



# State of North Carolina Office of the State Controller

Michael F. Easley, Governor

Robert L. Powell, State Controller

August 1, 2006

## MEMORANDUM

**TO:** Agency Fiscal Officers  
University Vice Chancellors  
Community College Business Officers  
Local Units of Government Finance Officers

**FROM:** Robert L. Powell, State Controller 

**SUBJECT:** New Merchant Card Processing Services Award

As previously communicated, the Office of the State Controller (OSC) has been engaged in a competitive procurement process to arrange for the establishment of a new Master Services Agreement (MSA) to replace the contract that is expiring with the current processor. The MSA provides services to eligible state agencies, universities, community colleges, and local units of governments on a statewide enterprise basis, allowing eligible participants to benefit from the leveraging of volume pricing.

Please be advised that the contract has been awarded to the current vendor, SunTrust Merchant Services, LLC (STMS). The award is effective immediately and will allow participants to begin taking advantage of the enhanced fee schedule effective August 1, 2006, depending upon when the participant transitions to the new contract. The resulting contract has been executed on behalf of the state by the State Controller and the State Treasurer. STMS has executed the contract on behalf of Wachovia Bank, N.A. and First Data Merchant Services Southeast, LLC (FDMS), which are collectively referred to as the "Servicers."

## CONTRACT ENHANCEMENTS

The most significant enhancement is reduced fees for participants. The primary "per transaction" fee under the old contract was \$.108, while the new per transaction fee will be \$.04, representing a 63% decrease. The per transaction fee is only one component of the total cost of processing a merchant card transaction. The pass-through fees, generally referred to as interchange fees charged by the card associations, will continue to be passed on at actual cost. Considering both vendor-levied and pass-through fees, the total fee for a typical transaction should be approximately 3.2% less than under the old contract. The actual fee reduction percentage will depend upon a participating agency's average-sized transaction amount.

Other enhancements provided by the new MSA include:

- Point of Sale (POS) terminal supplies at no cost, with only shipping costs being charged
- Option to utilize SunTrust Bank, in addition to Wachovia Bank, in order to obtain next-day availability of funds (applies to community colleges and local units of government that utilize SunTrust Bank as their official depository)
- New Web-based reporting system (forthcoming in the near future)

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- Concise set of documents and schedules comprising the MSA available to the participant before execution of the Agency Participation Agreement (APA)
- Modified Agency Participation Agreement (APA) more clearly defining the terms that a participant is being bound to upon execution
- Clearer disclosure of participant's responsibility to adhere to card association rules, and disclosure of participant's liabilities for non-compliance
- Protection against the entire contract being in default as result of the non-compliant actions of a single participant
- Establishment of a cure process for contract violations by a participant, including obtaining STMS's assistance to remedy any violation of a card association rule by a participant, and assistance in any mediation process with the card associations.

### **PCI SECURITY COMPLIANCE**

Before being allowed to participate under the new contract, entities will be required to comply with all card association rules. This includes the rules pertaining to PCI Security Standards. Agencies have been given a full year to become compliant with PCI Security Standards. The recent ratification of House Bill 1248, which increases governmental agencies responsibilities pertaining to identity theft protection, demonstrates the General Assembly's recognition of the importance of avoiding security breaches. PCI Security Compliance is a significant requirement of the new MSA. More information regarding this topic can be found on the State Controller's Web site. Link: [http://www.ncosc.net/PCI\\_links.html](http://www.ncosc.net/PCI_links.html)

### **CARD ASSOCIATION RULES COMPLIANCE**

In addition to PCI Security Compliance rules, there are other card association rules that apply to participants. Many of the rules have fines associated with violations and non-compliance, and some require services to the violating merchant to be terminated. Most of these rules, but not all, are found either in the STMS Operating Guide, or on Visa and MasterCard Websites. It should be noted that the rules on Visa and MasterCard Websites are excerpts of their rules, as the merchant card processors are all prohibited from providing a full printed copy of the rules.

Various trade organizations have been unsuccessful in forcing Visa and MasterCard to provide the rules in their entirety to the merchant community. Various anti-trust lawsuits are pending and US Senate Judiciary Committee hearings are being held. Considering this prohibition, the OSC will work with STMS in an effort to communicate the rules that are believed to be the most applicable to participants. It should be noted that the association rules require adherence, even if the rules are not publicly available. The majority of the rules that have associated fines for violations have at least an explanation of the rules published.

It should also be noted that the rules may vary from association to association. One example is the conditions under which a convenience fee may be charged. Visa allows a convenience fee only for "card-not-present" transactions if the fee is a "flat or fixed amount fee." MasterCard on the other hand allows the convenience fee to be either a "flat" fee or a "percentage-based" fee. In addition, both associations do not allow a fee to be charged for card-not-present transactions unless the same fee is charged for all like transactions regardless of the form of payment used (e.g., ACH bank drafts or card transactions initiated via the Web). In recent months, several participants have received notification from Visa that they must discontinue their practices that are in violation of these rules, or risk having their services terminated. The OSC will assist any participant in getting a clarification from either Visa or MasterCard if there is a question regarding a participant's particular practice. The OSC does not have authority to grant any waivers for non-compliance.

### **TRANSITION TO NEW CONTRACT**

The following applies to the process of transitioning to the new contract:

- There will be a three-month transition period, during which current participants will be able to accomplish the tasks necessary to transition to the new contract.

- The old contract will remain in effect, concurrently with the new contract, until October 31, 2006.
- Until the participant completes the transition tasks, the participant's application will be operating under the old contract and subject to the old pricing schedule.
- Any participant's application not transitioned to the new contract by the end of the transition period will have the services associated with that merchant number terminated by STMS, as the old contract will have expired.
- Transitioning completed by the 26<sup>th</sup> of a month will result in the pricing being effected retroactive to the first day of that month.
- In order to transition to the new contract there are two requirements, which both must be met:
  - Participant must execute the new Agency Participant Agreement (APA)
  - Participant must certify that it has achieved Payment Card Industry (PCI) Security Compliance
- Security compliance rules and associated liabilities exist today that did not exist in 2000 when participants began enrolling into the MSA. Because the new contract is clearer in disclosing a participant's obligations, it is important that participants read and understand the documents comprising the contract before executing the Agency Participation Agreement (APA).
- Certification of achievement of PCI Security Compliance will be at the application (merchant number) level and will depend upon the capture method used by the application. Participants having applications involving URLs and PC capture software must be enrolled with the State's PCI Security Compliance vendor, AmbironTrustWave (ATW). Participants utilizing POS terminals only for capture are not required to be enrolled with ATW. Applications associated with merchant numbers that are not enrolled with ATW (generally POS terminals) must still comply with all PCI Security Standards.
  - If application is enrolled with ATW – participant must receive certification by ATW for each of its applications (merchant numbers). Enrollment is made through ATW's TrustKeeper Portal.
  - If application is not enrolled with ATW – participant must certify to OSC, based upon its best knowledge, that the application (merchant number) is compliant. To assist the participant in making this determination, OSC will provide a "PCI Security Compliance Self-assessment Questionnaire." The entity should complete the questionnaire and, if self-determined to be compliant, complete and submit the "PCI Security Compliance Self-Assessment Certification Form" to OSC. It is not necessary to submit the completed questionnaire to OSC.
- Participants having multiple applications (merchant numbers), for which some of the applications are compliant and others are not, will be allowed to transition only the compliant applications to the new MSA.

## **CONCLUSION**

We are pleased to be able to offer this new Master Services Agreement for merchant card services. The competitive procurement process resulted in reduced cost and significant enhancements overall. We encourage agencies to take advantage of this offering and do more business electronically in the future.

However, we do caution that you fully understand the conditions under which you enroll in this contract, especially from a security and liability standpoint. OSC stands ready to assist you and encourage you to visit the OSC Website for more information.

More information can be found at OSC's Website: [http://www.ncosc.net/SECP/EPP\\_Index.html](http://www.ncosc.net/SECP/EPP_Index.html) . Any questions regarding the new contract may be addressed to OSC's Support Services Center, telephone (919) 875-HELP (4357), or David Reavis, E-Commerce Manager, telephone (919) 871-6483.