

MERCHANT SERVICES BANKCARD AGREEMENT
State of North Carolina and SunTrust Merchant Services
Contract Number 14-06002

North Carolina State Controller, North Carolina State Treasurer as the State of North Carolina (the "STATE")
(and together with entities signing Agency Participating Agreements "the CUSTOMER")

Customer's Legal Name	Doing Business As		
3512 Bush Street	Raleigh	NC	27609
Street Address	City	State	Zip Code

Government Entity	56-1611588
Specify Whether Customer is (circle one) a Corporation, Partnership, Sole Proprietorship, Non-Profit or Other Type of Entity	Taxpayer Identification Number

David C. Reavis, Contract Administrator	(919) 981-5553
Recipient For Notices Under Section 21.4	Facsimile Number

This Merchant Services Bankcard Agreement ("Agreement") is between the STATE (on behalf of the CUSTOMER) identified above, and SUNTRUST MERCHANT SERVICES, LLC ("STMS"), on behalf of WACHOVIA BANK, N.A. ("BANK"), and FIRST DATA MERCHANT SERVICES SOUTHEAST, LLC ("FDMS"). STMS, BANK, and FDMS are collectively referred to as "SERVICERS").

BANK, as a member of Visa U.S.A., Inc. ("VISA") and MasterCard International Incorporated ("MasterCard"), is responsible for its VISA and MasterCard bankcard programs and has authorized STMS or its members pursuant to a separate agreement (the "Agency Agreement") to act as an agent of and in conjunction with BANK in performing authorization, processing and settlement services for merchants participating in BANK's MasterCard and VISA bankcard programs.

This Agreement is made pursuant to the State's Request for Best and Final Offer (RFBAFO) No. 14-06002, and incorporates the terms, conditions, specifications and requirements of the RFBAFO. In the event of a conflict among the terms of this Agreement, the Parties agree that the following order of precedence shall apply: State or Federal law, this Agreement, the State's RFBAFO and STMS' response to the RFBAFO.

This Agreement comprises 1) STMS's "Standard Merchant Services Bankcard Agreement" with certain modified terms, conditions, and specifications; 2) the State's RFBAFO with certain modified terms, conditions, and specifications of the original RFP; and 3) STMS's Operating Procedures ("the Operating Guide)." In the event an issue of contract interpretation arises during the term of this Agreement, and such issue arises under the negotiated terms of STMS' Bankcard Agreement the issue shall first be considered pursuant to such terms. In the event an issue of contract interpretation arises during the term of this Agreement, and such issue arises under the negotiated terms of the RFBAFO the issue shall first be considered pursuant to such terms. In the event an issue of contract interpretation arises that is not addressed by the express terms of this Agreement, or that is addressed by the modified terms of both Parties; the modified terms derived from STMS's standard bankcard services agreement and the modified terms derived from the RFP shall be construed equally and jointly. Conflicts among the terms of this Agreement shall be subject to the dispute resolution process.

In consideration of the mutual covenants and agreements set forth herein, SERVICERS and CUSTOMER agree as follows:

- 1. Definitions.** As used in this Agreement, capitalized terms will have the meaning set forth in Annex 1.

2. **Services.**

- 2.1 During the term of the Agreement, CUSTOMER shall use SERVICERS as provider of Services for CUSTOMER.
- 2.2 Subject to Association Rules, Services may be performed by STMS or BANK as they may determine. In addition to SERVICERS, one or more affiliates of SERVICERS may assist in providing terminals or other equipment and local support functions in connection with this Agreement.
- 2.3 SERVICERS agree to provide the merchant card processing services described in the RFBAFO relating to RFP No. 14-06002, and as defined in the Modified Scope of Services.

3. **Operating Guide; Association Rules**

CUSTOMER acknowledges receiving, and reading the Operating Guide the terms of which are incorporated into this Agreement. CUSTOMER agrees to follow the procedures in the Operating Guide in connection with each Card transaction and to comply with all applicable Association Rules. From time to time, SERVICERS may change the Operating Guide, by providing CUSTOMER with at least 30 days' prior written notice. However, for changes in the Association Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there is any conflict between the terms of this Agreement and the Operating Guide, the terms of this Agreement will govern. If CUSTOMER loses or otherwise misplaces the Operating Guide or notices of changes thereto, CUSTOMER shall be responsible for contacting SERVICERS to obtain replacement copies.

4. **Acceptance of Cards**

- 4.1 **General.** CUSTOMER must check each Card presented for validity in accordance with the terms of this Agreement, the Operating Guide and the applicable Association Rules. CUSTOMER must not submit any sale that was not created between the CUSTOMER and the Cardholder for settlement and under no circumstances may a CUSTOMER submit any sale that has been previously charged back by the Cardholder and returned to the CUSTOMER. **Authorization;** CUSTOMER must receive authorization in advance for each Card transaction. CUSTOMER acknowledges that the Authorization, (i) indicates only the availability of credit at the time of Authorization, (ii) does not warrant that the person presenting the Card is the rightful Cardholder, and (iii) is not an unconditional guarantee by SERVICERS that any Card transaction will not be subject to chargeback. **Multiple Sales Drafts and Partial Consideration;** CUSTOMER must list all items of goods and services purchased during each transaction with the total amount thereof on a single Sales Draft and shall not use more than one Sales Draft to represent a single Card transaction. CUSTOMER must comply with all special procedures and conditions applicable under the Operating Guide and the Association Rules with respect to any partial payment, installment payment, delayed delivery or advance deposit situation and any delayed or amended charges for travel and entertainment transactions.
- 4.2 **Retail Transactions.** This Section 4.2 will apply if CUSTOMER uses data capture/point-of-sale terminals. If CUSTOMER completes any transactions when (i) the Cardholder is present but does not have his/her card, (ii) the Cardholder does not sign the Sales Draft, (iii) the signature on the Sales Draft is unauthorized as compared to the signature on the panel of the card, or (iv) the signature panel is blank, CUSTOMER shall be responsible for such Sale regardless of any authorization. **Refunds and Credits;** CUSTOMER must not return cash to the Cardholder for any price adjustments, returned goods or canceled services purchased with a card but will instead prepare a Credit Voucher and process each refund or adjustment back to the card used in the original sale, not exceeding the original transaction amount. CUSTOMER must not process a Credit Voucher without having completed a previous card transaction with the same Cardholder (or with a Cardholder who purchased a gift returned by the recipient) and must never accept money from a Cardholder for the purpose of preparing a Credit Voucher that will effect a deposit to the Cardholder's account.
- 4.3 **Telephone and Mail Order Transactions.** This Section 4.3 will apply if CUSTOMER submits card transactions effected by a mail order, telephone order or similar device (e.g. internet order). CUSTOMER assumes all responsibility for identification of the Cardholder and the validity of the card used for the telephone or mail order. **Refunds and Credits;** CUSTOMER must not process a Credit Voucher without having completed a previous card transaction with the same Cardholder and must never accept money from a Cardholder for the purpose of preparing a Credit Voucher that will effect a deposit to the Cardholder's account.

4.4 **Preauthorized Orders and Recurring Sales**

If CUSTOMER is authorized to accept preauthorized orders and recurring sales, CUSTOMER must comply with all procedures set forth relating to those sales in the Operating Guide.

5. Presentment of Card Transactions

CUSTOMER shall electronically or physically deliver to SERVICERS Sales Drafts for all Card transactions to be processed and settled hereunder. The submission deadlines are set forth in the Operating Guide.

6. Settlement of Card Transactions.

6.1 SERVICERS will only be required to settle CUSTOMER's Card transactions for Cards, as specified in the Schedules. Promptly after presentment of Sales Drafts pursuant to this Agreement and the Operating Guide, above, as applicable, SERVICERS will initiate a transfer of the applicable settlement funds to CUSTOMER in one of the following ways:

- (i) Direct Settlement Account. If CUSTOMER maintains a Settlement Account at a financial institution with which SERVICERS have arrangements permitting direct payment of settlement funds, SERVICERS will initiate a transfer of such applicable settlement funds through a credit to the Settlement Account.
- (ii) Wire Transfer. If CUSTOMER receives payment of settlement funds by wire transfer, SERVICERS will initiate a wire transfer of such applicable settlement funds to the Settlement Account.
- (iii) Automated Clearing House Credit. If CUSTOMER receives payment of settlement funds through automated clearing house credit, SERVICERS will initiate a transfer of such applicable settlement funds through ACH to CUSTOMER's Settlement Account.

6.2 All settlements to CUSTOMER for VISA and MasterCard Card transactions will be the net amount of sales and credit returns processed, with Chargebacks being treated as separate settlements.

6.3 All credits to CUSTOMER's Settlement Account or other payments to CUSTOMER are provisional and are subject to SERVICERS' final audit and Chargebacks. CUSTOMER agrees that SERVICERS may deduct such Chargebacks from settlement funds due to CUSTOMER. SERVICERS shall invoice CUSTOMER for any fees due the SERVICERS under this agreement pursuant to Paragraph 8 below.

6.4 SERVICERS will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties including but not limited to any Association or CUSTOMER's financial institution. In addition to any other remedies available to SERVICERS under this Agreement, CUSTOMER agrees that should any of the events set forth in Section 16.3 occur, SERVICERS may, upon at least 24 hours' advance written notice, change processing or payment terms to suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to CUSTOMER from SERVICERS pursuant to the terms of this Agreement, until SERVICERS have had reasonable opportunity to investigate and discuss such event with CUSTOMER. In cases of fraud or similar cause, no prior notice shall be required, but SERVICERS shall notify CUSTOMER in writing within three business days after effectuating a suspension of credits or other payments, which notice shall state SERVICERS' reason for the belief that such fraud or similar cause exists.

6.5 Following any termination of this Agreement, CUSTOMER agrees to continue to maintain settlement accounts open for a period of ten months after termination in order to accommodate any debits that may arise as a result of provisional credits, pursuant to Paragraphs 6.2 or 6.3 above.

7. Claims.

CUSTOMER does not waive its sovereign immunity with respect to any claims arising under Association Rules for fines or penalties. SERVICERS pledge to use their best commercially reasonable efforts to inform the CUSTOMER of any Association Rules that impose fines or penalties; nonetheless, CUSTOMER acknowledges it has been informed that fines or penalties may arise under conditions imposed by the Association Rules. Upon notice of any fines or penalties, either party may initiate an informal dispute resolution process under RFBAFO 14-06002, Section VII, Paragraph 24. In that event, parties pledge their best efforts to resolve any disputes involving fines and penalties.

8. Fees; Adjustments; Collection of Amounts Due.

8.1 SERVICERS shall charge CUSTOMER a fee for the Services, which shall be calculated and payable pursuant to the Schedules and any additional pricing supplements. CUSTOMER acknowledges that the fees stated herein are based upon the qualification of CUSTOMER's transactions for certain reduced interchange fees as set by the

applicable Association. If CUSTOMER's Card transactions fail to qualify for the reduced interchange fees, SERVICERS shall process such Card transactions at the higher applicable interchange fees.

- 8.2 The fees for Services set forth in the Schedules, are based upon assumptions and contained in the STATE'S Request for RFBAFO, and the SERVICERS' response to the RFBAFO. If the CUSTOMER significantly alters its method of doing business, SERVICERS may adjust CUSTOMER's transaction fees, as mutually agreed between the parties. If SERVICERS and CUSTOMER cannot agree in good faith to a mutually acceptable fee within sixty (60) days, SERVICERS may terminate this Agreement with sixty (60) days prior written notice.
- 8.3 The pass-through fees for Services set forth in the Schedules may be adjusted to reflect increases or decreases by Associations in interchange, assessment and other Association fees. All such adjustments shall be CUSTOMER's responsibility to pay and shall become effective upon the date any such change is implemented by the applicable Association or other party.
- 8.4 If CUSTOMER receives settlement funds by wire transfer, SERVICERS may charge wire transfer fees of \$10 per wire, notwithstanding any lesser amount shown on the Schedules.
- 8.5 When authorized by applicable statute(s), CUSTOMER agrees to pay SERVICERS any fines imposed on SERVICERS by any Association resulting from Chargebacks and any other fees or fines imposed by an Association with respect to acts or omissions of CUSTOMER.
- 8.6 If CUSTOMER's Chargeback Percentage for any line of business exceeds a one percent (1%) chargeback to Settlement Ratio (dollar value of chargebacks to dollar value of transaction volume), CUSTOMER may be assessed Chargeback fees and any applicable Chargeback handling fees or fines. The chargeback percentage is subject to change from time to time by SERVICERS in order to reflect changes in the chargeback percentage threshold reported by VISA or MasterCard..
- 8.7 If CUSTOMER believes any adjustments should be made with respect to CUSTOMER's Settlement Account, CUSTOMER shall notify SERVICERS in writing within sixty (60) days after any debit or credit is or should have been effected. If CUSTOMER notifies SERVICERS after such time period, SERVICERS may, in their discretion, assist CUSTOMER, at CUSTOMER's expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but SERVICERS shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by SERVICERS to assist CUSTOMER in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

9. Chargebacks.

- 9.1 CUSTOMER shall be responsible for all Chargeback amounts relating to Card transactions where:
 - (i) merchandise is returned and a proper credit for Cardholder is not received by SERVICERS for processing;
 - (ii) the Sales Draft is, or is alleged to have been, executed, accepted, endorsed, completed or assigned improperly without authority or not in accordance with the Authorization requirements or provisions of this Agreement;
 - (iii) regardless of any Authorization obtained (including without limitation, telephone and mail order transactions), CUSTOMER completed a transaction when the Cardholder did not sign the Sales Draft;
 - (iv) the signature on the draft was unauthorized as compared to the signature appearing on the Card, the signature panel on the Card was blank, or a limited purpose business purchasing card was accepted without appropriate authorization of the nature of the goods or services purchased (in addition to Authorization of the transaction amount);
 - (v) the Sales Draft is incorrectly completed, incomplete or illegible;
 - (vi) the Cardholder disputes the sale, quality or delivery (or availability for pre-arranged pick-up) of merchandise or the performance or quality of service covered by the Sales Draft or agreement accepted by such Cardholder;
 - (vii) the circumstances in which the Sales Draft was created or submitted by, or credit was received by, CUSTOMER constituted or otherwise involved a breach of any term, condition, representation, warranty or duty of CUSTOMER hereunder;
 - (viii) multiple Sales Drafts were executed to avoid authorization scrutiny;
 - (ix) the extension of credit for merchandise sold or rented or services performed was in violation of law or the rules or regulations of any governmental agency, whether federal, state, local or otherwise;

- (x) a legible copy of the Sales Draft or Credit Voucher cannot be produced by CUSTOMER within ten days of SERVICERS' request (except to the extent SERVICERS are responsible pursuant to Section 11.1);
- (xi) the Cardholder asserts any claim or defense which the Cardholder has as a consumer of goods or services;
- (xii) the Cardholder disputes the validity of a telephone or mail order Card transaction;
- (xiii) the Card transaction is otherwise subject to Chargeback by the Card issuing bank or Cardholder in accordance with the Association Rules or applicable law; or
- (xiv) the Card transaction is subject to Chargeback in accordance with the procedures set forth in the Operating Guide.

9.2 CUSTOMER shall reimburse SERVICERS for any Chargebacks, return items, or other losses resulting from CUSTOMER's failure to produce a Card transaction record requested by SERVICERS within the applicable time limits.

10. Representations; Warranties; Limitations on Liability; Exclusion of Consequential Damages.

10.1 Without limiting any other warranties hereunder, CUSTOMER represents and warrants as to each Card transaction submitted by CUSTOMER under this Agreement that:

- (i) the Card transaction represents a bona fide sale/rental of merchandise or services not previously submitted;
- (ii) the Card transaction represents an obligation of the Cardholder for the amount of the Card transaction;
- (iii) Intentionally Omitted.
- (iv) the Card transaction amount is only for the merchandise or services (including taxes, but without any surcharge) sold or rented and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the Card transaction simultaneously upon CUSTOMER's accepting and submitting the Card transaction for processing;
- (v) the Card transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to CUSTOMER by a Cardholder or arising from the dishonor of a personal check);
- (vi) CUSTOMER has no knowledge or notice of any fact, circumstances or defense which would indicate that the Card transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectibility of the Cardholder's obligation arising from such Card transaction or relieve the Cardholder from liability with respect thereto;
- (vii) the Card transaction submitted to SERVICERS was entered into by CUSTOMER and the Cardholder; and
- (viii) the Card transaction was made in accordance with the terms of this Agreement, Association Rules and the Operating Guide.

10.2 NOTWITHSTANDING SECTIONS ONE (1) AND TWO (2) OF THE RFBAFO, SECTION VII, STANDARDS, FOR SERVICES PROVIDED PURSUANT TO CONTRACT NUMBER 14-06002, SERVICERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO CUSTOMER OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

10.3 AS BETWEEN SERVICERS AND CUSTOMER, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, THEIR RESPECTIVE AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PROVIDED, HOWEVER, THAT UNDER NORTH CAROLINA LAW, SERVICERS MAY BE LIABLE FOR THE COSTS OF CLAIMS THAT

ARISE AGAINST CUSTOMER AS A RESULT OF SERVICERS' NEGLIGENCE UNDER THE NORTH CAROLINA TORT CLAIMS ACT; N.C.G.S. §143-291, et. seq.

10.4 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SERVICERS' CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE AMOUNT OF FEES RECEIVED BY SERVICERS PURSUANT TO THE AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS.

11. Retention of Records.

11.1 Reserved.

11.2 If the Schedules provide that CUSTOMER will retain images or legible copies of CUSTOMER's Sales Drafts and Credit Vouchers, CUSTOMER must retain legible copies of Sales Drafts and Credit Vouchers for a period of at least eighteen months from the date of each such transaction. CUSTOMER must submit to SERVICERS a legible copy of a Sales Draft or Credit Voucher in accordance with applicable Association Rules.

11.3 Unless the Schedules provide that SERVICERS are responsible for retaining records of CUSTOMER's Card transaction data and CUSTOMER has actually delivered to SERVICERS the applicable Card transaction data containing all required information in legible and suitable form for imaging or electronic capture and storage (as applicable), CUSTOMER shall be responsible for the retrieval of all Sales Drafts and Credit Vouchers requested by SERVICERS within the shortest time limits established by the Association Rules, as presented in the Operating Guide, this Agreement, or other notice from SERVICERS. CUSTOMER will not be relieved of its responsibility under the preceding sentence for any deficiencies in Card transaction data transmitted or otherwise delivered to SERVICERS, even though SERVICERS may agree to capture or produce images of, store and retrieve any such incomplete data on CUSTOMER's behalf.

12. Cash Payments by and Cash Disbursements to Cardholders.

CUSTOMER must not accept any direct payments from Cardholders for charges of merchandise or services which have been included on a Sales Draft; it is the right of the Card issuing bank to receive such payments. Taxes on Card transactions must be included in the amount charged and may not be collected by CUSTOMER in cash. CUSTOMER must not make any cash disbursements to a Cardholder as part of a Card transaction except to the extent expressly authorized by one or more of the Schedules, the Operating Guide or the Association Rules.

13. Confidentiality.

13.1 Unless CUSTOMER obtains consents from each applicable Association, SERVICERS, Card issuing bank and Cardholder, CUSTOMER must not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any chargebacks, retrieval requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. CUSTOMER shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. CUSTOMER must not retain or store magnetic stripe data after a transaction has been authorized. If CUSTOMER stores any electronically captured signature of a Cardholder, CUSTOMER may not reproduce such signature except upon specific request of SERVICERS or pursuant to a court or governmental agency request, subpoena or order.

13.2 CUSTOMER acknowledges that it obtains no ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a third party as an asset upon a bankruptcy, insolvency or failure of CUSTOMER's business. Upon a bankruptcy, insolvency or failure of CUSTOMER's business all Card transactions information must be returned to SERVICERS or acceptable proof of the destruction of all Card transaction information must be provided to SERVICERS.

14. Supplies; Advertising.

At CUSTOMER's option, SERVICERS may furnish CUSTOMER with operational supplies such as the forms of sales drafts, credit vouchers and Association decals. CUSTOMER shall display VISA, MasterCard and, if applicable, other Association decals and program marks on promotional materials furnished by SERVICERS, as required by Association Rules, but shall not indicate that VISA, MasterCard or any other Association endorses CUSTOMER's goods or services and will cease using such materials after termination of this Agreement.

15. Assignment.

15.1 Any transfer or assignment of this Agreement by CUSTOMER, by operation of law or otherwise, is voidable by SERVICERS without SERVICERS' prior written consent.

15.2 SERVICERS may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. SERVICERS shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger that may reasonably affect this Agreement. An assignment by any SERVICER to a wholly owned or majority controlled Affiliate shall be permitted under the terms of this Agreement, provided that such assignee is capable and willing to provide the same or substantially similar services to CUSTOMER under the same terms and conditions as agreed upon herein. CUSTOMER'S consent to an assignment by STMS or FDMS as the result of a merger in which the applicable SERVICER is the surviving corporation shall not be unreasonably withheld upon receipt of reasonable notice thereof, provided that any assignee shall affirm this Agreement attorning to the terms and conditions of this Agreement. In the event such consent is not given, CUSTOMER or SERVICERS may terminate this Agreement, upon thirty (30) days notice. Notwithstanding the foregoing, upon notice to CUSTOMER, another VISA and MasterCard member may be substituted for BANK under whose sponsorship this Agreement is performed. Upon substitution, such other VISA and MasterCard member shall be responsible for all obligations required of BANK, including without limitation, full responsibility for performance of the terms and conditions herein and such other obligations as may be expressly required by applicable Association Rules.

15.3 This Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other person charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign this Agreement.

16. Term; Events of Default.

16.1 This Agreement and the applicable Schedules shall become effective upon the date this Agreement and the applicable Schedules are signed by STMS, which shall in all instances be on or after the date(s) CUSTOMER and STMS sign this Agreement and the applicable Schedules and CUSTOMER will be advised of the effective date by SERVICERS.

16.2 The initial term of this Agreement shall commence and shall continue in force for five (5) years after it becomes effective. This Agreement may be renewed for two successive one-year periods unless any party terminates this Agreement by notice to the others, in writing, at least 60 days prior to the expiration of the term or renewal term, as the case may be. In the event a transition to a new vendor is needed for any reason, the SERVICERS shall continue to provide required services until such transition is completed subject to the terms and conditions of this Agreement.

16.3 If any of the following events shall occur (each an "Event of Default"):

- (i) [Intentionally Omitted]
- (ii) any assignment or transfer of this Agreement by CUSTOMER; or
- (iii) [Intentionally Omitted]
- (iv) fraudulent or suspected fraudulent Card sales (in excess of 1.0% of transaction or dollar volume as measured over a 30 day period) which may be subject to Chargebacks based upon Association rules or as outlined in the Program Guide, excessive Chargebacks (in excess of 1.0% of dollar or transaction volume as measured over a 30 day period) or any other circumstances which may materially increase SERVICERS' exposure for CUSTOMER's chargebacks or otherwise present a financial or security risk to SERVICERS; or
- (v) any representation or warranty of CUSTOMER in this Agreement is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made; or

- (vi) CUSTOMER shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement;
- (vii) [Intentionally Omitted]
- (viii) CUSTOMER shall default in the payment when due, of any material indebtedness for borrowed money or any material trade payable (other than any trade payable subject to a good faith dispute by CUSTOMER so long as CUSTOMER is actively pursuing resolution of such dispute); or
- (ix) [Intentionally Omitted]
- (x) [Intentionally Omitted]
- (xi) CUSTOMER or Participant (as applicable) shall fail to comply with the financial reporting requirements outlined in Section 18.1 of this Agreement;

then, upon the occurrence of an Event of Default, this Agreement may be terminated by SERVICERS by giving not less than 30 days' notice to CUSTOMER and, upon such notice, all amounts payable hereunder by CUSTOMER to SERVICERS shall be due and payable upon demand. Notwithstanding any of the foregoing, in the event that there is a breach of CUSTOMER's security or any other event or situation has transpired which has resulted in a request from any Association that this Agreement be terminated, the parties hereunder acknowledge that SERVICERS may terminate this Agreement immediately and all amounts payable hereunder from CUSTOMER to SERVICERS shall be immediately due and payable upon demand.

- 16.4 Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable and such provisions shall survive the expiration or termination of this Agreement.
- 16.5 If any Event of Default shall have occurred and be continuing, SERVICERS may, in their sole discretion, exercise all of their rights and remedies under applicable law.
- 16.6 If CUSTOMER's aggregated Card transactions fail to conform to assumptions contained in the STATE'S Request for Best and Final Offer (RFBAFO), and the SERVICERS' response to the RFBAFO., SERVICERS may adjust CUSTOMER's transaction fees, as mutually agreed between the parties. If SERVICERS and CUSTOMER cannot agree in good faith to a mutually acceptable fee within sixty (60) days, SERVICERS may terminate this Agreement with sixty (60) days prior written notice.
- 16.7 If this Agreement is terminated for cause, CUSTOMER acknowledges that SERVICERS may be required to report CUSTOMER's identification to the Combined Terminated Merchant File maintained by VISA and MasterCard. CUSTOMER expressly agrees and consents to such reporting if CUSTOMER is terminated as a result of the occurrence of an Event of Default.
- 16.8 The provisions governing processing and settlement of Card transactions, all related adjustments, fees and other amounts due from CUSTOMER and the resolution of any related chargebacks, disputes or other issues involving Card transactions will continue to apply even after termination of this Agreement, until all Card transactions made prior to such termination are settled or resolved. In addition, the provisions of Sections 8 through 13, inclusive, 15, and Subsections 16.7, 16.9, 16.10, 21.2 and 21.3, all in this Agreement, shall survive any termination.
- 16.9 After termination of this Agreement for any reason whatsoever, CUSTOMER shall continue to bear responsibility for all Chargebacks, fees, credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due to SERVICERS under this Agreement or which may be due to SERVICERS before such termination to either SERVICERS or any of SERVICERS' affiliates for any related equipment or related services.
- 16.10 CUSTOMER acknowledges that SERVICERS in their reasonable discretion may take any action(s) as necessary against CUSTOMER's individual Agency Participants, instead of CUSTOMER in its entirety, in accordance with this Agreement, the individual Agency Participant Agreements, and the Association Rules in order to mitigate any material financial or security risk to SERVICERS, or to ensure compliance with the Rules.

17. Reserved.

18. Financial and Other Information.

CUSTOMER shall prepare on an annual basis and make publicly available, its annual financial statements which shall be prepared in accordance with generally accepted accounting principals in the United States of America ("GAAP") as applicable to governments. Such financial statements shall be prepared in compliance with the

standards established by the Government Accounting Standards Board (“GASB”) for financial accounting and reporting for state and local government entities. Each Participant whose financial results are not consolidated into the financial statements prepared by CUSTOMER, shall make available to SERVICERS such Participant’s annual fiscal year end audited financial statements which shall also be prepared in accordance with GAAP and shall comply with the standards established by GASB or such other regulatory agency charged with the regulation of Participants financial reporting. Upon request, CUSTOMER or Participant (as applicable) shall provide to SERVICERS or their representatives reasonable access to CUSTOMER or Participant's facilities and records for the purpose of performing any inspection and/or copying of CUSTOMER or Participant's books and/or records related to the Card transactions contemplated under this Agreement.

19. **Indemnification.**

Intentionally Omitted.

20. **Reserved.**

21. **Miscellaneous.**

21.1 No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, elements of nature or other acts of God; (ii) any outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees’ demands are reasonable or within the party’s power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

21.2 This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it.

21.3 CUSTOMER may request SERVICERS to perform or provide any system enhancements, custom reports, or related service enhancements that are different from or in addition to the system, services and reports SERVICERS otherwise agree to provide to CUSTOMER (collectively, "System Enhancements"). Following receipt of any request for System Enhancements and prior to providing the requested System Enhancements, SERVICERS shall provide CUSTOMER with a description of the System Enhancements to be made, together with an estimate of SERVICERS' fee for providing such System Enhancements. If CUSTOMER thereafter instructs SERVICERS to make such System Enhancements, SERVICERS will use reasonable efforts to do so, and CUSTOMER shall pay the additional fees charged by SERVICERS for such System Enhancements, as mutually agreed upon.

21.4 Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to CUSTOMER at its address appearing at the beginning on this Agreement, and if to SERVICERS at 1307 Walt Whitman Road, Melville, New York 11747, Attention: General Manager, Facsimile (631) 683-7516 with a copy to Attention: General Counsel’s Office at 3975 NW 120th Avenue, Coral Springs, Florida 33065, Facsimile: (954) 845-5550, and shall be deemed to have been given (i) if sent by mail or courier, when received and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received.

21.5 The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement.

21.6 The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

21.7 This Agreement, along with any Schedules and the Operating Guide, constitutes the entire agreement between the parties with respect to the subject matter, supersedes any previous agreements and understandings and,

except as provided in other Sections of this Agreement or the Schedules, can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition. The Schedules shall be construed consistently with the terms of this Agreement and the order of precedence established in the preamble and comprise:

- (i) Modified Scope of Services (Schedule A)
- (ii) Schedule of Fees (Schedule B)
- (iii) Visa and MasterCard's Interchange Qualification Data Requirements (Schedule C)
- (iv) Service Level Agreement (SLA) (Schedule D)
- (v) Agency Participation Agreement (Schedule E)

21.8 The parties acknowledge that the VISA and MasterCard Association Rules may provide VISA and MasterCard certain rights to require action(s) by SERVICERS, and that such action(s) may include termination or modification of this Agreement with respect to transactions involving VISA or MasterCard Cards and the VISA or MasterCard Card systems, and to investigate CUSTOMER. In the event any rights are exercised by VISA or MasterCard requiring SERVICERS to take action with respect to any transactions, SERVICERS shall provide notice to CUSTOMER and the State, and provide an opportunity to cure any alleged violation of this Agreement or any Rule under which the action is taken as permitted by the applicable Association. The parties also acknowledge that issuers of other Cards, for which SERVICERS perform services on behalf of CUSTOMER, may provide similar rights and responsibilities under their applicable Association Rules with respect to this Agreement's applicability to transactions involving such other Cards. In the event any rights are exercised by card issuers other than VISA or MasterCard requiring SERVICERS to take action with respect to any transactions, SERVICERS shall provide notice to CUSTOMER and the State, and provide an opportunity to cure any alleged violation of this Agreement or any Rule under which the action is taken as permitted by the applicable Association.

21.9 In the event any rights are exercised by VISA, MasterCard or any other card issuers requiring SERVICERS to take action with respect to any transactions or compliance, SERVICERS shall provide notice to CUSTOMER and the State, and provide an opportunity to cure any alleged violation of this Agreement or any Rule under which the action is taken as permitted by the applicable Association. In such an event, SERVICER agrees to provide assistance to CUSTOMER relating to such matters including but not limited to: advocating cure periods that are sufficient for CUSTOMER to effect necessary changes to remedy a violation, good faith negotiation for mitigation or waiver of fines or penalties imposed under Association Rules, or other such cooperative efforts as the Parties agree are proper for the continuance of this Agreement.

The parties hereto have caused this Agreement to be executed by their duly authorized officers. **THIS AGREEMENT IS NOT BINDING UPON SERVICERS UNTIL SIGNED BY SERVICERS OR UPON THE OCCURRENCE OF ONE OF THE EVENTS SET FORTH IN SUBSECTION 16.1.**

Office of State Controller
("CUSTOMER")

Department of State Treasurer
("CUSTOMER")

By: _____

By: _____

Name: _____
(Please Print or Type)

Name: _____
(Please Print or Type)

Title: _____

Title: _____

Date: _____

Date: _____

SUNTRUST MERCHANT SERVICES, LLC
("STMS")

On behalf of WACHOVIA BANK, N.A. ("BANK"), and
FIRST DATA MERCHANT SERVICES SOUTHEAST, LLC ("FDMS")

By: _____

Name: _____
(Please Print or Type)

Title: _____

Date: _____

ANNEX 1

The following terms shall have the following meanings:

1. "ACH" means Automated Clearing House
2. "Affiliate" means (a) an entity's ultimate parent and (b) any entity that is directly or majority controlled by said entity or its ultimate parent.
3. "Agency Participation Agreement" means an agreement entered allowing a Participant to subscribe to the services as a Merchant under this Agreement as reflected in Schedule E.
4. "Association" means any entity formed to administer and promote Cards, including VISA and MasterCard, and any other entity as specified on the Schedules to this Agreement.
5. "Association Rules" mean the rules, regulations, releases, (whether contractual or otherwise) imposed or adopted by any Association.
6. "Authorization" means the process by which CUSTOMER electronically accesses SERVICERS' computerized system, unless such system is inoperable or otherwise not accessible to CUSTOMER, in which case CUSTOMER shall utilize the designated toll-free telephone number, to obtain credit approval from the Card issuing bank before completion of the Card transaction.
7. "BAI" means the Bank Administration Institute
8. "Bankruptcy Code" means title 11 of the United States Code, as amended from time to time.
9. "Business Day" means a day (other than Saturday or Sunday) on which SERVICERS are generally open for business.
10. "Card" means a valid credit card or valid off-line debit card bearing the service mark of VISA or MasterCard and, to the extent the Schedules so provide, a valid card issued by any other Associations specified on such Schedules.
11. "Cardholder" means the individual whose name is embossed on the Card and any authorized user of such Card.
12. "Chargeback" means the procedure by which a Sales Draft or other indicia of a Card transaction (or disputed portion thereof) is returned to Bank or the Card issuing bank, for failing to comply with Association Rules, the liability of which is the CUSTOMER's responsibility.
13. "CPS" means the State's Common Payment Service
14. "Credit Voucher" means the evidence of a refund or price adjustment by CUSTOMER to a Cardholder's account in connection with a prior purchase by such Cardholder using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise.
15. "CUSTOMER" means the N.C. Office of the State Controller and the N.C. State Treasurer, and governmental agencies and participants executing and delivering Agency Participation Agreements.
16. "CUSTOMER's Chargeback Percentage" means the actual monthly percentage calculated by dividing CUSTOMER's total monthly VISA and MasterCard Chargeback items in any line of business by the number of CUSTOMER's total monthly VISA and MasterCard transactions in such line of business.
17. "DST" means the Department of State Treasurer
18. "ITS" is the Office of Information Technology Services.
19. "MCC" means the Merchant Category Code
20. "Merchant" means the governmental agency that provides goods and/or services to a cardholder under this Agreement and has no other meaning.

21. "Master Services Agreement" means 1) STMS's "Standard Merchant Services Bankcard Agreement" with certain modified terms, conditions, and specifications; 2) the State's RFP with certain modified terms, conditions, and specifications of the RFP, as reflected in the State's RFBAFO; and 3) STMS's Operating Guide.
22. "Operating Guide" means the then-current manual prepared by SERVICERS, containing operational procedures, instructions and other directives relating to Card transactions.
23. "OSC" means the Office of the State Controller
24. "Participant" means the governmental agency that signs the Agency Participation Agreement.
25. "Preauthorized Order" means a Cardholder's written authorization to make one or more future charges to such Cardholder's MasterCard Card account.
26. "Recurring Sale" means a Cardholder's written authorization to make one or more future charges to such Cardholder's Visa or other non-MasterCard Card account.
27. "Sales Draft" means evidence of a purchase of goods or services by a Cardholder from CUSTOMER using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise, all of which must conform to Association Rules.
28. "Schedules" means the attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part of this Agreement.
29. "Services" means the activities undertaken by SERVICERS to authorize, process and settle all United States Dollar denominated VISA and MasterCard Card transactions undertaken by Cardholders at CUSTOMER's location(s) in the United States, and all other activities necessary for SERVICERS to perform the functions specified on the Schedules for all other Cards covered by this Agreement.
30. "Settlement Account" means an account at a financial institution designated by CUSTOMER as the account to be debited and credited by SERVICERS for Card transactions and Chargebacks.
31. "Sub-ZBA" means a Sub Zero Balance Account. Demand deposit account that sweeps net into a Zero Balance Account.
32. "The State" means the State of North Carolina, as represented by the State Controller and the State Treasurer.
33. "ZBA" means a Zero Balance Account. Demand account that sweeps net into a master demand account.