

<b>STATE OF NORTH CAROLINA</b>  <b>OFFICE OF THE STATE CONTROLLER</b>	<b>REQUEST FOR BEST AND FINAL OFFER</b> <b>NO. 14-06002</b>	
	Offers will be received until: July 12, 2006	
	Contract Type: Open Market	
<i>Refer <b>ALL</b> Inquiries to:</i> David Reavis Telephone No. 919-871-6483	Date Issued: July 10, 2006 Commodity Number: 946-35 Commodity: Merchant Card Processing Services	
E-Mail: <a href="mailto:david.reavis@ncosc.net">david.reavis@ncosc.net</a>	Using Agency Name: Office of the State Controller	
(See page 2 for delivery instructions.)	Agency Requisition No.	

**NOTICE TO VENDOR:** Offers, subject to the conditions made a part hereof, will be received at this office, 3512 Bush Street, Raleigh NC, until 12:00 noon Eastern Standard Time on the day of opening and then opened, for furnishing and delivering the goods and services as described herein. Refer to page 2 for proper mailing instructions. Bids are subject to rejection unless submitted on this form.

**EXECUTION:** In compliance with this Request for Best and Final Offers (Request for BAFO), and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all goods and services which are offered, at the prices agreed upon and within the time specified herein. Pursuant to GS § 147-33.100 and under penalty of perjury, the undersigned Vendor certifies that this offer has not been arrived at collusively or otherwise in violation of Federal or North Carolina law and this offer is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting an offer for the same commodity, and is in all respects fair and without collusion or fraud. Failure to execute/sign offer prior to submittal shall render bid invalid.

VENDOR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Offer valid for 45 days from date of opening unless otherwise stated here: 60 days

**ACCEPTANCE OF BEST AND FINAL OFFER**

If the State accepts any or all parts of this offer, an authorized representative of the Office of the State Controller shall affix her/his signature to the Vendor's response to this Request for BAFO (request for BAFO).

<p><b><u>FOR STATE USE ONLY</u></b></p> <p>Offer accepted and contract awarded this _____ day of _____, 2006, as indicated on attached certification,</p> <p>By _____ (Authorized representative of Office of the State Controller).</p>
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Bid No.: 14-06002 (REQUEST FOR BAFO)

Bidder: \_\_\_\_\_

**ISSUING AGENCY:** Office of the State Controller  
1410 Mail Service Center  
Raleigh, NC 27699-1410

**USING AGENCY:** Office of the State Controller  
3512 Bush Street  
Raleigh, North Carolina 27609

**MAILING INSTRUCTIONS:** Mail three fully executed originals and two copies of the response. In addition, provide one electronic copy. Address package and insert OSC control number as shown below. It is the responsibility of the vendor to have the BAFO in this office by the specified time and date of opening.

<u>DELIVERED BY US POSTAL SERVICE</u>	<u>DELIVERED BY ANY OTHER MEANS</u>
<b>BID NO.: 14-06002</b> Office of the State Controller Attn: David Reavis 1410 Mail Service Center Raleigh, NC 27699-1410	<b>BID NO.: 14-06002</b> Office of the State Controller Attn: David Reavis 3512 Bush Street Raleigh, NC 27609

**SOLICITATION REQUEST FOR BEST AND FINAL OFFER (BAFO):**

This request is to acquire a best and final offer from vendor for **Merchant Card Processing Services**, pursuant to the provisions of the original Request for Proposals (RFP) issued December 5, 2005 (Bid number 14-06002) and the negotiations conducted pursuant to the RFP. Any individual vendor can receive a different number of requests for Best and Final Offers (BAFOs) than other bidders. Vendor should submit its most competitive prices.

The components of this request for BAFO include:

- The request for BAFO solicitation document
- Merchant Services Bankcard Agreement – With Schedules
  - Schedule A – Modified Scope of Services
  - Schedule B – Schedule of Fees
  - Schedule C – Visa and MasterCard’s Interchange Qualification Data Requirements
  - Schedule D – Service Level Agreement
  - Schedule E – Agency Participation Agreement
- The vendor’s Operating Procedures (“Operating Guide”)

Acceptance of the vendor’s response to this request for BAFO will result in an Agreement that is made pursuant to this request for BAFO.

The accepted Agreement will be comprised of: 1) STMS’s “Standard Merchant Services Bankcard Agreement” with certain modified terms, conditions, and specifications; 2) the State’s request for BAFO with certain modified terms, conditions, and specifications of the original RFP; and 3) STMS’s Operating Procedures (“the Operating Guide).” These documents shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

The Agreement made pursuant to the State’s Request for Best and Final Offer (RFBAFO) No. 14-06002 will incorporate the terms, conditions, specifications and requirements of the request for BAFO. 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, the Vendor’s “Standard Merchant Services Bankcard Agreement” as modified and presented in response to the request for BAFO, the State’s request for BAFO and Vendor’s response to the request for BAFO.

This Agreement comprises 1) Vendor’s “Standard Merchant Services Bankcard Agreement” with certain modified terms, conditions, and specifications; 2) the State’s request for BAFO with certain modified terms, conditions, and specifications of the original RFP; and 3) Vendor’s 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 Vendor’s 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 request for BAFO 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 vendor’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.

Based upon negotiations, Vendor should include the following as its response to this request for BAFO:

- Merchant Services Bankcard Agreement – including:
  - Schedule A – Modified Scope of Services
  - Schedule B – Schedule of Fees
  - Schedule C – Visa and MasterCard’s Interchange Qualification Data Requirements
  - Schedule D – Service Level Agreement
  - Schedule E – Agency Participation Agreement
- Vendor’s published Operating Procedures (“Operating Guide”)

**Please Note:** This bid is still in the evaluation period. During this period and prior to award, possession of the BAFO, original bid response and accompanying information is limited to personnel of the Office of the State Controller and the Statewide IT Procurement Office, and to agencies responsible for participating in the evaluation. Bidders who attempt to gain this privileged information, or to influence the evaluation process (i.e. assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

**Basis for Rejection.** Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the requirements or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State.

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## **Section I. Introduction**

The North Carolina Office of the State Controller (OSC) is soliciting proposals from responsible and qualified merchant card acquirers (merchant card processors) to provide merchant card processing services to various participating State agencies and local units of government. The result will be the awarding of a multi-year contract entered into with the Vendor jointly by the North Carolina State Controller and the North Carolina State Treasurer. Merchant Card Processing Services include: 1) Card capture processing (authorization and transmission for settlement); 2) Settlement of submitted transactions with the participants' depository bank(s); 3) Deployment and servicing of capture equipment; and 4) Related Reporting Services. Participants pay for the services that they may subscribe to, as offered under a Master Services Agreement (MSA), with each executing an Agency Participation Agreement (APA).

The volume of transactions under a MSA is undetermined. An estimated transaction volume based on past history or other means may be used as a guide, but shall not be a representation by the State of any anticipated purchase volume under any contract made pursuant to this solicitation. Exhibit D should be referenced for past historical transaction data.

Agency Participation Agreements are primarily for State entities that are subject to the State's Cash Management Law - N.C.G.S. §147-86.10 et. seq. In addition, the agreements are available on a strictly voluntary basis to local units of government - N.C.G.S. §147-33.96 et. seq. Exhibit C should be referenced for the current category of participants, and Exhibit F should be referenced for a list of the current participants.

The merchant card processor will be required to process merchant card transactions captured and submitted by a variety of methods, including POS terminals, via a State operated gateway, and via third-party gateways. Exhibits A-1, A-2, and B should be referenced for diagrams of the various State merchant card players, capture methods, and bank settlement accounts structure.

The State Controller's Web site should be referenced regarding various E-Commerce Policies that pertain to Merchant Card Services. The link is: [http://www.ncosc.net/SECP/SECP\\_Policies.html](http://www.ncosc.net/SECP/SECP_Policies.html)

## **Section II. Bidding Information**

### **A. Instructions to Vendors**

Additional acronyms, definitions and abbreviations may be included in the text of the request for BAFO.

- 1) Proposals submitted electronically, or via facsimile (FAX) machine will not be accepted.
- 2) EXECUTION: Failure to sign under EXECUTION section will render proposal invalid.
- 3) TIME FOR CONSIDERATION: Vendor's offer must be valid for 120 days from the date of proposal opening
- 4) FAILURE TO MEET PROPOSAL REQUIREMENTS: While it is not anticipated that the awarded Vendor will fail to meet the proposal requirements, if such should occur, the right is reserved to further evaluate the responses to this request for BAFO and then to recommend an award to the next Vendor response that represents the best interest of the State.
- 5) PROMPT PAYMENT DISCOUNTS: Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 6) MISCELLANEOUS: Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
- 7) VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement

opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available through the Office of Information Technology's Division of Statewide Information Technology Procurement Internet web site: <http://www.its.state.nc.us/ITProcurement/>

- 8) **ORGANIZATION:** Vendors are directed to carefully review Section V herein and fully comply with the content and organizational requirements therein.
- 9) **E-PROCUREMENT:** This is NOT an e-procurement solicitation. However, the awarded Vendor must register in the e-procurement system within two days of contract award. See paragraph #46 of the attached Information Technology Procurement Office General Terms and Conditions for Goods and Related Services. E-procurement service fees shall not be assessed. It is the Vendor's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature Vendor acknowledges acceptance of all terms and conditions including those related to e-procurement. General information on the e-procurement service can be found at: [http://www.ncgov.com/eprocurement/asp/section/ep\\_index.asp](http://www.ncgov.com/eprocurement/asp/section/ep_index.asp)

## B. General Conditions for Proposals

- 1) **Definitions, Acronyms and Abbreviations.** Generally, see 9 NCAC 06A.0102 for definitions. The following are additional defined terms:
  - a) **The State:** Is the State of North Carolina, as represented by the State Controller and the State Treasurer, and by the Office of Information Technology Services
  - b) **ITS:** Office of Information Technology Services.
  - c) **OSC:** Office of the State Controller
  - d) **DST:** Department of State Treasurer
  - e) **DMV:** Division of Motor Vehicles
  - f) **ACH:** Automated Clearing House
  - g) **BAI:** Bank Administration Institute
  - h) **CPS:** Common Payment Service
  - i) **CVC:** Card Validation Code (Applies to MasterCard)
  - j) **CVV:** Card Verification Value (Applies to Visa)
  - k) **ISDN:** Integrated Services Digital Network
  - l) **IVR:** Interactive Voice Response
  - m) **MCC:** Merchant Category Code
  - n) **MSA:** Master Services Agreement
  - o) **Merchant Cards:** Credit cards and debit cards, whether issued by a bank or a proprietary card company
  - p) **NACHA:** National Automated Clearing House Association
  - q) **PCI:** Payment Card Industry
  - r) **POS:** Point of Sale
  - s) **Proprietary Card:** Merchant card issued by a company and processed other than through the Visa or MasterCard network.
  - t) **APA:** Agency Participation Agreement
  - u) **ZBA:** Zero Balance Account. Demand account that sweeps net into a master demand account.

- v) **Sub-ZBA:** Sub Zero Balance Account. Demand deposit account that sweeps net into a Zero Balance Account.
  - w) **DDA:** Deposit Demand Account
  - x) **Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of “goods” in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
  - y) **Vendor:** Company, firm, corporation, financial institution, partnership, individual, etc., submitting a response to a solicitation
  - z) **Open Market Contract:** A contract for the purchase of goods or services not covered by a term, technical, or convenience contract.
  - aa) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
  - bb) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
  - cc) **RFP:** Request for Proposal
- 2) **Read and Review.** It shall be the Vendor’s responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements and the State’s intent as specified herein. If a Vendor discovers an inconsistency, error or omission in this solicitation, the Vendor should request a clarification from the State’s contact person listed on the front page of the solicitation. Questions and clarifications, other than those asked at the prep-proposal conference, must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time period identified hereinabove.
- 3) **Vendor Responsibility.** The Vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The Vendor(s) must provide a justification for their proposed hardware, product and software solution(s) along with costs therefor. Vendors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying services, maintenance, warranties, value added services or other criteria identified herein.
- 4) **Oral Explanations.** The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this request for BAFO with anyone other than the Agency contact or procurement officer named on Page 2 above may be grounds for rejection of said Vendor’s offer. Agency contact regarding this request for BAFO with any Vendor may be grounds for cancellation of this request for BAFO.
- 5) **Insufficiency of References to Other Data.** Only information that is received in response to this request for BAFO will be evaluated. Reference to information previously submitted will not suffice as a response to this solicitation.
- 6) **Conflict of Interest.** Applicable standards may include: N.C.G.S. §§ 147-33.100, 14-234, 133-32. The Vendor shall not knowingly employ, during the period of this contract, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing services involving, or similar to, the scope and nature of this solicitation or the resulting contract.
- 7) **Contract Term.** A contract awarded pursuant to this request for BAFO shall have an effective date as provided in the Notice of Award. The term shall be **Five (5) years**, and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this contract for **two (2) additional one (1) year** periods at its sole discretion.

- 8) Effective Date. This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing Vendor for goods provided nor services rendered prior to the appropriate signatures and the arrival of the effective date of the Contract. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.
- 9) Recycling and Source Reduction. It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items that are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of the purchasers at the Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.
- 10) Historically Underutilized Businesses. Pursuant to General Statute 143-48 and Executive Order #150, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at: <http://www.doa.state.nc.us/hub/>
- 11) Clarifications/Interpretations. Any and all amendments or revisions to this document shall be made by written addendum from the IT Procurement Office. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 12) Rights Reserved. While the State has every intention to award a contract as a result of this request for BAFO, issuance of the request for BAFO in no way constitutes a commitment by the State of North Carolina, or the procuring Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:
- a) waive any formality;
  - b) amend the solicitation;
  - c) cancel or terminate this request for BAFO;
  - d) reject any or all proposals received in response to this document;
  - e) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal;
  - f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;
  - g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
  - h) if all responses are deficient, determine whether Wavier of Competition criteria may be satisfied, and if so, negotiate with one or more Vendors.
- 13) Alternate Bids. Vendor may submit alternate bids for various levels of service(s) or products meeting specifications. Alternate bids must specifically identify the request for BAFO requirements and advantage(s) addressed by the alternate bid. Any alternate proposals must be clearly marked with the legend as shown herein. Each proposal must be for a specific set of services or products and bid at specific pricing. If a Vendor chooses to respond with various service or product offerings, each must be bid with a different price and a separate proposal

response. Vendors may also provide multiple proposals for software or systems coupled with support and maintenance options, provided, however, all proposals must satisfy the specifications.

Alternate bids must be clearly marked

**“Alternate bid for ‘name of Vendor’”**

and numbered sequentially with the first bid if separate proposals are submitted.

This legend must be in bold type of not less than 14-point type on the face of the bid, and on the text of the alternative proposal.

- 14) Co-Vendors. Vendors may submit offers as partnerships or other business entities. Such partners or other “co-Vendors,” if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one Vendor. Any requirements for references, financial statements or similar reference materials shall mean **all** such partners or co-Vendors.
- 15) Submitting a Proposal. Each Vendor submitting a proposal warrants and represents that:
- a) The proposal is based upon an understanding of the specifications and requirements described in this request for BAFO.
  - b) Costs for developing and delivering responses to this request for BAFO and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the Vendor. The State is not liable for any expense incurred by the Vendors in the preparation and presentation of their proposals.
- 16) All materials submitted in response to this request for BAFO become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and Vendor resulting from this request for BAFO process.
- 17) A proposal may not be unilaterally modified by the Vendor for a one hundred-twenty –(120) day period following the delivery of the proposal, or of any best and final offer.

### C. Evaluation Process

- 1) "Best Value" procurement is defined in N.C.G.S. §143-135.9. The intent of "Best Value" Information Technology procurement is to enable Vendors to offer and the State to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of the procurement.
- 2) Source selection. A tradeoff/ranking method of source selection will be utilized in this procurement to allow the State to award the contract to the Vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. The overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
  - a) The evaluation methodology shall be consistent with 9 NCAC 06B.0302, or the corresponding section of any future NC Administrative Code, and this Section.
  - b) The evaluation committee may conduct negotiations with one or more qualified Vendors, request clarifications, an interview with or presentation from any or all Vendors as allowed by applicable rules. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh, North Carolina, to negotiate or discuss technical and contractual aspects of the proposal.
  - c) Evaluation Process Explanation. State Agency employees will evaluate all proposals. All proposals will be initially classified as being responsive or non-responsive. If a proposal is found non-responsive, it will

not be considered further. All responsive proposals will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the request for BAFO materials or Proposal shall have specific page numbers and sections stated in the reference.

- d) To be eligible for consideration, a Vendor must meet the intent of all requirements. Compliance with the intent of all requirements will be determined by the State. Further, a serious deficiency in the response to any one requirement or specification may be grounds for rejection regardless of overall score.
  - e) Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of proposal, data that is essential for a complete and thorough evaluation of the proposal.
- 3) Best and Final Offers (BAFO). If negotiations or subsequent offers are solicited, the Vendors shall engage in negotiations in good faith and provide BAFOs in response to the State’s request(s). Failure to deliver a BAFO when requested shall disqualify the Vendor from further consideration. The State may establish a competitive range based upon evaluations of proposals, and conduct negotiations or request BAFOs from the Vendors within this range; e.g. “Finalist Vendors.” The State will evaluate BAFOs and add any additional points to the Vendors’ respective scores. Points awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned points to attain final scores.
- 4) Vendor may be disqualified from any evaluation or award if Vendor, or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.
- 5) Evaluation Method. Qualified bids will be evaluated and acceptance made based on the criteria set forth below:

Specifications:	Maximum Points:
Merchant Card Processing Services Features (Functionality and Technology)	250
Total Costs {Initial Costs (Conversion for agencies), Ongoing Costs}	250
Capability to interact with various gateways, including Common Payment Service	100
Transaction Reporting Services Features (Functionality, Technology)	100
Experience, qualifications, credentials	100
Financial Stability	50
Conversion work plan	50
Support and service	50
Other Value Added Services	25
Presentation/Demonstration maximum additional points	25
<b>TOTAL</b>	<b>1,000</b>

- 6) The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsibility	Date
Issue of RFP	Office of State Controller	12/05/2005
Pre-Proposal Conference; receive questions from Vendors	Office of State Controller	12/15/2005
Deadline To Submit Additional Questions	Potential Vendors	12/19/2005
Response to Written Questions	Office of State Controller	12/22/2005
Submission of Proposal	Vendors	01/12/2006
Proposal Evaluation	Evaluation Committee	02/07/2006
Oral Presentation and/or Product Demonstrations (optional)	Vendors	02/13/2006
Best and Final Offers from Finalists (optional)	Vendors	07/12/2006
Contract Award	Office of State Controller	08/01/2006
Protest Deadline	Vendors	15 days after award

- 7) **Award Of Contract.** The responsible Vendor whose proposal is most advantageous to the State, taking into consideration the evaluation factors herein, will be recommended for contract award.
- 8) ITS has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve proposal award information electronically from our Internet web site: <http://www.ips.state.nc.us/ips/pubmain.asp>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-proposal number (14-06002), and then search. This information may not be available for several weeks dependant upon the complexity of the acquisition and the length of time to complete the evaluation process.
- 9) **Protest Procedures:** Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in this office within 15 calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest. **All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1009 - .1029.**

### **Section III. Technical Specifications**

- 1) Architecture. The North Carolina Statewide Technical Architecture is located at the following website: (<http://www.ncsta.gov/>). This provides a series of domain documents describing objectives, principles and best practices for the development, implementation, and integration of business systems. Agencies and Vendors should refer to these Architecture documents when implementing enterprise applications and/or infrastructure.
- 2) **Equivalent Items**. Whenever a material, article or piece of equipment is identified in the specification(s) by reference to a manufacturer's or Vendor's name, trade name, catalog number or similar identifier, it is intended to establish a standard, unless otherwise specifically stated as a brand specific requirement (no substitute items will be allowed). Any material, article or piece of equipment of other manufacturers or Vendors shall perform to the standard of the item named. Equivalent bids must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to the State and if not destroyed in the evaluation process, may be returned to the Vendor at the Vendor's expense.
- 3) All bids shall include specifications and technical literature sufficient to allow the State to determine that the equipment meets all requirements. This technical literature will be the primary source for bid evaluation. If a requirement is not addressed in the technical literature it must be supported by additional documentation and included with the bid. Bid responses without sufficient technical documentation may be rejected.
- 4) The State may, in its sole discretion, investigate any substitute or equivalent goods irrespective of any representation made by a Vendor or manufacturer.
- 5) **Specifications**: Any deviation from specifications indicated herein must be clearly identified as an exception and listed on a separate page labeled "Exceptions to Specifications;" otherwise, it will be considered that items offered are in strict compliance with these specifications, and Vendor will be held responsible. Any deviations shall be explained in detail. **The Vendor shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable. Offers of alternative or equivalent goods may be rejected; and if offered, must be supported by independent documentary verification of equivalence to the specified goods.**
- 6) Technical Specifications. Means, as used herein, a specification that documents the requirements of a system or system component. It typically includes functional requirements, performance requirements, interface requirements, design requirements, development standards, maintenance standards, or similar terms. Compliance with technical specifications is mandatory.
- 7) Technical Requirements and Specifications

#### **Important Instructions:**

The Vendor must meet the requirements in Paragraphs A, B, and C below to be considered for evaluation.

The Vendor's response must specifically describe in detail and provide examples (when applicable) as to how it will comply with Paragraphs D through T listed below. Suitable alternative solutions may be considered, if the solution is deemed "equal to or greater than" the requirement. When applicable, the Vendor's response must address pertinent details to be used in evaluation, such as methodologies, hardware and software utilization, technical specifications, response times, downtimes, timeframes, deadlines, volume restraints/limits, staffing resources, size capacities, service level expectations, etc. Acknowledgement that a specification can be met is not sufficient.

- A. The vendor affirms that it has over thirty (30) years experience processing merchant card transactions through major credit/debit card processing networks.
- B. The vendor affirms that it has performed work for a comparable public sector client which is similar in nature to that requested by the State in the Request for Proposals (RFP) dated December 5, 2005.
- C. The vendor affirms that it can provide funds settlement with one of the official depositories located in North Carolina and designated by the State Treasurer pursuant to G.S. §147-78, and in accordance with the requirements specified in Paragraph I below.
- D. The Vendor shall perform services specified herein as contracted by the STATE.
- a. The services shall be provided to any requesting State agency or local unit of government authorized and designated as eligible participants by the OSC.
  - b. The services shall only be provided to participants, under the terms of this Agreement, if participants have agreed to, and agree to be bound by the terms and conditions set forth herein. Each participant, prior to delivery of these services, shall execute a separate Agency Participation Agreement (APA). Parties to the APA will be the Vendor, OSC, and the participant. DST will be a party in the case of a State agency participant. The APA is annexed to the request for BAFO as Exhibit G.
  - c. All services provided shall be in accordance with and governed by applicable statutes and regulations, including the National Automated Clearing House Association (NACHA) Operating Rules and the Federal Reserve Bank Regulation E.
  - d. All services provided shall be subject to all applicable Card Association Rules (e.g., Visa and MasterCard) in accordance with all applicable laws.
  - e. All services shall be subject to the Vendor's Operating Guide in accordance with all applicable laws.
- E. Provide Structure for Multiple Participants**
- a. Vendor shall provide accounting, reporting, identification, etc., to accommodate various categories of participants, and to accommodate rollup of data to the various hierarchy levels.
  - b. The following hierarchy shall be accommodated, with the capability of adding additional divisions in the future if needed:
    - i. State – Reflected in reporting as Agent Head Office
    - ii. Participant Categories: General Government; Universities; Community Colleges; Local Governmental Units – Reflected in reporting as Corporate Divisions
    - iii. Participants – Reflected in reporting as Chains
    - iv. Merchant Numbers – Reflected in reporting as/ Outlets
    - v. Terminal IDs
- F. Provide Merchant Processing services for Multiple Brands and Types of Cards**
- a. Vendor shall provide merchant processing services for multiple brands and types of cards, including: 1) bank credit cards; 2) debit cards (PIN and PIN-less); and 3) proprietary cards. Specific requirements may vary for individual participants; each participant must meet applicable requirements.
  - b. Cards processed through the MSA include: Visa and MasterCard credit and debit cards.
  - c. Proprietary cards processed through the MSA may be American Express and Discover, but under arrangements where each participant has its own agreement with the issuing card company, where the participants participate under a master agreement provided by the STATE.

**G. Accommodate Various Capture Methods**

Vendor shall support, at a minimum, the following capture methods:

- a. Point of Sale (swipe) terminals
- b. Mobile Point of Sale Units (wireless)
- c. Electronic cash registers
- d. Electronic capture software systems
- e. Internet capture systems
- f. Interactive Voice Response (IVR) systems
- g. Transactions submitted via the State's Gateway (Common Payment Service)
- h. Transaction submitted via participants' third-party gateways

**H. Perform Necessary Transaction Processing**

- a. Vendor shall provide all necessary processing services associated with processing merchant cards (e.g., Authorizations, Pre-authorizations, Capture, Reversals, Voids, and Returns). Vendor shall provide audit trails for each type of transaction.
- b. Vendor shall provide authorization processing services through the appropriate authorization networks, depending upon the type of card. Voice authorization services via toll free telephone numbers must be provided when necessary.
- c. In conjunction with the authorization process, vendor shall return a unique transaction identifier with each authorization/rejection for all data capture methods, along with information necessary to identify the source of the transaction (e.g., merchant number and POS terminal number).
- d. If the participant or gateway assigns an identifying transaction number to the submitted transaction, the transaction number shall be included on the authorization/rejection returned to the participant or gateway.
- e. For participants requiring the service, vendor shall provide fraud verification services:
  - i. Address Verification Service (Street Number and Zip Code)
  - ii. Card Security Verification Service (CVV2, CVC2)
  - iii. Real-time authorization
- f. In the case of proprietary card transactions, if approved in advance by the State Controller, and if the participant has the appropriate equipment (e.g., split transaction POS terminals), the option shall be offered that allows for the authorization to be effected directly with the card issuing company. This option shall be determined on a case by case basis.
- g. Vendor shall provide for the acceptance and transmission of transactions for settlement through the appropriate networks. This includes all types of cards, unless the direct submission option for proprietary cards is utilized, as referenced above.
- h. The vendor shall have edits in place to assist in preventing duplicate, erroneous, or invalid payments from being sent through the appropriate networks.

**I. Facilitate Funds Settlement Processing with Depository Bank(s)**

- a. Vendor shall provide gross settlement (the net amount of sales and credit returns processed) to either a depository bank account designated by the State Treasurer in the case of a State Agency participant, or to a depository bank account designated by the chief fiscal officer of a non-State Agency participant. A participant that receives funds comprising of both State and local funds (e.g., community college or Clerk

of Superior Court) may be considered a non-State agency for purposes of this requirement, depending upon the participant's banking relationships.

- b. In the case of a State Treasurer designated bank account for non-Proprietary card transactions (i.e., Visa and MasterCard), the funds shall be credited the next banking day after the transaction is submitted to the Vendor for processing, provided the transaction is submitted to the Vendor prior to 10:00 p.m. The participant may elect either Wachovia Bank or SunTrust Bank as the depository bank to accommodate this next banking day funding.
- c. In the case of a State Treasurer designated bank account for Proprietary card transactions (i.e., American Express and Discover), the settlement of funds shall be in accordance with the agreement between the State and the card issuing company. The participant may elect either Wachovia Bank or SunTrust Bank as the depository bank
- d. In the case of a non-State agency participant for non-Proprietary card transactions (i.e., Visa and MasterCard), the funds shall be credited depending upon the depository bank that the participant's chief fiscal officer designates. The vendor shall offer the option of settling into a bank account maintained at either Wachovia Bank or SunTrust Bank, thereby providing funds availability the next banking day after the transaction is submitted to the Vendor for processing (the same option available to State Agency participants). Funds availability may be delayed an additional day if the non-State participant designates a bank other than Wachovia Bank or SunTrust Bank.
- e. In the case of a non-State agency participant for Proprietary card transactions (i.e., American Express and Discover), the settlement of funds shall be in accordance with the agreement between the card issuing company and the participant (or with the State in the case of a master agreement).
- f. Funding shall be in the form of either: 1) an ACH transaction; or 2) in the form equivalent to an ACH formatted transaction.
- g. The ACH transaction or ACH formatted transaction shall contain at a minimum, the amount of the settlement and the merchant number, which must be in the customer ID field.
- h. In the case of a State Treasurer designated bank account, the State Treasurer shall arrange with either Wachovia Bank or SunTrust Bank for the establishment of a separate Deposit Demand Account (DDA) for each participant to accommodate the daily ACH settlements and to accommodate any chargebacks.
  - i. The participant's settlement DDA will be a "sub-zero balance account" (sub-ZBA) that sweeps "net" (of chargebacks) to the State Treasurer's statewide ZBA account maintained at the bank (which is ultimately swept to the State Treasurer's main account at the bank).
  - ii. The participant shall have access to the sub-ZBA via the bank provided online reporting system.
  - iii. Each daily sweep transaction from the sub-ZBA to the ZBA shall be contained on the daily BAI file that the depository bank provides the State Treasurer (for the ZBA transaction activity), with the BAI code indicator "275" (ZBA Credit), with the sub-ZBA account number being identified.
  - iv. The State Treasurer shall be responsible for paying for the banking services in accordance with pre-established arrangements made between the depository bank and the State Treasurer for depository related services. The State Treasurer shall not be responsible for any bank account services associated with the settlement of funds to a non-State Treasurer bank account (e.g., local unit of government, community college, local school administrative unit, Clerk of Court, etc.), but shall be responsibility of the participant.
  - v. The Vendor and the State Treasurer both affirm that arrangements have been made with both Wachovia Bank and SunTrust Bank to accommodate the depository arrangements described above.
  - vi. The State Treasurer shall have sole responsibility for maintaining the accounts described herein.

**J. Transaction Reporting**

- a. Vendor shall provide an Internet based online reporting system for the tracking of all transactions. The system shall be accessible by each participant, and accessible by OSC (agent head office level) on a global basis. Such reporting will be via the Vendor's product called "MyMerchant View," or through the Vendor's product called "ClientLine."
- b. Vendor shall make available to all participants all reports that are generally provided to its customers, including any future enhancements.
- c. Vendor shall, for central management purposes, provide OSC a monthly summary report depicting transaction volumes for all participants.
- d. Vendor shall provide the STATE and participants other reporting capabilities and functionality that it generally provides to its customers, to include but not limited to, hardcopy reporting, flat files transmissions, dispute processing system reporting, and special reporting.
- e. Vendor shall retain records for at least as long as any action may be required to accommodate any Card Associations' Rules, but at a minimum of eighteen (18) months.

**K. Common Payment Service (CPS) Gateway Interaction**

- a. Vendor shall support transactions submitted for authorization and processing via the State operated Common Payment Service (CPS) gateway.
- b. Vendor shall interact with CPS's components, which include Cybersource middleware (version 3.1.9 SP8 or any future upgrade version). Should the vendor determine that its system is not compatible with any or all of the components of CPS, the vendor may propose a solution that provides for a retrofitting or replacing of CPS's components. Any retrofitting or replacing shall be at the vendor's expense, unless included in the cost proposal herein.
- c. Vendor shall support the same business and support functions for CPS as is required to be provided participants directly, as specified herein.
- d. Vendor shall support CPS transmissions using frame relay circuit (primary) and a second frame relay circuit connected to a vendor site at a separate location as a backup. The frame relay connections shall be provided by the vendor at no additional cost to the STATE.
- e. Vendor shall provide sufficient advanced notice to the CPS of planned processing outages.
- f. Vendor shall provide services to CPS in accordance with the Service Level Agreement (SLA) contained herein as a schedule.

**L. Other Third Party Gateway Interaction**

- a. Vendor shall accommodate a variety of third party gateways that the participants may utilize. The vendor is not required to support interaction with all gateways currently being utilized by the participants. Should a vendor be selected that does not support one or more of the current gateways, the vendor may propose an alternate solution, or the State may make alternate arrangements to support those participants.
- b. Only gateways that are Payment Card Industry (PCI) compliant shall be utilized. The vendor shall advise the STATE of any gateway being used by a Participant that reverts to a non-compliant status, which may result in discontinuation of the non-compliant gateway services. Vendor believes that all systems are compliant and will not knowingly utilize a non-compliant system. Vendor agrees to notify the State as soon as commercially reasonable after it has been made aware of any non-compliant system.

**M. Point of Sale (POS) Terminals / Equipment Deployment and Servicing**

- a. The vendor shall make available to the participants suitable point of sale (POS) terminals/equipment and necessary printer devices and supplies to accommodate the participants' capture needs. Equipment that accommodates various capture methods, to include wireless devices, shall be provided.
- b. The vendor shall provide for a menu of terminals/equipment from which the participants may choose, which may be revised from time to time as new equipment and newer models become available.
- c. The options available to the participants shall include the options to purchase, rent, and lease.
- d. The terminals/equipment shall meet all industry standards.
- e. Split dial terminals for plural processing, allowing direct authorization with proprietary card companies shall be available, if that option is chosen by the participant.

**N. Customer Service and Support**

- a. The vendor shall provide for a customer service arrangement to meet the needs of the Office of the State Controller, the Common Payment Service, and the participants. Most servicing needs of the participants are anticipated to be coordinated through the Office of State Controller, with the vendor dealing directly with the participants for selected servicing needs. The specific service arrangements are as described in vendor's response to the request for BAFO.
- b. The vendor shall provide training for new participants via a phone/Internet training module. Training will include but not be limited to topics such as: terminal use, report generation, transaction queries, authorizations, fraud management, retrieval and chargeback handling, management of interchange qualifications, and related "back office" functions.
- c. The vendor shall provide an ongoing training program for participants.
- d. The vendor shall provide an ongoing education program for participants.
- e. The vendor shall provide technical support to participants and the Common Payment Service (CPS) 24x7, via a 1-800 telephone number.
- f. The vendor shall keep the Office of the State Controller and participants adequately and timely informed of all relevant card industry rule changes, and provide guidance for adherence to the changes.
- g. The vendor shall assist the State and any participant in any resolutions relating to any card association rules changes or alleged violations of the any rules.
- h. The vendor shall conduct at least an annual onsite business review with the Office of the State Controller, providing an analysis of the utilization of services by all participants. Annual transaction volumes shall be reported on the State's fiscal year, from July 1 through June 30. The review shall also indicate the amount of revenues paid the vendor by the various participants during the fiscal year, broken down by participant category (corporate divisions). Other pertinent statistics shall be reported, including but not limited to the number of participants, the number of merchant numbers, the number of terminal IDs, average ticket size, mix of card types, effective interchange rates, qualification rates, etc.
- i. The State desires to receive the best available rate, with as many transactions as possible being coded with the program rate category of either "emerging markets" (in the case of Visa), or "public sector" (in the case of MasterCard), or other similar appropriate clearing level designation. The vendor shall provide adequate coding and monitoring procedures to ensure that the best and appropriate Merchant Category Code (MCC) is assigned to transactions. The method(s) shall include bi-annual reports that reflect transactions by participants that are experiencing excessive downgrades. The State acknowledges that

each participant must adhere to Visa & MasterCard's Interchange Qualification data requirements, that may be in effect from time to time, in order to obtain the appropriate rate. The vendor shall accommodate an audit, by either the State or contracted vendor, performed to ensure that the best available MCC is being utilized. See also, paragraph 39 to section VII of the request for BAFO.

#### **O. Chargebacks and Disputed Payments**

- a. The vendor shall provide for a system that handles chargebacks and disputed payments. Unless otherwise arranged, all debits shall be made to the same settlement bank account to which the original credit settlement was made. Processing shall be via the Vendor's Integrated Dispute System (IDS) or comparable system.
- b. The vendor shall provide a system to timely communicate all notifications regarding chargebacks and disputed payments, and for the tracking of such transactions. Participant requests are forwarded to the participant via paper or electronic method, based on participant set-up.
- c. The vendor shall coordinate with the financial institutions and associated entities to resolve disputed payments within the timeframes allotted by the card associations.

#### **P. Proprietary Card Processing**

- a. Vendor shall provide processing of transactions for proprietary cards (i.e., other than Visa and MasterCard), in accordance with the agreements that either the State Controller or participant(s) may enter into directly with the issuing card company.
- b. Vendor shall provide the participant the option, if so elected, to utilize point of sale terminals that accommodate split dialing, allowing the equipment to transmit proprietary card transactions directly to the issuing card company, without any involvement of the vendor.

#### **Q. Payment Card Industry Security Standards**

- a. The vendor and participant shall comply with all Payment Card Industry (PCI) security standards, including:
  - i. Only providing and/or utilizing PCI compliant equipment for participants.
  - ii. Storing card holder information relating to transactions appropriately, including authorizations, settlements, and reversals, etc.
  - iii. Transmitting cardholder transactions appropriately.
- b. The vendor shall coordinate and cooperate with any PCI security assessment vendor that the State may contract with, to ensure all participants and gateways are PCI compliant.

#### **R. Participant Billing / Invoicing**

- a. Vendor shall provide a monthly detailed invoice to each participant for agency-specific services, as per the rates specified in the approved vendor's fee schedule. Fees are not to be netted against transactions (i.e., deducted from the settlement of transactions). The vendor shall provide for the timely delivery of the invoices to the participants.
- b. The fee schedule shall contain two categories of fees: pass through fees and vendor-levied fees. Any increases in pass through fees may be passed on to the participants provided an advance notice is provided. Any decrease in pass through fees must be put into effect based upon the actual date effected by the charging association or switch network.
- c. The invoicing shall be at the participant level, with a rollup of merchant numbers for each chain. Additionally, for central management purposes, rollup reporting of chains shall be provided to OSC at the agent level.

- d. Each participant shall pay the vendor directly for services invoiced.
- e. The vendor shall keep the Office of the State Controller informed of any participants that are delinquent in making payments.

**S. Conversion Plan**

- a. Vendor shall submit a general conversion plan in the event a future reporting system is implemented.

**T. Backup and Disaster Recovery**

- a. Vendor shall have an adequate backup and disaster recovery plan, relating to both technical and environmental situations and make summary of such plan available to the STATE if requested.
- b. Vendor shall have an adequate disaster continuance plan in case of isolated and regional natural disasters.

## Section IV. Cost Proposal

1. The vendor must provide a complete pricing schedule, to include all startup costs, all ongoing monthly costs, and any onetime credits offered. Any startup costs should be of the nature that can be allocated to the participants receiving the service. Should a tiered pricing schedule be offered, the vendor must describe the proposed method of determining when a new threshold level is met, when the new tiered pricing will take effect, and the frequency of re-evaluation of the volume levels. No “out of pocket” charges will be allowed. The State’s preference is that no travel related expenses be charged the State or Participants. If they are, they must be listed and described.
2. A separate pricing schedule must be submitted for equipment related expenses. The schedule should specify the costs for: 1) purchase; 2) rental; and 3) lease. It should also include pricing for supplies.
3. The State expects the ongoing monthly pricing for card transaction processing to be of the nature characterized as “actual pass through fees plus vendor-levied fees,” where “pass through fees” are defined as any fees levied by switch networks, by the card associations, or by the card issuing companies (in the case of proprietary cards) for which the vendor has no control over, except for the manner in which the transactions are processed on behalf of the participants. Pass through fees typically include interchange fees, dues, assessment fees, and switch fees. Vendor-levied fees based on dollar volume will not be allowed.
4. The State desires to receive the best available rate, with as many transactions as possible being coded with the program rate category of either “emerging markets” (in the case of Visa), or “public sector” (in the case of MasterCard), or other similar appropriate clearing level designation.
5. In addition to providing a complete pricing schedule, the following Cost Response Forms must be completed, using the assumed volume activity. There is a Cost Response Form for each of five scenarios of data that must be completed:
  - Scenario 1 – Assumed volume for year one of contract
  - Scenario 2 – Assumed volume for year two of contract
  - Scenario 3 – Assumed volume for year three of contract
  - Scenario 4 – Assumed volume for year four of contract
  - Scenario 5 – Assumed volume for year five of contract
  - Summary of Five Years’ Total Costs
6. The pass through costs on the scenario forms have been pre-calculated based upon the estimated “effective interchange rate” and average ticket size for each card experienced during FY 2004-05. The purpose of calculating the estimated pass through fees is to obtain the total fees for a particular year. Vendor-levied costs will be the costs used in the evaluations of the proposals. Best Value “total cost of ownership” will be used in the final cost analysis.
7. The annual costs for equipment related expenses should be completed, based upon the assumed data provided on the separate form. There is only one form for equipment related expenses, and the cost should be applied to each of the five years. (Will be the same figure for each of the five years.) The equipment cost form should be completed before completing any of the 5-year scenario cost forms. The form is not meant to be inclusive of all equipment fees that may be included on the pricing schedule.
8. The summary page will show the costs, broken into two categories – pass through costs and vendor-levied through costs. The forms are shown as Exhibits herein. All seven costs forms (one equipment cost form; five yearly cost forms; and one summary cost form) can be download in an Excel format at the following site on the Office of State Controller’s Web Page. [http://www.ncosc.net/SECP/EPP\\_Index.html](http://www.ncosc.net/SECP/EPP_Index.html) . The Vendor is responsible for ensuring that all calculations (including formulas) are performed correctly.

## Section V. Other Requirements and Special Terms

- 1) **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.:** In accordance with Executive Order #60, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers located outside of the United States. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's proposal. The Vendor shall provide the following for any proposal or actual utilization or contract performance outside of the United States:
  - a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract
  - b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
  - c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under a state contract outside of the United States
  - d) Any Vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided
- 2) Special Terms and Conditions – The following paragraphs of the General IT Terms and Conditions do NOT apply to this bid solicitation: Number 15, 32, and 47.
- 3) Financial Stability – Include information and material necessary to demonstrate the Vendor's financial stability, including but not limited to a complete copy of an audited financial report for the Vendor's most recent, full fiscal year. As used herein, Financial Statements excludes tax returns and compiled statements. Financial information must be included within the proposal. References to a website for financial information is not acceptable. The State may, in its sole discretion, accept evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this request for BAFO. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of the contract award.
- 4) Vendor shall provide evidence of its Commercial General Liability insurance as described in this request for BAFO upon request.
- 5) The State expects that any qualified Vendor will be a sophisticated merchant card acquirer and anticipates that each Vendor may have certain standardized documents and agreements associated with the transactions and accounts that are the subject of this request for BAFO. Such documentation includes full printed copies of any Operating Guides or other such documentation cited in a Vendor's proposal. Vendors are directed to deliver any and all such documents to the State for evaluation by the State upon request. Vendors are cautioned that this request, and the delivery of such documents does not and shall not constitute the State's acceptance of such documents nor the terms and conditions that may be stated therein. The State expects that such documents and their respective terms and conditions may be the subject of negotiation. Vendors are also directed to include any license agreements for software that may be contemplated in their proposals. The State anticipates that any software would be incidental to the Services and provided at no additional cost.
- 6) Data Aggregation, Reporting: Vendor shall not aggregate any data information received arising in its performance of any contract awarded under this request for BAFO, nor disclose or disseminate information which includes personally identifiable information to any third party except to the extent permitted herein or as compelled by law. As used herein, "data information" shall be considered confidential information."

## Section VI. Proposal Content and Organization

- 1) This section should contain all relevant and material information relating to the Vendor's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the services and/or provide the goods described in this request for BAFO. If any relevant and material information is not provided, the offer may be rejected from consideration and evaluation. Proposals will be considered and evaluated based upon the Vendor's full completion and response to the following, and any additional requirements herein, or stated in a separate Exhibit.
- 2) Information and Descriptive Literature. Vendor must furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this proposal, each Vendor must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous proposal will not satisfy this provision. Proposals that do not comply with these requirements may be rejected.
- 3) Proposal Content. Demonstrate compliance with all conditions, requirements, specifications, and terms of performance.
  - a) Clearly state your understanding of the problem(s) presented by this request for BAFO.
    - i) Response to requirements and technical specifications
    - ii) Cost proposal
  - b) Detailed description of Vendor's firm must include all of the following:
    - i) Full name, Federal Tax identification number, address, and telephone number of the organization;
    - ii) Date established;
    - iii) Background of firm;
    - iv) Ownership (public company, partnership, subsidiary, etc.);
    - v) If incorporated, state of incorporation must be included.
    - vi) Type of chartered financial institution, State or National, if applicable.

The State may, at its discretion, verify and validate that one or more of the above criteria are met, including the review and audit of work papers, deliverables, life cycle methodologies, references or other documentation (including certification artifacts).
- 4) Any errata or exceptions must be stated on a separate page, labeled "Errata and/or Exceptions" with references to the corresponding terms or provisions of the Solicitation.
- 5) Proposal Format. The proposals should be organized in the exact order in which the requirements and/or desirable performance criteria are presented in the RFFAFO. The Execution page of this request for BAFO must be placed at the front of the Proposal. Each page should be numbered. The proposal should contain a table of contents, which cross-references the request for BAFO requirement and the specific page of the response in the Vendor's proposal. All proposals should be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.
- 6) Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the proposal and subsequent evaluation process:
  - a) Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.
  - b) The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
- 7) Proposal Organization: The proposal should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated.

- a) Letter of Transmittal - Each proposal must be accompanied by a letter of transmittal that provides the following information:
    - i) Identify the submitting organization;
    - ii) Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
    - iii) Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
    - iv) Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
    - v) Acknowledge receipt of any and all amendments to this request for BAFO.
  - b) Table of Contents
  - c) (Optional) Proposal Summary. A proposal summary may be included by Vendors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Vendor's proposal.
  - d) Response to Section III, Technical Specifications
  - e) Response to Section IV, Cost
  - f) Financial Statement
  - g) Conflict of Interest: Vendor acknowledges that no assistance in preparing the response to this request for BAFO was received from any current or former employees of the State of North Carolina whose duties relate(d) to the original RFP or this request for BAFO unless such assistance was provided by the state employee or former state employee in his or her official capacity and that no employee, former employee or member of the employee's or former employee's immediate family has any financial interest in the outcome of this request for BAFO; however Vendor would like to clarify that this warranty does not apply to the employee, former employee or a member of the employee's or former employee's family who derive a financial interest solely as a result of ownership of vendor's stock, including but not limited to dividends, stock splits.
  - h) Response to Section V, Special Terms
  - i) Errata and Exceptions, if any
  - j) Other Supporting Material Including Technical System Documentation
  - k) Training and Other Materials, Samples or Examples
  - l) Within each section of their proposal, Vendors should address the items in the order in which they appear in this RFFBAFO. Forms, if any, provided in the request for BAFO must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates, or expenses must be presented with the cost response.
- 8) Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.
- 9) Vendors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.
- 10) Value Added Services. Vendors are encouraged to provide descriptions of any Value Added Services. Any value added services may be presented as included in the base costs of the bid, or in alternative proposals if clearly marked as such with the phrase "alternate bid for 'name of' Vendor" and numbered sequentially with the first bid. This legend must be in bold type of not less than 14-point type on the face of the bid, and on the text of the alternative proposal. Value Added Services may comprise one or more services identified in a Statement of Work, if any, or other offerings of the Vendor. The State is not obligated to accept or request any such services. For each such service

offered by Vendor, describe the service in a separate response section titled “Value Added Services” illustrating the additional value of the service to the State within the proposal submitted.

## **Section VII. Contractual Terms and Conditions**

**Definitions:** As used herein;

State shall mean the State of North Carolina, as represented by the State Controller and the State Treasurer.

Purchasing State Agency or Agency shall mean the Office of the State Controller and the State Treasurer.

Participant shall mean an agency or local unit of government that subscribes to any of the services provided under this contract.

- 1) **Standards:** Manufactured Point-of-Sale (“POS”) terminals sold to CUSTOMER shall meet all requirements of the PCI, ISO, IEEE or UL, if applicable.
  - a) **Site Preparation:** Vendors shall provide the State and Participants complete site requirement specifications for the POS terminals, if any. These specifications shall ensure that the POS terminals to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State and Participants of any site requirements for any POS terminals required by the State’s specifications.
  - b) **Goods Return:** POS terminals and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor or replaced for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. POS terminals failing to meet the State’s technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State’s option, and at the Vendor’s expense.
  - c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercially reasonable practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State or Participant, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or POS terminals. Alternate or substitute products, goods or POS terminals may be accepted or rejected in the sole and reasonable discretion of the State; and any such alternates or substitutes must be accompanied by Vendor’s certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.
- 2) **Warranties:** Vendor shall pass through or assign all applicable third party warranties for products, goods or POS terminals to the State and the Participants, when such warranties are available for assignment or pass through.
- 3) **Personnel:** Vendor shall provide timely notice of any changes in the relationship manager assigned to the State’s Contract Administrator.
- 4) **Subcontracting:** The Vendor may subcontract the performance of required services with other Vendors or third parties, or change subcontractors. Vendor shall remain solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. For such subcontractors that are contracted by Vendor to perform services exclusively or that are dedicated substantially for Vendor’s performance of this Agreement, Vendor shall:
  - a) Provide the State with complete copies of any agreements made with such subcontractors upon the State’s request;
  - b) Include an affirmative statement that the State is an intended third party beneficiary of the contract
  - c) Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
- 5) **Vendor’s Representation:** Vendor warrants that qualified personnel will provide services in a professional manner. “Professional manner” means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the merchant card industry. Vendor will serve as the prime Vendor under this Contract. Names of any third party Vendors or subcontractors of Vendor may appear for purposes

of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- 6) Software License** (*for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto*): Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State and Participants a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State and Participants shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State and Participants may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State and Participants shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State and Participants may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's or Participant's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State and Participant(s) shall i) destroy all software copies made by the State or Participant(s), ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State or Participant shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.
- 7) Maintenance/Support Services:** *Unless otherwise provided in the State's solicitation document, or in an attachment hereto*, for the first year and all subsequent Contract years, Vendor agrees to provide the following services for the current version and one previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:
- a) Error Correction.** Upon notice by State or Participant of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State and Participants shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Program. Vendor, the State, and Participants shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or effect maintenance services under this Paragraph.
  - b) Vendor shall notify the State and Participants of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.**
  - c) Updates.** Vendor shall provide to the State and Participants, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.
  - d) Telephone Assistance.** Vendor shall provide the State and Participants with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 6:00 AM - 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.
- 8) Travel Expenses:** Vendor may be reimbursed for travel expenses arising under the performance of this Contract at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within

thirty -(30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing services under this Contract.

- 9) Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use commercially reasonable efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate Vendor for sums due under the Contract.
- 10) Prohibition Against Contingent Fees and Gratuities:** As used herein, direct or indirect financial or personal beneficial interest, bonus, commission, fee or gratuity does not include dividends, distributions or other value that an employee or official of the State may receive as the result of ownership of any publicly traded stock issued by Vendor. Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.
- 11) Availability of Funds:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Participant for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Participant's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature or local unit governing board for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the State or Participants under this Contract, and relieve the State or Participants of any further obligation thereof. The Participants shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 12) Payment Terms:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Participant. Each Participant is responsible for all payments under the Contract. No additional charges to the Participant will be permitted based upon, or arising from, the Participant's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Participant, the Participant may:
- Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
  - Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
  - In no event shall such approval and action obligate the State or Participant to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

- 13) Acceptance Criteria:** In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.
- 14) Equal Employment Opportunity:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 15) Reserved.**
- 16) Advertising/Press Release:** The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 17) Confidentiality:** In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “**CONFIDENTIAL.**” By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. *However, under no circumstances shall price information be designated as confidential.* The State may serve as custodian of Vendor’s confidential information and not as an arbiter of claims against Vendor’s assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys’ fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor’s confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor’s confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.
- a) Care of Information: Vendor agrees to use commercially reasonable efforts to safeguard and protect any data, documents, files, and other materials received from the State or a Participant during performance of any contractual obligation from loss, destruction or erasure.
- b) Vendor shall advise its employees and agents having access to the Confidential Information of the obligations set forth in this Agreement; and take appropriate action by instruction or agreement with its employees and agents having access to the Confidential Information to fulfill its obligations under this Agreement. For such agents that are subcontracted by Vendor to perform services exclusively or that are dedicated substantially for Vendor’s performance of this Agreement, Vendor shall:

- i) Ensure that such agents are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina, and
  - ii) verify and produce true copies of any such agreements upon request of the State.
- c) The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
- d) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.
- 18) Deliverables:** Deliverables, as used herein, shall comprise all project materials, including goods and data created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina and must be kept confidential or returned to the Agency, to ITS procurement, or destroyed as required by the State. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, and designs; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.
- 19) Late Delivery, Back Order:** Vendor shall advise the Agency contact person or office immediately upon determining that any Service or Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure substitute Services or Deliverables.
- 20) Patent, Copyright, and Trade Secret Protection:**
- a) To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.
  - b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor.
  - c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a United States patent, or copyright or violates a trade secret. The Vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
    - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
    - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
  - d) Should any Services or software supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software, and refund any sums the State or Participants have paid Vendor less any reasonable

amount for use or damage and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State or Participants have paid Vendor less any reasonable amount for use or damage.

e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

**21) Access to Persons and Records:** Pursuant to N.C. General Statute 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other Agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Vendor shall retain any such books, transaction records, and account information related to the performance of the contract year in which the transactions occurred plus three (3) years after the close of the year in which the transaction occurred. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

**22) Assignment:** Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor 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 Vendor 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 the State under the same terms and conditions as agreed upon herein. The State's consent to an assignment by Vendor (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 the awarded contract. In the event such consent is not given, the State or Vendor may terminate this Agreement, upon thirty (30) days notice. Notwithstanding the foregoing, upon notice to the State, another VISA and MasterCard member may be substituted for the BANK under whose sponsorship this Agreement is performed. Upon substitution, such other VISA and MasterCard member shall be responsible for all obligations required of the 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.

**23) Insurance Coverage:** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and

b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and

c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment; and

d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

**24) Dispute Resolution:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty -(30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

**25) Default:** In the event any Services or Deliverables furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the State and the failure is not cured within the special or negotiated terms the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28 and 29 and the obligation to informally resolve disputes as provided in Paragraph 24 of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Vendor without expense to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

a) If Vendor fails to deliver Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.

b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

**26) Waiver of Default:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in a writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 30)b hereinbelow.

**27) Termination:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

a) The parties may mutually terminate this Contract by written agreement at any time.

b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25, or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:

i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby,

subject only to the limitations provided in Paragraphs 28 and 29 herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.

ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the each Participant will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

**28) Limitation of Vendor's Liability:**

a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.

b) Notwithstanding anything in this Agreement to the contrary, Vendor's 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 Vendor pursuant to the Agreement for services performed in the immediately preceding 12 months.

c) The limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection."

**29) Vendor's Liability for Injury to Persons or Damage to Property:**

a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.

b) Under North Carolina Law, Vendor may be liable for the costs of claims that arise against the State or Participants as a result of Vendor's negligence under the North Carolina Tort Claims Act; N.C.G.S. §143-291, *et. seq.*

c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Vendor's goods.

**30) Reserved:**

**31) Changes:** This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

**32) Reserved.**

**33) Time is of the Essence.** Time is of the essence in the performance of this Contract.

**34) Date and Time Warranty:** The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

**35) Independent Contractors:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

- 36) Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency or Participant. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
- 37) Notices:** Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
- 38) Titles and Headings:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 39) Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 31 herein. Notwithstanding anything in request for BAFO Section 7N(i) to the contrary, the State acknowledges that it is required to follow the Card Associations' Interchange Qualification processing and data requirements, which requirements are subject to change from time to time. Vendor shall give the State thirty (30) days' prior notice, or if Vendor cannot provide thirty (30) days' notice, as much notice as is practicable before the effective date of any change, provided notice is made prior to invoicing unless it is not commercially reasonable to do so given STMS' receipt of notice from the Card Associations.
- 40) Taxes:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.
- 41) Governing Laws, Jurisdiction, and Venue:**
- a) This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
  - b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.
- 42) Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 43) Compliance with Laws:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 44) Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees

and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

**45) Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

**46) Electronic Procurement (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

a) Reserved.

b) Reserved.

c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

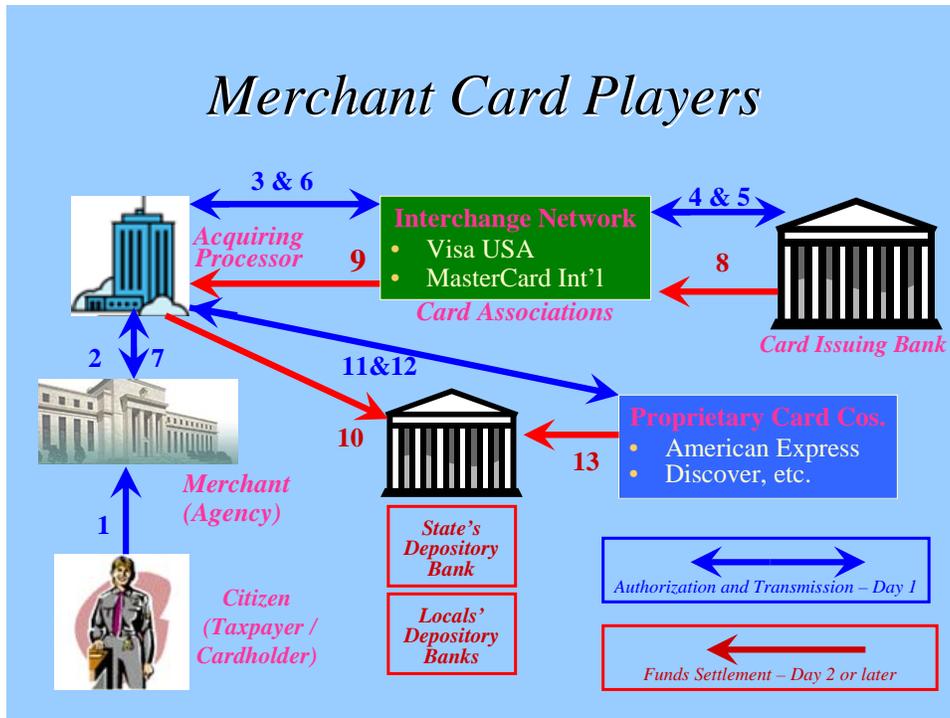
**47) Electronic Procurement (Applies only to Statewide Term Contracts):** Within fifteen (15) calendar days of notice, the Vendor shall provide supplier information, contract pricing and other product related information requested by the State or the Supplier Manager. This information shall include such information as Vendor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information or properly requested by the State of the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the Vendor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the Vendor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display Vendor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with Vendor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the Vendor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

**48) Contract Administrators:** The Contract Administrators for this Contract shall be as follows: (To be completed.)

**49) Contract Term:** The term of this Contract shall be five (5) years, and will expire upon the anniversary date of the effective date. The State retains the option to extend this contract for two (2) additional one (1) year periods at its sole discretion. In the event a transition to a new vendor is needed for any reason, the Vendor shall continue to provide required services until such transition is completed.

### Section VII. Attachments or Exhibits

#### Exhibit A-1 – State’s Merchant Card Players



#### Exhibit A-2 – State’s Merchant Card Capture Options

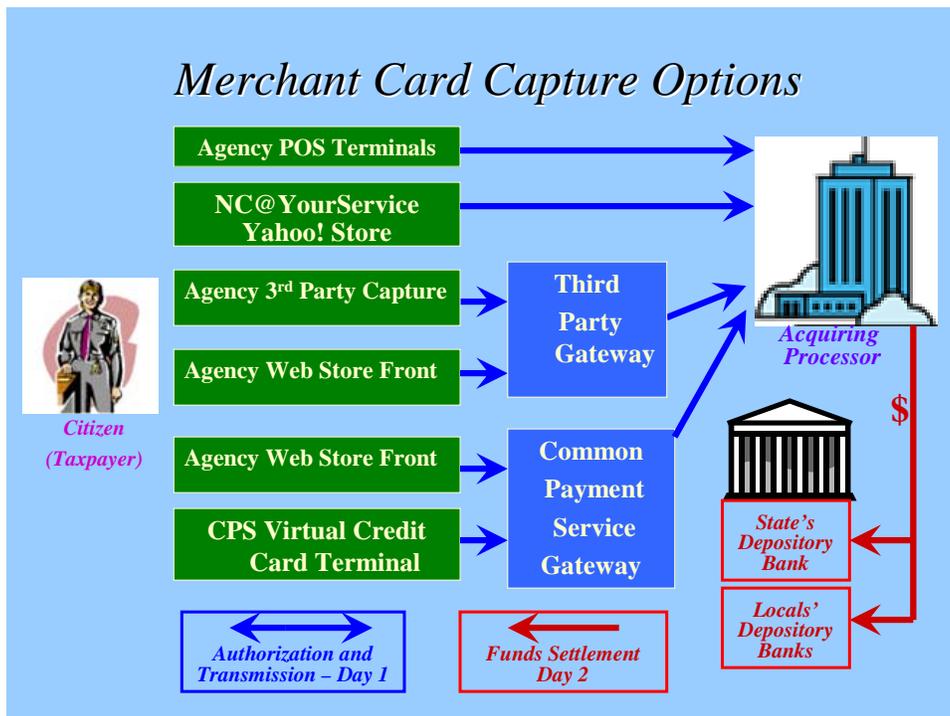
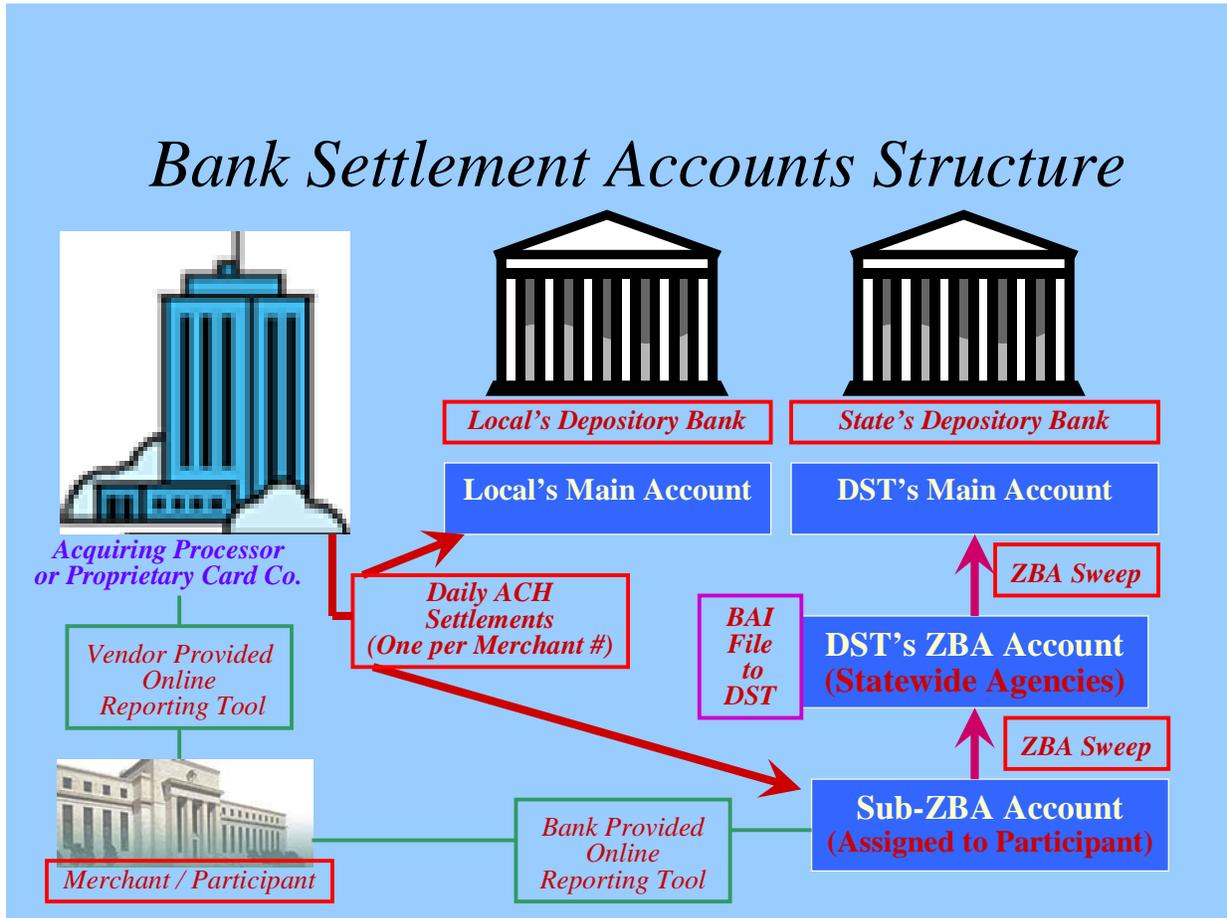


Exhibit B – Bank Settlement Accounts Structure



**Exhibit C – Participants and Data by Category**

Participant Category (Chain)	Number of Participants	Number of Transactions	Dollar Amount	Number Merchant Nos.	Number Terminal IDs	Number Using CPS as Gateway	Number Using Yahoo! Gateway	Number Using Other Gateway
General Government	17	1,238,183	\$49,878,101	80		7	8	2
Universities	15	1,103,383	\$207,239,458	334		2	3	20
<b>Depositing with DST</b>	<b>32</b>							
Community Colleges	24	117,377	\$14,215,648	93		1	0	2
Local Government	28	382,833	\$40,146,465	114		0	0	8
<b>Total</b>	<b>84</b>	<b>2,841,776</b>	<b>\$311,479,672</b>	<b>621</b>	<b>1,938</b>	<b>10</b>	<b>11</b>	<b>32</b>
<b>Total above through CPS</b>	<b>9</b>	<b>1,192,155</b>	<b>\$66,460,667</b>			<b>10</b>		
<b>Other Gateways:</b> Verisign – 14; Touchnet – 8; Cybersource – 2; Tickets.com – 2; YourPay – 3; Blackboard – 2; PC Paciolan – 1; Total - 32								
<b>Capture Software:</b> IC Verify; PC Charge; Cybersource/Paylinx; Counterpoint; PC Amex; Federal ADP; Protobase; Authorize VisaNet; Verl VisaNet; Cash Follet; Intellipay; Unipay; POS Partner; PC DataTran; PC Universal Payment; PC Sellmate; MBS Textbook; Encore LT;								
<b>Transactions by Card Type FY 2004-05:</b> Visa – 72.0%; MasterCard – 26.9%; Amex – 1.1%; Discover – 0.1% The average “Returns” rate is 1.2%.								
<b>Average Ticket FY2004-05:</b> Visa – \$110; MasterCard – \$163; Amex – \$55; Discover – \$178								

**EXHIBIT D****Historical Merchant Card Data**

Fiscal Year	Transactions	Dollar Volume	Merchant #s
2000-01	284,555	\$ 22.8 million	200
2001-02	867,596	\$ 76.7 million	500
2002-03	1,572,998	\$182.6 million	540
2003-04	2,078,031	\$233.7 million	590
2004-05	2,841,776	\$311.4 million	621
2005-06	Year-to-date volumes are approximately 28% over same period of prior year.		

**EXHIBIT E****Official State depositories providing a BAI file transmission service to the State Treasurer**

Bank of America  
Branch Banking & Trust Company  
First Citizens Bank of NC  
RBC Centura Bank  
SunTrust Bank  
Wachovia Bank

**EXHIBIT F – Current Merchant Card MSA Participants**

UNC Wilmington	U					
NC State University	U		Yahoo	Touchnet	Verisign	
Winston-Salem State University	U				Verisign	
UNC Asheville	U			Touchnet		
North Carolina Central University	U					
Appalachian State University	U			Touchnet	Verisign	T.com
UNC Greensboro	U		Yahoo	Touchnet		
UNC Chapel Hill	U	CPS	Yahoo		Verisign	Cyber
UNC Pembroke	U			Touchnet		T.com
UNC Charlotte	U			Touchnet	Verisign	YourPay
Fayetteville State University	U					BlackBd
East Carolina University	U	CPS			Verisign	Paciolan
NC School of Arts	U					T.com
Western Carolina University	U			Touchnet	Verisign	
Elizabeth City State University	U			Touchnet		
NC School of Science & Math	G		Yahoo			
NC Dept of Transportation & DMV	G	CPS	Yahoo			
NC Department of Agriculture	G		Yahoo			T.com
Dept of Environment and Natural Resources	G		Yahoo			Cyber
DENR Parks and Recreation	G					
NC Wildlife Resources Com	G	CPS				
NC Department of Revenue	G	CPS				
NC Secretary of State	G	CPS				
NC Department of Commerce & Banking	G	CPS	Yahoo			
NC Office of the Governor	G					
NC Department of Justice	G					
NC Department of Insurance	G		Yahoo			
NC Department of Cultural Resources	G	CPS	Yahoo			
NC Department of Corrections	G					
NC Department of Labor	G	CPS	Yahoo			
NC Dept of Health & Human Services	G					YourPay
NC Partnership for Children	G					
Central Carolina Community College	G					
College of the Albemarle	G					
Guilford Tech Community College	G					
Southwestern Community College	G					YourPay
Caldwell Community College	G					
Surry Community College	G					
Southeastern Community College	G					
Piedmont Community College	G					
W Piedmont Community College	G					

McDowell Community College	C	
Wayne Community College	C	Verisign
Wilkes Community College	C	
Asheville-Buncombe Community College	C	
Davidson Community College	C	
Lenoir Community College	C	
Martin Community College	C	
Randolph Community College	C	Verisign
Gaston Community College	C	
Craven Community College	C	
Robeson Community College	C	
Pitt Community College	C	
Edgecombe Community College	C	
Rowan-Cabarrus Community College	C	
Blue Ridge Community College	C	CPS
Piedmont Triad Airport	L	
Wake County	L	
City of Raleigh	L	
City of Greensboro	L	
Town of Elizabethtown	L	
City of High Point	L	Verisign
City of Sanford	L	
Town of Cary	L	
Town of Jamestown	L	
City of Wilson	L	
Cabarrus County	L	Verisign
City of Winston-Salem	L	Verisign
City of Mount Airy	L	
County of Currituck	L	Verisign
City of Charlotte	L	
City of Monroe	L	YourPay
City of Jacksonville	L	
Town of Huntersville	L	
Town of Apex	L	
Orange Water & Sewer	L	Verisign
City of Havelock	L	
Pitt County Health Dept	L	
Town of Spring Lake	L	
Buncombe County	L	
Guilford Co Hlth Dept	L	
City of Hendersonville	L	
Town of Chapel Hill	L	
City of Hickory	L	

**U** = Universities; **G** = General Government; **C** = Community Colleges; **L** = Local Units of Government  
**CPS** = Common Payment Service; **Yahoo** = Yahoo!; **Cyber** = Cybersource; **BlackB** = Blackboard;  
**Verisign** = Verisign; **YourPay** = YourPay; **T.com** = Tickets.com

EXHIBIT G

**SAMPLE AGENCY PARTICIPATION AGREEMENT  
MERCHANT CARD PROCESSING SERVICES  
STATE OF NORTH CAROLINA AND SUNTRUST MERCHANT SERVICES**

This Agency Participation Agreement (“APA”) for Merchant Card Processing Services (“Agreement”) is entered into between \_\_\_\_\_ (“Participant”), the Office of the State Controller, (“OSC”), the Department of State Treasurer (“DST”) and SunTrust Merchant Services, LLC (“STMS”) (“Vendor”) on behalf of Wachovia Bank, N.A. (“Bank”), and First Data Merchant Services Southeast, LLC (“FDMS”) as of \_\_\_\_\_, 200\_\_.

WHEREAS, on \_\_\_\_\_, 2006 \_\_\_\_\_ entered into a Master Services Agreement (Contract No. 14-06002) with the State of North Carolina to provide a variety of merchant card processing services to eligible participating entities (hereinafter referred to as “Participants,” and

WHEREAS, the above referenced Participant desires to subscribe to certain services (“Subscribed Services”) available under the Master Services Agreement (MSA);

NOW THEREFORE, The parties to the Agreement hereby agree as follows:

1. Vendor hereby agrees to provide Subscribed Services to the Participant pursuant to the terms and conditions of the Master Services Agreement, which are incorporated herein by reference.
2. Participant acknowledges receipt of a copy of the Master Services Agreement and agrees to be bound by the terms and conditions therein.
3. Participant represents that it has obtained approval from the Office of the State Controller (OSC) to enter into the Agreement, as evidenced by the signature of the State Controller or his designee in the Agreement.
4. Participant agrees to abide by all policies promulgated by the Office of the State Controller pertaining to Electronic Commerce, specifically for merchant card processing.
5. Participant and Vendor each agrees to the method of payment for all Subscribed Services provided in accordance with the Master Services Agreement.
6. If the Common Payment Service is utilized in conjunction with the Subscribed Services, the Participant will abide by all applicable policies and procedures promulgated by the Office of Information Technology Services.
7. Either party may terminate the Agreement at any time before the expiration of the Master Services Agreement by giving the other parties one hundred twenty (120) days prior written notice. This agreement shall automatically terminate upon termination of the Master Services Agreement.
8. Prior to receiving services, Participant agrees that it shall be subject to Vendor’s credit approval.
9. Participant agrees that, in executing this Schedule E, it is accepting all obligations and responsibilities of CUSTOMER as outlined in the Agreement as well as all terms and conditions outlined therein except for obligations that are solely the obligations of OSC or DST. Participant acknowledges that STMS in its reasonable discretion as permitted by the Agreement may take any action(s) as necessary against individual Participants, instead of CUSTOMER in its entirety, in order to mitigate any material financial or security risk to STMS, or to ensure compliance with the Agreement.

To be executed by all related parties.

**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: \_\_\_\_\_

\_\_\_\_\_  
("PARTICIPANT")

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

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

(Please Print or Type)

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

Date: \_\_\_\_\_

**Office of the State Controller, State of North Carolina**

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

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

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

Date: \_\_\_\_\_

**[Note: Execution by DST not required for Non-State Agency Participants](#)**

**Department of the State Treasurer, State of North Carolina**

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

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

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

Date: \_\_\_\_\_

**EXHIBIT H-E1**

**Equipment Cost Scenario**

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

Vendor must provide three equipment options: 1) Purchase; 2) Rental; 3) Lease  
Complete this form for two of the three options.

<b>Purchase Option - Per Month</b>			
Terminal	Quantity	Unit Price	Extended Price
Omni 3200SE or Equivalent	1		
Omni 3200SE w/Pin or Equivalent	1		
Hypercom T7 or Equivalent	1		
Hypercom T7 w/Pin or Equivalent	1		
IC Verify 3.0 Software/IPN or Equivalent	1		
Total Cost Purchase - 5 terminals			

<b>Rental Option - Per Month</b>			
Terminal	Quantity	Unit Price	Extended Price
Omni 3200SE or Equivalent	1		
Omni 3200SE w/Pin or Equivalent	1		
Hypercom T7 or Equivalent	1		
Hypercom T7 w/Pin or Equivalent	1		
Total Cost Rental - 4 terminals			

<b>Total Equipment Purchase/Rental Costs</b>	
--	--

(9 terminals - Insert on each scenario year.)

**EXHIBIT H-Y1**

**Scenario for Year 1** Bidder Name: \_\_\_\_\_

<b>Pass Through Fees Calculations - Estimated</b>					Total Annual Transactions: 3,635,000	
Type Transaction:		Visa	MasterCard	Pin Debit	AmeX/Disc	Total
Estimated Avg Ticket Size	A	\$110	\$163	\$ 88	\$ 100	\$461
Estimated Effective IC Rate	B	1.49%	1.89%	1.40%	1.90%	8.33%
IC Per Transaction	C=AxB	\$1.64	\$3.08	\$1.23	\$1.90	\$7.85
Card Type Percentage		0.72	0.269	0.001	0.01	1
Number Trans. Monthly	D	218,100	81,485	303	3,029	302,917
Monthly Pass thru cost		357,466	251,030	373	5,755	614,624
Annual Pass thru cost		4,289,591	3,012,355	4,478	69,065	7,375,489
Monthly \$ Volume	E	23,991,000	13,281,987	26,657	302,917	37,602,560
Annual \$ Volume		287,892,000	159,383,845	319,880	3,635,000	451,230,725

The above pass through cost calculations for illustration only. Not for evaluation purposes.

<b>Vendor-levied Fees Calculations</b>						
Assumed monthly volume (For Evaluation Purposes Only): - Credit Returns 1.2% of transactions.						
		Visa	MasterCard	Pin Debit	AmX&Discover	Total
Number Transactions	D	218,100	81,485	303	3,029	302,917
Dollar Volume	E	23,991,000	13,281,987	26,657	302,917	37,602,560
<b>Processing Fees:</b>						
Rate per transaction:	F					
Transaction Processing	G=DxF	-	-	-	-	-
(Adjust number of transactions by -1.2% if charged net of credits.)						
<b>Monthly Fees:</b>						
Assume 84 participants (chains), 621 merchant numbers, 1938 terminal IDs.						
List and describe		Rate	Per	Volume		Total
Address Verifications	H		Verification	7,000		-
Chargebacks	I		Chargeback	100		-
Report Maintenance	J					-
Voice Authorization	K			500		-
Other	L					-

Total (Add line items if necessary)	M				M = H...L	-
<b>Equipment Fees:</b> Complete the Equipment Cost Form and insert the total here.					N	0
<b>Other Fees:</b>					O	
<b>Total Vendor-levied Monthly Fees</b>					P = G+M+N+O	-
<b>Total Vendor-levied Annual Fees</b>					Q = P x 12	-

Merchant Card Services - REQUEST FOR BAFO No. 14-06002.

**EXHIBIT H-Y2**

**Scenario for Year 2**

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

<b>Pass Through Fees Calculations - Estimated</b>					Total Annual Transactions:	4,545,000
Type Transaction:		<u>Visa</u>	<u>MasterCard</u>	<u>Pin Debit</u>	<u>AmeX/Disc</u>	<u>Total</u>
Estimated Avg Ticket Size	A	\$110	\$163	\$ 88	\$ 100	\$461
Estimated Effective IC Rate	B	1.49%	1.89%	1.40%	1.90%	8.33%
IC Per Transaction	C=AxB	\$1.64	\$3.08	\$1.23	\$1.90	\$7.85
Card Type Percentage		0.72	0.269	0.001	0.01	1
Number Trans. Monthly	D	272,700	101,884	379	3,788	378,750
Monthly Pass thru cost		446,955	313,873	467	7,196	768,491
Annual Pass thru cost		5,363,464	3,766,479	5,599	86,355	9,221,897
Monthly \$ Volume	E	29,997,000	16,607,051	33,330	378,750	47,016,131
Annual \$ Volume		359,964,000	199,284,615	399,960	4,545,000	564,193,575

The above pass through cost calculations for illustration only. Not for evaluation purposes.

<b>Vendor-levied Fees Calculations</b>						
Assumed monthly volume (For Evaluation Purposes Only): - Credit Returns 1.2% of transactions.						
		<u>Visa</u>	<u>MasterCard</u>	<u>Pin Debit</u>	<u>AmX&amp;Discover</u>	<u>Total</u>
Number Transactions	D	272,700	101,884	379	3,788	378,750
Dollar Volume	E	29,997,000	16,607,051	33,330	378,750	47,016,131
<b>Processing Fees:</b>						
Rate per transaction:	F					
Transaction Processing	G=DxF	-	-	-	-	-
(Adjust number of transactions by -1.2% if charged net of credits.)						
<b>Monthly Fees:</b>						
Assume 90 participants (chains), 631 merchant numbers, 1950 terminal IDs.						
List and describe		<u>Rate</u>	<u>Per</u>	<u>Volume</u>		<u>Total</u>
Address Verifications	H		Verification	7,500		-
Chargebacks	I		Chargeback	150		-
Report Maintenance	J					-
Voice Authorization	K			600		-
Other	L					-

Total (Add line items if necessary)	M				M = H...L	-
<b>Equipment Fees:</b> Complete the Equipment Cost Form and insert the total here.					N	0
<b>Other Fees:</b>					O	
<b>Total Vendor-levied Monthly Fees</b>					P = G+M+N+O	-
<b>Total Vendor-levied Annual Fees</b>					Q = P x 12	-

Merchant Card Services - REQUEST FOR BAFO No. 14-06002.

**EXHIBIT H-Y3**

**Scenario for Year 3**

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

<b>Pass Through Fees Calculations - Estimated</b>					Total Annual Transactions:	5,680,000
Type Transaction:		<u>Visa</u>	<u>MasterCard</u>	<u>Pin Debit</u>	<u>AmeX/Disc</u>	<u>Total</u>
Estimated Avg Ticket Size	A	\$110	\$163	\$ 88	\$ 100	\$461
Estimated Effective IC Rate	B	1.49%	1.89%	1.40%	1.90%	8.33%
IC Per Transaction	C=AxB	\$1.64	\$3.08	\$1.23	\$1.90	\$7.85
Card Type Percentage		0.72	0.269	0.001	0.01	1
Number Trans. Monthly	D	340,800	127,327	473	4,733	473,333
Monthly Pass thru cost		558,571	392,255	583	8,993	960,403
Annual Pass thru cost		6,702,854	4,707,063	6,998	107,920	11,524,835
Monthly \$ Volume	E	37,488,000	20,754,247	41,653	473,333	58,757,233
Annual \$ Volume		449,856,000	249,050,960	499,840	5,680,000	705,086,800

The above pass through cost calculations for illustration only. Not for evaluation purposes.

<b>Vendor-levied Fees Calculations</b>						
Assumed monthly volume (For Evaluation Purposes Only): - Credit Returns 1.2% of transactions.						
		<u>Visa</u>	<u>MasterCard</u>	<u>Pin Debit</u>	<u>AmX&amp;Discover</u>	<u>Total</u>
Number Transactions	D	340,800	127,327	473	4,733	473,333
Dollar Volume	E	37,488,000	20,754,247	41,653	473,333	58,757,233
<b>Processing Fees:</b>						
Rate per transaction:	F					
Transaction Processing	G=DxF	-	-	-	-	-
(Adjust number of transactions by -1.2% if charged net of credits.)						
<b>Monthly Fees:</b>						
Assume 95 participants (chains), 641 merchant numbers, 1970 terminal IDs.						
List and describe		<u>Rate</u>	<u>Per</u>	<u>Volume</u>		<u>Total</u>
Address Verifications	H		Verification	8,000		-
Chargebacks	I		Chargeback	200		-
Report Maintenance	J					-
Voice Authorization	K			700		-
Other	L					-

Total (Add line items if necessary)	M				M = H...L	-
<b>Equipment Fees:</b> Complete the Equipment Cost Form and insert the total here.					N	0
<b>Other Fees:</b>					O	
<b>Total Vendor-levied Monthly Fees</b>					P = G+M+N+O	-
<b>Total Vendor-levied Annual Fees</b>					Q = P x 12	-

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**EXHIBIT H-Y4**

**Scenario for Year 4**

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

<b>Pass Through Fees Calculations - Estimated</b>					Total Annual Transactions:	6,815,000
Type Transaction:		<u>Visa</u>	<u>MasterCard</u>	<u>Pin Debit</u>	<u>AmeX/Disc</u>	<u>Total</u>
Estimated Avg Ticket Size	A	\$110	\$ 163	\$ 88	\$ 100	\$ 461
Estimated Effective IC Rate	B	1.49%	1.89%	1.40%	1.90%	8.33%
IC Per Transaction	C=AxB	\$1.64	\$3.08	\$1.23	\$1.90	\$7.85
Card Type Percentage		0.72	0.269	0.001	0.01	1
Number Trans. Monthly	D	408,900	152,770	568	5,679	567,917
Monthly Pass thru cost		670,187	470,637	700	10,790	1,152,314
Annual Pass thru cost		8,042,245	5,647,647	8,396	129,485	13,827,773
Monthly \$ Volume	E	44,979,000	24,901,442	49,977	567,917	70,498,335
Annual \$ Volume		539,748,000	298,817,305	599,720	6,815,000	845,980,025

The above pass through cost calculations for illustration only. Not for evaluation purposes.

<b>Vendor-levied Fees Calculations</b>						
Assumed monthly volume (For Evaluation Purposes Only): - Credit Returns 1.2% of transactions.						
		<u>Visa</u>	<u>MasterCard</u>	<u>Pin Debit</u>	<u>AmX&amp;Discover</u>	<u>Total</u>
Number Transactions	D	408,900	152,770	568	5,679	567,917
Dollar Volume	E	44,979,000	24,901,442	49,977	567,917	70,498,335
<b>Processing Fees:</b>						
Rate per transaction:	F					
Transaction Processing	G=DxF	-	-	-	-	-
(Adjust number of transactions by -1.2% if charged net of credits.)						
<b>Monthly Fees:</b>						
Assume 100 participants (chains), 650 merchant numbers, 1990 terminal IDs						
List and describe		Rate	Per	Volume		Total
Address Verifications	H		Verification	9,000		-
Chargebacks	I		Chargeback	225		-
Report Maintenance	J					-
Voice Authorization	K			800		-
Other	L					-

Total (Add line items if necessary)	M				M = H...L	-
<b>Equipment Fees:</b> Complete the Equipment Cost Form and insert the total here.					N	0
<b>Other Fees:</b>					O	
<b>Total Vendor-levied Monthly Fees</b>					P = G+M+N+O	-
<b>Total Vendor-levied Annual Fees</b>					Q = P x 12	-

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**EXHIBIT H-Y5**

**Scenario for Year 5**

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

<b>Pass Through Fees Calculations - Estimated</b>					Total Annual Transactions:	7,835,000
Type Transaction:		<u>Visa</u>	<u>MasterCard</u>	<u>Pin Debit</u>	<u>AmeX/Disc</u>	<u>Total</u>
Estimated Avg Ticket Size	A	\$110	\$ 163	\$ 88	\$ 100	\$ 461
Estimated Effective IC Rate	B	1.49%	1.89%	1.40%	1.90%	8.33%
IC Per Transaction	C=AxB	\$1.64	\$3.08	\$1.23	\$1.90	\$7.85
Card Type Percentage		0.72	0.269	0.001	0.01	1
Number Trans. Monthly	D	470,100	175,635	653	6,529	652,917
Monthly Pass thru cost		770,494	541,077	804	12,405	1,324,781
Annual Pass thru cost		9,245,927	6,492,930	9,653	148,865	15,897,374
Monthly \$ Volume	E	51,711,000	28,628,437	57,457	652,917	81,049,810
Annual \$ Volume		620,532,000	343,541,245	689,480	7,835,000	972,597,725

The above pass through cost calculations for illustration only. Not for evaluation purposes.

<b>Vendor-levied Fees Calculations</b>						
Assumed monthly volume (For Evaluation Purposes Only): - Credit Returns 1.2% of transactions.						
		<u>Visa</u>	<u>MasterCard</u>	<u>Pin Debit</u>	<u>AmX&amp;Discover</u>	<u>Total</u>
Number Transactions	D	470,100	175,635	653	6,529	652,917
Dollar Volume	E	51,711,000	28,628,437	57,457	652,917	81,049,810
<b>Processing Fees:</b>						
Rate per transaction:	F					
Transaction Processing	G=DxF	-	-	-	-	-
(Adjust number of transactions by -1.2% if charged net of credits.)						
<b>Monthly Fees:</b>						
Assume 105 participants (chains), 660 merchant numbers, 2000 terminal IDs.						
List and describe		Rate	Per	Volume		Total
Address Verifications	H		Verification	9,500		-
Chargebacks	I		Chargeback	250		-
Report Maintenance	J					-
Voice Authorization	K			900		-
Other	L					-

Total (Add line items if necessary)	M				M = H...L	-
<b>Equipment Fees:</b> Complete the Equipment Cost Form and insert the total here.					N	0
<b>Other Fees:</b>					O	
<b>Total Vendor-levied Monthly Fees</b>					P = G+M+N+O	-
<b>Total Vendor-levied Annual Fees</b>					Q = P x 12	-

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**EXHIBIT H-YS**  
**5-Yr Total Costs -**  
**Summary**

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

	Pass Thru Costs	Vendor-Levied Costs	Total Costs
Year 1	\$ 7,375,489	\$ -	
Year 2	\$ 9,221,897	\$ -	
Year 3	\$ 11,524,835	\$ -	
Year 4	\$ 13,827,773	\$ -	
Year 5	\$ 15,897,374	\$ -	
Total	<b>\$ 57,847,369</b>	<b>\$ -</b>	<b>\$ -</b>
Less Credits			<b>\$ -</b>
Net 5-Yr Costs		<b>\$ -</b>	<b>\$ -</b>

**Instructions**

Before completing this page, you must complete the individual cost scenarios for each of the five years.

Pass Thru costs are pre-calculated by the State.

Before completing each of the year scenarios, you must complete the equipment cost scenario form.

The total cost figure on the cost form is to be applied to each of the 5 years.

The forms (All H-exhibits) are to be completed in addition to submitting a complete pricing schedule.

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