termination of this Agreement. American shall ensure that American's Affiliates, and Representatives who have received Bank Data will destroy and cease all further use of such Bank Data. Notwithstanding the above, American may retain Bank Data (i) only to the extent required for purposes of final reconciliation pursuant to this Agreement, and only until the final reconciliation, including payment, is complete, or (ii) to the extent and for as long as American is required to retain such Bank Data by Applicable Law and only for the purposes and use prescribed by such law (e.g., if Bank Data has to be retained for tax reporting purposes, then such Bank Data will only be retained for the period of the tax reporting obligation and only retained and used for purposes of tax reporting). American shall not retain or use Bank Data post-termination other than pursuant to the prior sentence. Once American is no longer required to retain such Bank Data, American shall return or destroy such Bank Data as provided herein. Obligations surrounding the confidentiality and security of the Bank Data shall continue to apply for so long as such Bank Data is retained by American.

21.7.4 American Data and Confidential Information Obligations of Bank. Bank will have no rights in relation to American Data or American Confidential Information after termination of this Agreement and will ensure that Bank's Affiliates, and Representatives who have received such American Data will cease all further use of such American Data. At American's option, Bank shall either return such American Data to American and/or destroy such American Data and certify to such destruction within five (5) Business Days of request by American. If returning

or destroying any part of such American Data is technologically and commercially impossible, then the parties agree to reach a resolution that ensures protection and nonuse of such American Data following termination of this Agreement. Bank shall ensure that Bank's Affiliates, and Representatives who have received American Data will destroy and cease all further use of such American Data. Notwithstanding the above, Bank may retain American Data (i) only to the extent required for purposes of final reconciliation pursuant to this Agreement, and only until the final reconciliation, including payment, is complete, or (ii) to the extent and for as long as Bank is required to retain such American Data by Applicable Law and only for the purposes and use prescribed by such law (e.g., if Bank Data has to be retained for tax reporting purposes, then such Bank Data will only be retained for the period of the tax reporting obligation and only retained and used for purposes of tax reporting). Bank shall not retain or use American Data post-termination other than pursuant to the prior sentence. Once Bank is no longer required to retain such American Data, Bank shall return or destroy such American Data as provided herein. Obligations surrounding the confidentiality and security of the American Data shall continue to apply for so long as such American Data is retained by Bank:

21.7.5 Post-Termination Support Data. Each Party agrees to reasonably cooperate with the other to support the post-termination needs of Cardholders. If American has to share American Data with Bank after termination for such support purposes, Bank agrees to cease use of such American Data as soon as such support issue has been satisfied. If Bank has to share Bank Data with American after termination for such support purposes, American agrees to cease use of such Bank Data as soon as such support issue has been satisfied. Any such support data provided by one party to the other will be subject to the destruction requirements of Section 21.7.3 and Section 21.7.4 once the support issue has been resolved.

21.8 Revenue Guarantee Payment. Upon the termination of this Agreement, and as part of the final reconciliation under Section 11.9 with respect to Bank and the Card Program the amount of the Revenue Guarantee that shall be payable by Bank to American with respect to the Card Program as described in Section 13.1 shall be determined as set forth below. No Shortfall Miles shall be issued in connection with any such payment of the Revenue Guarantee. (Captions in the parentheses below are provided for convenience and have no binding effect.):

21.8.1 Bank shall pay the Revenue Guarantee as determined and paid in the normal course, as contemplated by Section 13.1 where this Agreement expires pursuant to Section 20.1 (Term);

21.8.2 With respect to termination by American pursuant to Sections 6.4 and 20.3.7 (Termination of AAdvantage Program), no

Revenue Guarantee shall be applicable after notice of termination is provided (or was required to have been provided) by American (however, for the avoidance of doubt, Miles awarded by Bank and posted by American shall continue to be payable by Bank in the normal course).

21.8.3 With respect to any other termination scenario not referenced elsewhere, Bank shall pay the portion of the Revenue Guarantee attributable to such Contract Year on a pro rata basis until the Termination Date, unless such termination was due to a breach by American of its obligations hereunder, in which case no Revenue Guarantee is payable for any period after such breach.

## **22. Assignment; Successors and Assigns**

22.1 Without prejudice to American's rights under Section 22.2, neither American nor Bank may assign or otherwise convey this Agreement, or any of its rights and obligations under this Agreement, to any third party without the other Party's prior written consent, and any such attempted assignment without consent shall be null and void. However, a Party may assign or transfer this Agreement to its Affiliate with reasonably sufficient or comparable resources to perform under this Agreement, provided that (i) the transferring Party obtains the other Party's prior written consent (which shall not be unreasonably conditioned or withheld), (ii) the transferee agrees in writing to be bound by the terms and conditions of this Agreement and (iii) the transferring Party continues to be bound by the terms and conditions of this Agreement after such assignment or transfer.

22.2 American reserves the right to transfer the AAdvantage Program independent of its airline business to a third party to whom substantially all of the AAdvantage Program assets are sold, assigned, contributed or otherwise transferred ("**AAdvantage Program Assignee**"). American shall deliver to Bank prior notice of the intent to enter into an agreement to so transfer (the "**AA Prior Transfer Notice**"). Upon delivery of the AA Prior Transfer Notice, Bank may terminate this Agreement at any time by providing to American no less than ninety (90) days prior written notice of termination; provided, however, if the actual transfer of ownership to the AAdvantage Program Assignee occurs prior to Bank delivering notice of termination, then American shall notify Bank immediately, and this Agreement shall terminate upon such actual transfer unless another arrangement has been agreed between American and Bank and, where required, the AAdvantage Program Assignee. American shall not enter into any confidentiality agreement with any third party that would prohibit it from disclosing to Bank the AA Prior Transfer Notice. Unless otherwise agreed between American and Bank (i) upon American's delivery of the AA Prior Transfer Notice Bank's rights to use the Cardholder List as set forth in Section 21.4 shall take effect immediately, and the restrictions set forth in Section 5 shall no longer be applicable to Bank, (ii) upon American's entry into the transfer agreement, the restrictions set forth in Section 5 shall no longer be applicable to American, and (iii) upon the actual transfer by American to the AAdvantage Program Assignee, the rights of American to use the Cardholder List as set forth in Section 21.4 shall take effect. American shall not enter into any arrangement with or make any representation to any third party that would prohibit it from

delivering to Bank the AA Prior Transfer Notice or otherwise restrict Bank's rights as described in this Section 22.2.

22.3 Bank reserves the right to transfer the portfolio of Card Accounts independent of the rights to offer AAdvantage Miles under this Agreement to a third party to whom substantially all of its Credit Card assets are sold, assigned, contributed or otherwise transferred ("**Card Assignee**"). Bank shall deliver to American prior written notice of the intent to enter into an agreement to so transfer (the "**Bank Prior Transfer Notice**"). Upon delivery of the Bank Prior Transfer Notice, American may terminate this Agreement at any time by providing to Bank no less than ninety (90) days prior written notice of termination; provided, however, if the actual transfer of ownership to the Card Assignee occurs prior to American delivering notice of termination, then Bank shall notify American immediately, and this Agreement shall terminate upon such transfer unless another arrangement has been agreed between American and Bank and where required, the Card Assignee. Unless otherwise agreed between American and Bank (i) upon Bank's delivery of the Bank Prior Transfer Notice American's rights to use the Cardholder List as set forth in Section 21.4 shall take effect immediately, and the restrictions set forth in Section 5 shall no longer be applicable to American, (ii) upon Bank's entry into the transfer agreement, the restrictions set forth in Section 5 shall no longer be applicable to Bank, and (iii) upon the actual transfer by Bank to the Cards Assignee, the rights of Bank to use the Cardholder List as set forth in Section 21.4 shall take effect. Bank shall not enter into any arrangement with or make any representation to any third party that would prohibit it from delivering to American the Bank Prior Transfer Notice or otherwise restrict American's rights as described in this Section 22.3.

22.4 This Agreement is binding on and inures to the benefit of the permitted successors and assigns of each Party.

### 23. Force Majeure

No Party shall be liable for delays or failure in its performance hereunder caused by any act of God, war, strike, labor dispute, work stoppage, fire, act of government, act or attempted act of terrorism or any other cause, whether similar or dissimilar, beyond the control of that Party, including, with respect to American, and without limitation, any incident, accident or hijacking or attempted hijacking involving any aircraft of American or any of its Affiliates or any other airline carrier (each a "**Force Majeure Event**"); provided, however, that the affected Party deliver prompt written notice to the other Party and under no circumstances, including upon the occurrence or continuation of a Force Majeure Event shall (a) Bank be allowed any delay or failure in its payments obligations to American hereunder, or (b) a party be relieved from its respective confidentiality, privacy and security obligations hereunder. Notwithstanding the above, no change in the value of Brazil's currency or the value of a Dollar, or any controls imposed on currency exchange or repatriation shall be considered a "Force Majeure Event," and no such events shall relieve or delay Bank's obligations to (a) offer and award AADVANTAGE Miles in connection with the Card and Card Accounts, (b) report to American AADVANTAGE Miles so awarded and pay for AADVANTAGE Miles posted, and (c) otherwise alter the Parties obligations hereunder.

## 24. Notices

24.1 Standard Notice Procedure. All notices, reports, invoices and other communications required or permitted hereunder to be given to or made to a Party must be in writing and addressed as described below. Notices will be considered as properly given (i) if delivered and received in person; (ii) if sent by an international express courier delivery service that provides signed acknowledgments of receipt; or (iii) if deposited in the U.S. certified or registered first class mail, postage prepaid, return receipt requested. All notices are effective upon receipt. For the purposes of delivering notice pursuant to this Section 24, the current contacts and addresses of the Parties are set forth where indicated in Schedule 24.

24.2 Simplified Notice Procedure. With respect to certain operational provisions of the contract, described below, notice may be provided using a more simplified procedure:

- (i) Notices to a Party provided pursuant to Section 2.
- (ii) Approval of the use of a Party's Permitted Marks and required approvals of Card Program collateral. Where more than one individual is listed as a contact, notice to and approval from one of the listed individuals shall be sufficient.

Notices under this Section 24.2 will be considered as properly given if sent by a Party via e-mail, with an electronic request for "delivery receipt" and shall be effective upon the sender's receipt of the delivery receipt. The current contacts and e-mail address of the Parties to be used for these purposes are set forth in Schedule 24.

24.3 Change of Contacts for Notice. Bank may change any contact and address for notice by giving at least five (5) calendar days' prior written notice to American in the same manner as that contemplated for that type of notice as that set forth above. American may change a contact and address for notice by giving five (5) calendar days' prior written notice to Bank in the same manner as that contemplated for that type of notice as set forth above. For the convenience of the Parties, American or Bank may, from time to time, update and recirculate Schedule 24 to the Parties to reflect properly given changes of contact or address for notice.

## 25. Miscellaneous

25.1 Severability. If any provision of this Agreement is deemed to be illegal, invalid or unenforceable for any reason (including by reason of any legislation or any decision of a Competent Authority), it will be severed from this Agreement and the remaining provisions of this Agreement will be unaffected, and this Agreement will continue in full force and effect.

25.2 Waiver and Consent. No waiver of a breach of any provision of this Agreement by a Party will constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of such Party.

Except where otherwise indicated, where a matter is subject to the consent, approval or agreement of a Party, the determination as to whether to provide such consent, approval or agreement may be made in such Party's sole discretion.

25.3 Specific References, Liability and Relationships. Each of American and Bank are responsible for ensuring compliance with the terms of this Agreement by its employees, and agents and including its contractors under this Agreement. All references to contractors in this Agreement will include subcontractors, but a Party is still required to comply with any limitations on delegation and subcontracting that may be contained in this Agreement.

25.3.1 Nothing in this Agreement is intended or will be construed to create or establish any agency, partnership, joint venture or employee or employer relationship, and the Parties disclaim any such relationship between them and no fiduciary duty to one another or any other special or implied duty exists that is not expressly stated herein. The Parties agree that they are acting solely as independent contractors under this Agreement.

25.3.2 Neither Party shall, nor shall any of its employees or agents have the power or authority to bind or obligate the other Party, make any monetary commitment on behalf of the other Party, or compromise or settle any dispute involving the other without the express prior written consent of the other Party. Bank shall not represent itself to be an agent of American or discuss with any Person, including any Bank Affiliate, any arrangement or agreement respecting the AADVANTAGE Program.

25.4 No Third Party Beneficiaries; Delegation.

25.4.1 All rights, remedies and obligations of the Parties under this Agreement shall accrue or apply solely to the Parties hereto or their permitted successors or assigns, and there is no intent to benefit any third Person (including Members), except as expressly provided in Section 19 with respect to the rights of a Person entitled to indemnification thereunder.

25.4.2 If Bank uses a subcontractor, Bank shall remain responsible for the performance, obligations and acts of such subcontractor to the same extent as if such performance, obligations and acts were of Bank's employees.

25.5 Construction; Entire Agreement. The Schedules referenced and attached to this Agreement shall be incorporated by reference and form a part of this Agreement. Unless otherwise expressly stated in a Schedule, in the event of a conflict between the terms of a Schedule and the terms of the body of this Agreement, the terms of the body shall prevail.

25.5.1 The Parties acknowledge and agree that this Agreement has been drafted and prepared through the efforts of all Parties, and that the rule of construction that any vague or ambiguous

terms are to be construed against the drafting Party will not be applied to any Party.

25.5.2 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter thereof, and supersedes any prior or contemporaneous agreement or understanding, whether written or oral, if any, between the Parties with respect to such subject matter.

25.6 Time is of the Essence. Time is of the essence with respect to the performance of all material provisions hereunder. Each Party shall notify the other involved Parties of its deadline for submitting material for approval, so the relevant Parties can work together in good faith to meet or possibly obtain variances from such deadlines as may be needed from time to time.

25.7 Captions. The captions appearing in this Agreement have been inserted as a matter of convenience and in no way define, limit or enlarge the scope of this Agreement or any of the provisions hereof.

25.8 Amendments. This Agreement may only be modified by a written instrument signed by the Parties.

25.9 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE UNITED STATES OF AMERICA AND OF THE STATE OF NEW YORK, EXCLUDING ITS RULES OF CONFLICTS OF LAW APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE. Each Party irrevocably consents, agrees and submits to the exclusive jurisdiction of the courts of the State of New York and of the United States of America located in the City of New York for the purposes of any suit, action or proceeding arising out of or relating to this Agreement and irrevocably waives, to the fullest extent permitted by law, any objection to the laying of venue of any such suit, action or proceeding in any such court or any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each Party agrees that neither of them will bring any suit, action or other proceeding arising out of this Agreement, the subject matter herein or any of the transactions described herein, in any jurisdiction other than the jurisdiction described above. Each Party consents to process being served in any such suit, action or proceeding by serving a copy thereof upon its agent for service of process in the State of New York, provided that a copy of the service process notice shall also be mailed to each Party. Each Party agrees that such service shall be deemed in every respect effective service of process in any such suit, action or proceeding and shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon and personal delivery to such Party. American hereby appoints CT Corporation System as its agent for service of process in the State of New York. Bank hereby appoints CT Corporation System as its agent for service of process in the State of New York. Bank shall pay directly to CT Corporation System the initial and annual fees for such services and shall provide American written evidence of such payment promptly after the execution of this Agreement and annually thereafter. Each Party agrees

to maintain such agents at all times unless it shall designate a successor agent or agents of a similar reputation. The prevailing Party in any claim or action to enforce any of the terms of this Agreement shall be entitled to recover all reasonable costs of enforcement, including court costs and reasonable attorneys' fees, subject to the limitations stated in Section 19.

25.10 Records; Audits. Each Party must maintain its books and records related to the Card Program in a complete and correct manner in all material respects and in accordance with good business practices.

25.10.1 Each Party (through a third party auditor or regulator) may review, inspect and audit the operations, facilities, books, records, data files and other information maintained by or on behalf of the other Party solely related to the other Party's compliance with the applicable terms of this Agreement. Audits may be carried out no more than once each Contract Year or at any time if necessary to comply with the request of a Competent Authority where such audit is required by Applicable Law.

25.10.2 The auditing Party shall provide at least fifteen (15) days' prior notice to the other Party of the proposed audit, or such shorter period of time as is reasonably practicable if the audit is carried out at the request of a Competent Authority and is required by Applicable Law. The audit must be conducted only during normal business hours, and the auditing Party shall use reasonable care not to cause damage to property or interrupt the normal business operations of the other Party.

25.10.3 Prior to the commencement of an audit, the Parties shall promptly agree upon an audit plan, including the scope and duration of the audit and production of supporting documents, however, the timing of the audit shall not be delayed where the Parties do not reach agreement. An audited Party is not required to provide access to any operations, facilities, books, records, data files and other information to the extent (A) such access is prohibited by Applicable Law, (B) the books, records, data files and other information are legally privileged, or (C) such operations, facilities, books, records, data files and other information relate to other programs operated by the audited Party, but at a minimum, an audited Party shall cooperate in providing the auditing Party with materials reasonably sufficient to demonstrate compliance with the applicable terms of this Agreement.

25.10.4 To the extent relevant, the Parties shall cause their respective Affiliates and use commercially reasonable efforts to cause their third party service providers to cooperate with any audit and provide reasonable access to any of their relevant operations or facilities.

25.10.5 The auditing Party will bear the cost of the audit; provided that in the event an audit performed pursuant to this



Section 25.10 reveals any systemic error or operational deficiency or failures, the audited Party at its sole cost shall correct such discrepancy and make any necessary adjustments.

25.10.6 The audit right described in this Section 25.10 shall (i) be in addition to the data security audit rights set forth in Section 17, and (ii) shall continue after expiration or termination of this Agreement with respect to outstanding obligations until such time as the obligations of the Parties to each other and to any Competent Authority have been fully satisfied and discharged under Applicable Law as it applies to the Party.


25.11 Survival. The provisions of Section 1, Section 24, and Section 25 (other than Section 25.10) shall survive the termination of this Agreement for so long as any other provision survives. The following Sections shall survive termination until all payment obligations to American have been satisfied and all AAdvantage Miles awarded hereunder have been paid by Bank: Sections 8.1, 8.2, 8.7, 9.2, 9.4, 9.5, 10.1, 10.2, 11.1, 11.3-11.7, 11.9, 12.1, 13.1, 13.2, and 21.8. The provisions of Section 19 shall survive for so long as the applicable statute of limitations would permit a claim. The provisions of Section 16.8.2.2, Section 21.1.2, Section 21.2, Section 21.5, Section 21.6, Section 21.7, Section 23, and Section 25.10 shall survive as applicable or as provided therein. Section 11.8 shall survive any termination of this Agreement for the longer of (i) the period during which a Party may be liable for taxes related to activities carried out under this Agreement under any applicable statute of limitations, or (ii) if any tax audit or controversy regarding this Agreement is then pending, the duration of such audit or controversy.

25.12 Counterparts. This Agreement and any amendments hereto may be executed in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument. Delivery by facsimile or electronic format (i.e., "pdf" or "tif") of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK.  
SIGNATURE PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this Agreement effective on the date set forth above.

**AMERICAN AIRLINES, INC.**



---

By: Kurt Stache  
Title: Senior Vice President – Marketing and Loyalty



IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this Agreement effective on the date set forth above.

**AMERICAN AIRLINES, INC.**

\_\_\_\_\_  
By: Kurt Stache  
Title: Senior Vice President – Marketing and Loyalty

**BANCO SANTANDER (BRASIL) S.A.**

\_\_\_\_\_  
By: *Angel Santodomingo*  
Title: *Vice Presidente Executivo*

*Gustavo Bahia Gama Sechin*  
\_\_\_\_\_  
Gustavo Bahia Gama Sechin  
Superintendente Executivo



# **Exhibit B**

## SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000  
FACSIMILE: 1-212-558-3588  
WWW.SULLCROM.COM

*125 Broad Street*  
*New York, New York 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

BRUSSELS • FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

June 29, 2020

Via First Class Mail and E-mail

Priscila Soria Sanchez,  
American Airlines, Inc.,  
4255 Amon Carter Boulevard,  
Fort Worth, TX 76155.

Re: AAdvantage Program Participation Agreement

Dear Ms. Sanchez:

I write on behalf of Banco Santander (Brasil), S.A. ("Santander") regarding the AAdvantage Program Participation Agreement between American Airlines, Inc. ("American") and Santander, dated December 9, 2016 (the "Agreement"). Capitalized terms used but not defined in this letter have the meanings given to them in the Agreement.

We understand that American stopped air travel between the United States and Brazil on March 29, 2020, due to the low demand caused by the ongoing COVID-19 global pandemic, and has not resumed flights between the two countries for over 90 days. On June 4, 2020, American issued a press release indicating that it does not intend to resume travel to Brazil until August 5, 2020 at the earliest.

American's cessation of air travel between the United States and Brazil has undermined the fundamental premise of the Agreement and has substantially eroded the value of the co-branded Santander / AAdvantage® credit card issued by Santander for Brazilian cardholders. With the United States and Brazil leading the world in confirmed COVID-19 cases according to the World Health Organization (WHO Coronavirus Disease (COVID-19) Dashboard, <https://covid19.who.int>), the effects of the COVID-19 pandemic likely will continue to have a fundamental impact on the desirability of air travel between the United States and Brazil for the foreseeable future. Among other things, expectations are for a significant decrease in the demand for air travel for an indeterminate amount of time. Even when travel restrictions, "shelter in place" and quarantine orders are lifted, demand for international air travel will likely remain significantly lower than before the onset of the COVID-19 pandemic due to, among other things, (i) a general reluctance to travel, (ii) the possibility of an actual recurrence of the pandemic, (iii) any government mandates that either impose travel restrictions or limit the number of seats that can be occupied on an aircraft to allow for social distancing, (iv) any government mandates that

Priscila Soria Sanchez

-2-

may discourage certain passengers from traveling, such as any imposing requirements for passengers to wear face coverings while traveling, submit to tests or examinations administered prior to entering an airport or boarding an airplane, or quarantine for at least 14 days upon arrival, and (v) the increased usage of “virtual” teleconferencing products as an alternative to face-to-face meetings.

The COVID-19 pandemic, by itself, and American’s cessation of air travel between the United States for more than 90 days, entitles Santander to terminate the Agreement, including immediate termination under Section 20.4.5 of the Agreement.

Accordingly, this letter serves as notice that Santander is terminating the Agreement under Section 20.4.5. Santander would like to meet with American to coordinate the details and mechanics of the termination process, including, among other things:

- determining any final reconciliation for the Revenues Guarantee relating to Year 4 of the Agreement, which is to be calculated on a pro rata basis up to such Termination Date;
- developing a joint communication plan to advise Members, Cardholders and the general public of the impending termination of the Card Program and a transition plan for the wind down of the Card Program.

Please advise as soon as possible, but no later than July 6, 2020, if American disputes Santander’s right to terminate the Agreement pursuant to Section 20.4.5. If American disputes Santander’s right to terminate the Agreement—or does not respond in writing by July 6, 2020, in which case Santander will proceed on the understanding that American disputes Santander’s right to terminate the Agreement—Santander reserves the right to seek a judicial declaration that a termination event has occurred. In that event, Santander will continue to perform under the Agreement in order to cause as little disruption as possible to affected Members and Cardholders, but do so under protest and reserving all rights, including that the effective date of termination will be the date hereof.

Sincerely,



James L. Bromley

cc: Priya Aiyar  
Richard Elieson  
(American Airlines, Inc.)