Payment Solutions Agreement

This Payment Solutions Agreement (**Agreement**) is among State of North Carolina (**Company**); First Data Merchant Services LLC (**First Data**); and Wells Fargo Bank, N.A. (**Bank**).

The parties agree:

1   Services

First Data (along with Bank or Debit Sponsor Bank, as described in this Agreement) will provide Company with services according to the terms of this Agreement, the services described in the schedules below, as well as additional services that the parties agree to in writing (together, **Services**). First Data may provide the Services itself or through its affiliates; and, except for Bank's or Debit Sponsor Bank's specific responsibilities described in this Agreement, First Data is solely responsible for the Services.

Schedule 1: TeleCheck Services Schedule
Schedule 2: Equipment Rental and Purchase Schedule
Schedule 3: TransArmor Services Schedule
Schedule 4: PCI ComplyAlly Service Schedule
Schedule 5: Convenience Fee Service Schedule
Schedule 6: SaaS Services Schedule
Schedule 7: Clover Services and Equipment Schedule
Schedule 8: Clover Curbside Services and Equipment Schedule
Schedule 9: PayPoint Schedule
Schedule 10: Electronic Benefits Transfer Services Schedule
Schedule 11: Account Updater Schedule
Schedule 12: Authorization Optimization Services Schedule
Schedule 13: Walk-In Services Schedule
Schedule 14: Fraud Detect Schedule
Schedule 15: Commerce Hub Services Schedule
Schedule 16: Electronic Remittance Services Agreement - Merchant Authorization

2   Acquiring Services

2.1   Bank's Role. Bank is a member of the Visa and Mastercard Networks, permitting it to acquire Visa and Mastercard payment transactions. Bank sponsors First Data as a Member Service Provider under the Network Rules, allowing First Data to process payment authorizations, transmissions, and settlement activities for Visa and Mastercard transactions under Bank's direction. With respect to Visa and Mastercard transactions that are part of the Acquiring Services described below, references to First Data include Bank; however, ***Bank's responsibilities are limited solely to the sponsorship and settlement of certain card transactions submitted in accordance with this Agreement and the Visa and Mastercard Network Rules, and Bank will not have any obligation or liability of any nature in connection with any services of any kind provided by First Data or its affiliates. Specifically, Bank is: (1) the only entity approved to extend Visa and Mastercard product acceptance to merchants; (2) responsible for educating merchants on applicable Visa and Mastercard Network Rules (available, respectively, at: usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf and mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf), which may be provided through First Data; and (3) responsible for all funds derived from settlement that are held in reserve.*** Bank's interests or obligations under this Agreement may be assigned or otherwise transferred to another financial institution that is a member of the Networks; further, Bank may assign any of its rights or delegate any of its obligations under this Agreement to a subsidiary, affiliate, or entity that is acquiring all or any portion of its assets.

2.2   First Data will acquire Company's electronic transactions for payment organizations and networks (together, **Networks**) identified below (**Acquiring Services**). First Data will be Company's exclusive provider of the Services during the Term of this Agreement.

2.3   Networks. First Data will provide Company with Acquiring Services for the following Networks:

(1)   Visa

(2)   Mastercard

   (3) American Express

   (4) Discover

2.4 Additional Card Acquiring Services.

  2.4.1 Additional Cards. First Data, and not Bank, will provide the Acquiring Services to Company for its transactions that are initiated with Cards issued by Networks other than Visa and Mastercard, and that are identified in this Agreement. A **Card** is a card, code, device, or other means allowing access to a credit, debit, prepaid, stored value, or similar account. An **Additional Card** is a Card issued by a Network other than Visa or Mastercard

  2.4.2 Additional Card Network Agreements. Payment transactions for Additional Cards are subject to separate agreements between Company and the Additional Card issuing Networks (**Additional Card Network Agreements**). Company will comply with the terms of its Additional Card Network Agreements and obtain any consents required by these Networks to submit Additional Card transactions to First Data for processing. Company will promptly notify First Data if any of its Additional Card Network Agreements expire or terminate. First Data will not be obligated to process Company's Additional Card transactions if Company does not have an effective Additional Card Network Agreement with the applicable Network. ***First Data and Bank have no responsibility to Company for a Network's performance obligations, responsibilities, or liabilities to Company under their Additional Card Network Agreements***.

  2.4.3 Processing. First Data will only provide Company with data capture and authorization processing services for transactions initiated with Additional Cards; First Data will not provide settlement services for the Additional Card Networks. First Data will submit settlement files for Additional Card transactions to the appropriate Networks on behalf of Company. Additional Card transactions will be settled directly between Company and the corresponding Network according to their Additional Card Network Agreements.

2.5 Debit Transactions. First Data will also provide Company with Acquiring Services for its debit Card transactions (**Debit Services**). First Data will process Company's debit Card transactions based on: (1) availability of the debit Networks; (2) whether a debit Card is enabled for a particular debit Network; or (3) other factors. First Data will have discretion to choose any available debit Network when routing a particular debit Card transaction for Company, subject to applicable Laws. First Data will provide the Debit Services using a financial institution (**Debit Sponsor Bank**) that is a member of a debit Network that is accessible to Company and can sponsor acceptance of Company's debit Card transactions within the debit Network. First Data will choose the financial institution that acts as the Debit Sponsor Bank for Company's transactions. The Debit Sponsor Bank may assign its interests or obligations under this Agreement to another financial institution that is a member of the debit Networks. First Data may also substitute, or assign, the Debit Sponsor Bank's interest or obligations under this Agreement to another financial institution that is a Member of the debit Networks. References to the term "Bank" in this Agreement include the Debit Sponsor Bank with respect to the Debit Services; however, the financial institution that is the Debit Sponsor Bank is only responsible for the performance obligations described as Bank's under this Agreement with respect to Company's debit Card transactions.

2.6 Network Rules. Company will comply with all rules, requirements, and standards of each of the Networks (together, **Network Rules**). Company acknowledges receipt of First Data's current payments acceptance guide (**Your Payment Acceptance Guide**), which will assist Company with properly accepting and submitting its transactions for processing. Under Network Rules, Company does not own the Card account, Cardholder, personal, or other payment transaction information generated when a payment transaction is processed using the Acquiring Services. Company will not use, retain, disclose, sell, or disseminate any Card or Cardholder information (including, names, addresses, and Card account numbers) obtained in connection with payment transactions except for (1) authorizing, processing, and settling transactions; or (2) resolving chargebacks, retrieval requests, or similar issues related to its transaction. Company will not reproduce electronically captured Cardholder signatures except as requested by First Data or the Networks. A **Cardholder** is the individual who was issued a Card.

2.7 Locations. First Data will perform the Acquiring Services for payment transactions submitted from all Company's locations in the United States (excluding Puerto Rico, and other U.S. territories).

2.8 Submitting Transactions. Company is responsible for:

(5)　　properly transmitting the transaction data (including all transaction detail required by the Networks) to First Data's systems using the format and specifications provided by First Data (Company will maintain and update the systems that it uses to accommodate changing Network requirements as specified by First Data);

(6)　　all payment transactions submitted for processing under its merchant identification numbers (**MIDs**), including, without limitation, all returns, refunds, or chargebacks, whether charged back by Cardholders or Card issuers;

(7)　　preventing its employees, agents, and others from submitting returns or refunds that do not reflect valid returns or refunds corresponding to prior transactions;

(8)　　retaining transaction records according to the timelines required by the Network Rules or applicable Laws; and

(9)　　maintaining transaction fraud and chargeback rates below thresholds established by the Networks.

2.9　Transaction Acceptance. Company will only accept and submit transactions where:

(1)　　the transaction represents a genuine sale of Company's goods or services to the Cardholder;

(2)　　the transaction is not materially different than the transactions Company has described to First Data with regard to the products or services sold, the procedures for payments acceptance, or the fulfillment of obligations to the Cardholder;

(3)　　the transaction complies with all requirements of the applicable Network Rules, the laws of all relevant jurisdictions, and all other requirements of this Agreement;

(4)　　the transaction is not a duplicate of any other transaction;

(5)　　the transaction is authorized by the rightful Cardholder for the amount of the transaction in satisfaction of the Cardholder's obligations to Company;

(6)　　the transaction is in payment of goods or services provided simultaneously with the payment transaction (except for delayed delivery, advance deposit, or other partial transactions specifically allowed under the Network Rules and explicitly authorized by First Data in writing);

(7)　　the transaction is not a refinancing of an existing obligation;

(8)　　the transaction is valid, collectible, and is not subject to any dispute, setoff, or counterclaim; and

(9)　　in the case of a refund, the transaction is submitted to reimburse the Cardholder for a sale transaction that was previously submitted.

Company represents and warrants that each transaction that it submits will comply with this Section.

2.10 Sales Drafts. Company will provide First Data a copy of any sales draft(s) upon request.

2.11 Settlement.

2.11.1　Company will identify a bank account held in Company's name (the **Settlement Account**) that First Data will use in connection with all Services. Company authorizes First Data to initiate: (1) credits to the Settlement Account for proceeds of transactions submitted, and (2) debits to the Settlement Account for any amounts that may be owed or required to be paid under this Agreement. First Data will process credits to the Settlement Account via Automated Clearing House (**ACH**) entry unless the parties agree to transfer funds by wire. First Data will process debits to the Settlement Account via ACH entry.

2.11.2　Company may identify more than one bank account as the Settlement Account. If Company designates more than one Settlement Account, credits to any of these Settlement Accounts will satisfy First Data's obligations, and successful debits to any of the Settlement Accounts will satisfy Company's obligations under this Agreement.

2.11.3   Each banking day, First Data will initiate a transfer to the Settlement Account of the funds that the Networks deliver for Company's Card payment transactions, less any amounts due from Company for fees, refunds, chargebacks, pass through expenses, or other of its obligations.

2.11.4   Company does not have a property or ownership interest in any proceeds of transactions or funds received by First Data in connection with Company's Card transactions (including any funds held in a Reserve) until those funds are transferred to the Settlement Account. First Data's obligations to fund Company represent a general obligation and not a property interest in any specific funds.

2.11.5   All deposits into the Settlement Account are provisional. Cardholders, Card issuers, and the Networks have the right to require reimbursement of transactions, to impose obligations relating to violations of the Network Rules, to assess additional interchange or other assessments, and to impose fees, fines, or charges relating to the qualification of transactions.

2.11.6   Company must promptly notify First Data if it fails to receive any settlement funding or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if Company provides inaccurate information about, or fails to notify First Data of changes to, the Settlement Account. First Data is not responsible for settlement errors that arise if Company provides inaccurate information about, or fails to notify First Data of changes to, the Settlement Account.

2.12 MATCH Reporting. Under some circumstances, First Data may be required to report Company to the Member Alert to Control High Risk (**MATCH**) listing or similar listings maintained by the Networks. Company acknowledges that First Data's obligation to Company in regard to such reporting is limited to submitting any corrective notice if any such reporting is in error.

2.13 Mark License, Network Decals.

2.13.1   First Data grants Company a revocable, royalty free, non-exclusive, limited license that cannot be assigned, transferred, or further sublicensed to use the Networks' trademarks and service marks (together, **Protected Marks**) in the United States according to the applicable Network Rules. This license does not grant Company any other intellectual property right, title, interest, or claim (express or implied, by estoppel, or otherwise) to the Protected Marks. Company will not take any action that impairs an owner's intellectual property rights in its Protected Marks.

2.13.2   Company will discontinue use of the Networks' decals, Protected Marks, promotional, or other materials immediately after termination of this Agreement.

2.13.3   Company will not indicate that its products or services are endorsed by any of the Networks.

3   Financial Information; Audit

Company will promptly provide any financial or other information reasonably requested by First Data to perform credit risk, security, qualification, and other reviews related to the provision of the Services, transactions submitted, fulfillment of obligations to First Data or Cardholders, or the financial condition of Company. Company authorizes First Data to obtain information from third parties when performing credit risk, security, qualification, and other reviews. First Data, Bank, or their designees may perform a reasonable audit of Company's records related to its performance under this Agreement with 30 days' advance written notice to Company, during Company's normal business hours, and at First Data's or Bank's expense.

4   Notice of Material Changes; Third Parties

Company will provide First Data with reasonable advance notice of any material change in the nature of Company's business (including any change in control or merger, any liquidation, any transfer or sale of substantially all of its assets, or any change to Company's operations that would materially affect the products or services sold, the procedures for payments acceptance, or the fulfillment of obligations to a Cardholder). Company will provide First Data with written disclosure identifying the third parties, systems, and services Company uses to receive, transmit, process, or otherwise manage information or its information technology systems (e.g., without limitation, encryption, or firewall providers) related to the transaction information or payment data processed in connection with this Agreement (these third parties must be registered providers with the Networks).

5   Company's Payment Obligations

Company will pay First Data for:

(1)   all fees and charges for the Services;

(2)   all transactions that are charged back by Cardholders, Card issuers, or the Networks;

(3)   all refunds submitted in connection with Company's transactions;

(4)   all costs, liabilities, or other obligations imposed on First Data by the Networks or other third parties as a result of transactions submitted by Company or the actions taken (or not taken) by Company or its third party service providers; and

(5)   the Early Termination Fee.

6   Reserve

6.1   First Data may require Company to fund a cash reserve (**Reserve**) in an amount that reflects First Data's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of First Data, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that Company may have to First Data. The Reserve is not a segregated fund that Company may claim to own. First Data is obligated to pay to Company any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to Company's payment transactions have expired (as provided for under the Network Rules).

6.2   The obligations due to Company from the Reserve will not accrue interest unless required by applicable Laws.

6.3   First Data will notify Company if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

6.4   First Data may set off any obligations that Company owes to First Data from the Reserve.

6.5   Although Company acknowledges that the Reserve is a general obligation of First Data, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Company that is held by First Data, Company grants and acknowledges that First Data has a security interest in the Reserve and, at First Data's request, will provide documentation to reflect this security interest.

7   Setoff and Priority

All funds that First Data owes to Company under this Agreement are subject to Company's payment obligations under this Agreement. First Data may set off amounts Company owes to First Data against any funds that First Data owes to Company.

8   Statements, Reporting

First Data will provide Company with statements or electronic reporting (either, **Statements**) reflecting the fees, settlement amounts, and other information related to the Services. Company must review the Statements and inform First Data of any errors within 60 days following the date that the error was, or should have been, reported. The reporting of any errors will enable First Data to recover amounts or prevent the errors from continuing. First Data will have no obligation to provide refunds for errors that Company reports more than 60 days after they were, or should have been, reported. Company and First Data will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

9   Term and Implementation Period

9.1   This Agreement commences on the later of the dates it is signed by First Data or Company (that date, the **Effective Date**). The six months following the Effective Date are referred to in this Agreement as the **Implementation Period**, and Company agrees to take all preparatory steps to start its implementation of the Services no later than _____.

9.2   Following the Implementation Period, this Agreement will continue for an initial term of 5 years (**Initial Term**), unless terminated as allowed under the terms of this Agreement. This Agreement will renew for successive 1-year periods (each a **Renewal Term**), unless either party gives the other 90 days' advance written notice of non-renewal before the end of the

Initial Term. Either party may terminate this Agreement for any reason (without cause) during a Renewal Term by giving the other party 90 days' advance written notice of termination. Together, the Initial Term and any Renewal Term(s) are the **Term** of this Agreement.

9.3 This Agreement's exclusivity requirements will not apply and Company will not be charged any Acquiring Fees during the Implementation Period until Company processes its first transaction through First Data.

10 Confidential Information

10.1 Confidentiality. No party will disclose non-public information about another party's business (including the terms of this Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

10.2 Disclosure. The recipient may disclose another's party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors, or vendors) that need to know it in connection with the recipient's performance under this Agreement, and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, request from a regulator, or as required under applicable Laws or Network Rules.

11 Data Security

11.1 Company is responsible for any unauthorized access to any transaction data from Company or from third parties retained by or on behalf of Company.

11.2 First Data is responsible for any unauthorized access to Company's transaction data on First Data's systems.

11.3 Company must comply with Payment Card Industry Data Security Standards (**PCI DSS**) and obtain timely certification of its systems and processes (which must be maintained during the Term) as required under the Network Rules. Company will comply with all additional standards that the Networks may require. Company will allow the Networks, First Data, or Bank to audit its PCI DSS compliance and information technology systems related to the Services provided under this Agreement.

11.4 First Data must comply with all PCI DSS requirements and the Network Rules that apply to its performance under this Agreement.

11.5 Security Incident.

11.5.1 If Company becomes aware that there has been unauthorized access to transaction data (a **Security Incident**), it will promptly notify First Data. If requested by First Data, Company will retain a reputable firm that is certified and approved by the Networks that provides forensic information security services and risk assessments in order to: (1) assess the nature and scope of the Security Incident; and (2) identify the access controls or transaction data involved in the Security Incident. Company will take appropriate steps to contain, control, stop, and remediate any Security Incident.

11.5.2 Company will provide reasonable details regarding the Security Incident to, and cooperate with, First Data, any Networks, and the forensics firms that are involved in the investigation and remediation of a Security Incident. Company will take all actions that the Networks require in connection with the investigation and remediation of a Security Incident.

11.5.3 Company will reimburse First Data and/or Bank for all fines, fees, penalties, assessments, or other obligations of any kind imposed by a Network or a regulator on First Data or Bank due to a Security Incident caused by Company or its third party service providers (together, **Network Security Fees**).

11.6 Data Use. Company consents to First Data retaining, using, combining, disclosing or sharing Data: (1) to provide, develop, improve, modify or offer the Services or other similar services for Company or other clients, (2) for analytics, or (3) for fraud prevention (collectively, **Permitted Purposes**). First Data may continue to use or share the Data for the Permitted Purposes

following termination of this Agreement. First Data will also use a consumer's Data as agreed by consumers. **Data** means information about Company, its customers, their transactions, or financial information covered by this Agreement. First Data will not identify Company to another client except as instructed by you.

12 General Suspension; Termination

12.1 General Termination. Either Company or First Data may terminate this Agreement by giving 30 days' advance written notice if the other materially breaches this Agreement and fails to remedy the breach within 30 days of receiving notice of it.

12.2 Risk Termination. First Data may immediately suspend or terminate this Agreement, in its discretion, upon notice if Company:

(1)   engages in fraud, misrepresentation, or intentional misconduct related to its performance under this Agreement;

(2)   experiences excessive chargebacks, irregular, or fraudulent payment transactions (based on Network thresholds), or engages in business practices creating excessive risk for Cardholders or First Data;

(3)   experiences a material adverse change in its financial condition;

(4)   fails to provide notice of a material change in the nature of its business;

(5)   fails to disclose the third parties or systems it uses in connection with the transaction information or payment data processed under this Agreement;

(6)   fails to fund a Reserve when required under this Agreement;

(7)   experiences a Security Incident or fails to comply with PCI DSS or a material Network requirement;

(10)   materially changes its operations, products, services, or procedures for payments acceptance;

(11)   sells substantially all of its assets, undergoes a change in ownership or control, merges, or effects an assignment without obtaining the prior consent of First Data;

(12)   defaults under any other agreement it has with First Data or its affiliates; or

(13)   a Network, a governmental authority, or Bank instructs First Data to suspend its performance under or terminate this Agreement (in which case the Early Termination Fee will not apply).

Together, the events described in this Section are **Default Events**.

12.3 First Data's and Bank's provision of Services under this Agreement is expressly contingent upon First Data's and Bank's satisfactory completion of their risk, credit and regulatory reviews of Company. Company agrees to provide First Data and Bank with any documentation and assistance as may be reasonably required from time-to-time to facilitate these reviews. Should First Data and Bank be unable to satisfactorily complete their reviews as described in this Section, the parties agree to terminate the Agreement without penalty, such termination to be memorialized in writing

13 Early Termination Fee

First Data will suffer substantial injury, and it would be difficult to determine the damages, if Company breaches this Agreement's exclusivity requirements or this Agreement is terminated before the end of the Term due to any Default Event. First Data and Company agree an accurate reflection of the damages caused by an early termination of this Agreement is an amount equal to 80% of the average monthly fees paid to First Data during the 12-month period preceding the termination, multiplied by the number of months (including partial months) remaining in the Term (the **Early Termination Fee**). Company will pay First Data an Early Termination Fee if this Agreement terminates prior to the end of its Term because Company breaches this Agreement's exclusivity requirements or there is a Default Event (no Early Termination Fee will be due if this Agreement is terminated due to First Data's uncured breach).

14   Indemnification

14.1 Company will indemnify First Data and Bank (including their respective affiliates, directors, officers, managers, and employees) for losses, damages, costs, or expenses (together, **Losses**) due to third party claims that result from Company's or their third party service providers gross negligence, willful misconduct, or breach of this Agreement. First Data will indemnify Company (including its respective affiliates, directors, officers, managers, and employees) for Losses due to third party claims that result from First Data's gross negligence, willful misconduct, or breach of this Agreement.

14.2 The indemnified party will promptly notify the indemnifying party of any third party claim that is subject to indemnification under this Agreement. The indemnifying party will have the opportunity to defend these claims using counsel it selects and will have the authority to enter into a settlement for monetary damages provided that it pays such amounts. The parties will cooperate with regard to any other conditions of settlement as well as in providing records, access to personnel or other information reasonably necessary to defend any indemnified claims.

15   Exclusion of Damages

First Data, Bank, and Company will not be liable to each other for lost profits, revenues, or business opportunities, nor any exemplary, punitive, special, indirect, incidental, or consequential damages (whether direct or indirect) under this Agreement; regardless of whether these damages were foreseeable or a party was advised they were possible. Network Security Fees, the Early Termination Fee, and other amounts for which a party is liable under this Agreement (including, without limitation, amounts imposed by a regulatory authority that are specifically due to a party's failure to perform its obligations under this Agreement) are not excluded by this Section.

16   Limitation of Liability

First Data's and Company's aggregate liability to the other for losses arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement will be limited to $500,000.00 (**Liability Cap**). The Liability Cap will not apply to: (1) First Data's obligation to remit the proceeds of Company's transactions that are processed under this Agreement (after accounting for all offsetting obligations); or (2) Company's payment obligations related to the Services, Network Security Fees, the Early Termination Fee, and other amounts for which it is specifically liable under this Agreement (including, without limitation, amounts imposed by a regulatory authority that are specifically due to a party's failure to perform its obligations under this Agreement). Bank will have no liability to Company except for what is set forth in *Section 2.1*.

17   Notices

Written notices (other than normal operations) required under this Agreement will be sent by email, certified mail, or courier (all with tracking and delivery confirmation). Notices will be effective upon receipt.

Notices to Company will be sent to: _____.

Notices to First Data will be sent to: First Data Merchant Services LLC, Attn: Legal Department, 4000 NW 120th Avenue, MS/CON – MER, Coral Springs, Florida 33065; with a copy to First Data Merchant Services LLC, Attn: General Counsel, 6855 Pacific Street, Omaha, Nebraska 68106. Emailed notices to First Data will be sent to legalpapers@fiserv.com

Notices to Bank will be sent to: Wells Fargo Bank, P.O. Box 6079, Concord, CA 94524. Bank's phone number is: 844-284-6834.

18   Third Party Beneficiaries, Providers

There are no third party beneficiaries to this Agreement other than First Data's or Bank's subsidiaries and affiliates involved in providing the Services to Company. Each party is responsible for the performance of any third parties it uses in connection with the Services, and their compliance with the terms of this Agreement.

19   Waivers

A party's waiver of a breach of this agreement will not be considered a waiver of a subsequent breach.

20 Compliance with Law, Choice of Law, Waiver of Jury Trial

The parties will comply with all laws, rules (including Network Rules), and regulations (together **Laws**) that are applicable to their respective performance obligations under this Agreement. This Agreement will be governed by New York law (without regard to its choice of law provisions). The courts of New York, New York will be the proper venue for legal proceedings brought in connection with this Agreement. ***First Data and Company each waive their right to a jury trial for claims arising in connection with this Agreement***.

21 Entire Agreement, Amendment, Counterparts

The defined term **Agreement** includes its schedules, addenda, and any amendments (capitalized terms used in the schedules, addenda, or amendments without definition will have the meanings given to them in this Agreement). This Agreement is the entire agreement between the parties and replaces any prior agreements or understandings (written or oral) with respect to its subject matter. Schedules, addenda, amendments, or any other modifications to this Agreement related to Services that are provided solely by First Data and not Bank need only be executed by Company and First Data (references in these Schedules to **party** or **parties** will mean First Data and Company, as applicable, and not Bank). This Agreement and any addenda, or amendments may be executed electronically and in counterparts, each of which constitutes one agreement when taken together. Electronic and other copies of the executed Agreement are valid.

22 Assignment

The parties may not assign this Agreement without the others' written consent (not to be unreasonably withheld), except as provided in *Sections 2.1 and 2.5*, or otherwise under its terms. This Agreement will be enforceable against a party's permitted successors or assigns.

23 Publicity

Company and First Data may make general references about each other and the Services to third parties, such as auditors, regulators, financial analysts, and prospective customers and clients, provided that Company or First Data does not breach *Section 10*. First Data may issue a press release regarding this Agreement, including its renewal and the Services provided, subject to Company's review and approval, which shall not be unreasonably withheld or unduly delayed. Company must obtain prior written approval for any publicity, statements, or references related to the Bank and its role in connection with this Agreement.

Authorized Signatures:

State of North Carolina

By: _Nels Roseland_
    F3E1D5E435E1424...

Name: Nels Roseland

Title: State Controller

Date: 5/24/2024 | 15:06 PM EDT

First Data Merchant Services LLC

By: _shane mccullough_
    A67BCA183AF0465...

Name: shane mccullough

Title: Authorized Signer

Date: 5/24/2024 | 13:48 PM CDT

Wells Fargo Bank, N.A.

as Bank and Debit Sponsor Bank under Section 2.5
By First Data pursuant to a Limited Power of Attorney

By: _shane mccullough_
    A67BCA183AF0465...

Name: shane mccullough

Title: Authorized Signer

Date: 5/24/2024 | 13:48 PM CDT

TeleCheck Services, LLC

For purposes of Schedule 1 only

By: _shane mccullough_
    A67BCA183AF0465...

Name: shane mccullough

Title: Authorized Signer

Date: 5/24/2024 | 13:48 PM CDT

STATE OF NORTH CAROLINA OFFICE OF THE STATE CONTROLLER Statewide Accounting Division	REQUEST FOR BEST AND FINAL OFFER NO. 14-OSC-2023-02-MCS / BAFO 1
	Offers will be received until: January 15, 2024
	Issue Date: December 22, 2024
*Refer **ALL** inquiries regarding this BAFO to:* Courtney Michelle Courtney.Michelle@osc.nc.gov 919-733-0659	**Commodity Number:** 641018
	Description: Merchant Card Processing Services
	Using Agency: NC Office of the State Controller
See page 2 for submittal instructions.	**Requisition** No.: N/A

NOTICE TO VENDOR

Offers, subject to the conditions made a part hereof, will be received at this office via email until 2:00 PM EST 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 submittal instructions. Bids submitted via facsimile (fax) machine in response to this Best and Final Offer (BAFO) will not be accepted. Bids are subject to rejection unless submitted on this form.

EXECUTION

In compliance with this Request for Best and Final Offer (BAFO), and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all goods and services which are offered, at the prices agreed upon and within the time specified herein. Pursuant to N.C.G.S. §143B-1354 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 of fraud.

Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.

OFFEROR: First Data Merchant Services, LLC		
STREET ADDRESS:2900 Westside Parkway	P.O. BOX:	ZIP:
CITY & STATE & ZIP: Alpharetta, GA 30004	TELEPHONE NUMBER:	TOLL FREE TEL. NO
PRINT NAME & TITLE OF PERSON SIGNING: Shane McCullough Authorized Signer	FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE: 5/22/2024	E-MAIL: shane.mccullough@fiserv.com

Offer valid for thirty (30) days from date of offer opening unless otherwise stated here: _____ days

ACCEPTANCE OF OFFER

If the State accepts any or all parts of this offer, an authorized representative of Office of the State Controller shall affix his/her signature to the Vendor's response to this Request for BAFO. The acceptance shall include the response to this BAFO, any provisions and requirements of the original RFP which have not been superseded by this BAFO and the Department of Information Technology Terms and Conditions. These documents shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful vendor(s).

FOR STATE USE ONLY

Offer accepted and contract awarded this __24__ *day of* __May_____, 20_24_, *as indicated on attached certification,*

by _Nils Roseland_____ (Authorized representative of Office of the State Controller).

<u>**SUBMTTAL INSTRUCTIONS:**</u>

Vendor may submit their BAFO response via email instead of US Mail or other delivery service. Responses may be emailed to <u>Courtney.Michelle@nc.gov</u>, no later than the specified time and date of opening. Please include the BAFO number in the email subject line.

SOLICITATION REQUEST FOR BEST AND FINAL OFFER (BAFO)

This request is to acquire a best and final offer from Vendor for a Merchant Card Processing System. The offer should integrate the previous response to the RFP, the clarification of the extension of the offer validity date to January 15, 2024, and any changes listed below. Any individual vendor can receive a different number of requests for BAFOs than other offerors.

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 Department of Information Technology (DIT) 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.

In accordance RFP 14-OSC-2023-02-MCS, the order of precedence will be as follows: Best and Final Offers, special terms and conditions specific to this RFP, Specifications of the RFP, the Department of Information Technology Terms and Conditions, and the agreed portion of the awarded Vendor's offer.

Section 1. First Data Merchant Services LLC ("FDMS") Payment Solutions Agreement. In response to RFP Section 7.4, FDMS has provided its Payment Solutions Agreement in Appendix C to its response proposal. This Payment Solutions Agreement includes Schedules 1: TeleCheck Services Schedule through Schedule 16: Electronic Remittance Services Agreement. These documents shall constitute and be referred to collectively herein as the "Vendor Agreement". The "Sample" watermark and the "Sample PSA for State of North Carolina" footer in the Vendor Agreement shall be deemed removed and of no force or effect. The Vendor Agreement is incorporated into the contract resulting from RFP 14-OSC-2023-02-MCS in the manner shown below.

    A. To the extent that any of the Vendor's terms presented or incorporated into Vendor's Agreement conflict with the special terms and conditions specific to this RFP, Specifications or Requirements of the RFP, and the RFP Terms and Conditions, the RFP special terms and conditions, Specifications, Requirements, and Terms and Conditions shall take precedence except as modified herein.

    B. Terms and conditions presented in the Vendor Agreement comprising licensing agreements, license grants, maintenance and support for licensed products or software, intellectual property rights, and equipment warranties shall supersede the RFP 14-OSC-2023-02-MCS Terms and Conditions; provided, however that the term of such licensing agreements or license grants shall not supersede other terms and conditions of the RFP 14-OSC-2023-02-MCS.

    C. In the event of any conflict between RFP 14-OSC-2023-02-MCS Terms and Conditions and the Vendor Agreement, the following terms and conditions shall always take precedence:

        1. RFP Attachment B, Section 1. Paragraph 10) "Payment Terms" and Section 2. Paragraph 15) "Payment Terms (Applicable to SaaS)." The State does not agree to pay any late payment, or interest fees on Vendor invoices.

2. RFP Section 7.10 "Confidentiality of Offers" and Attachment B, Section 1. Paragraph 18) "Confidentiality.

3. RFP Attachment B, Section 1, Paragraph 17) "Dispute Resolution."

4. RFP Attachment B, Section 1, Paragraph 21) "Termination"

5. RFP Attachment B, Section 1, Paragraph 27) Transportation

6. RFP Attachment B, Section 1, Paragraph 32) "Governing Laws, Jurisdiction, and Venue"

7. RFP Attachment B, Section 2, Paragraph 18) "Security of State Data" and all RFP specifications relating to or concerning security..

D. Notwithstanding any terms, definitions, standards, or documents incorporated into or referenced in the Vendor's Agreement,

1. the term "confidential information" shall be determined pursuant to the RFP and the N.C. Public Records Act,

2. the term "affiliate" shall not apply to the State or any authorized purchaser,

3. terms requiring payment of audit costs shall not apply,

4. merger clauses, "entire agreement" clauses, and clauses of similar intent shall not apply,

5. arbitration provisions, provisions limiting actions that differ from the statutes of limitation established by North Carolina law and terms requiring indemnification by the State or any authorized purchaser or hold harmless provisions shall not apply,

6. in matters of records retention, the State's record retention schedules and the NC Public Records Act shall control.

7. Vendor's limitation of liability provisions, including provisions limiting liability for property damage or personal injury, and exclusion of damages provisions shall have no force or effect and shall be superseded by the RFP Attachment B, Section 1, Paragraph 22) Limitation of Vendor's Liability and Paragraph 23) Vendor's Liability for Injury to Persons or Damage to Property,

8. the State has the authority to transfer or assign Vendor's products, licenses, or Service in accordance with N.C.G.S. 143A-6, and other applicable law,

9. Vendor shall provide the State notice of any changes to its Vendor Agreement and obtain the State's agreement to incorporate such changes into the State's agreement; unilateral change provisions without Vendor notification and the State's agreement are void. ,

10. the term of a Vendor Agreement or Schedule signed after the execution of the contract resulting from RFP 14-OSC-2023-02-MCS, shall be coterminous with RFP contract term, including any extensions thereto. Notwithstanding the foregoing, the only document within the Vendor Agreement that shall be signed after the execution of the contract resulting from this RFP is the Payment Solutions Agreement, pages 1-9, of Vendor's Appendix C. The signature lines appear on page 9. Vendor shall remove the watermark and footer from this document

prior to its execution. Other than the signature lines on page 9 of the Payment Solutions Agreement, the signature lines in the Vendor Agreement shall have no force or effect.

11. all fees, charges, fee schedules, costs, cost schedules, and fee provisions shall have no force or effect and shall be superseded by the agreed portions of Vendor's offer.

12. the terms of the Vendor Agreement are not confidential.

E. Notwithstanding any provisions appearing in the Vendor's Agreement, none of the following shall have any effect or be enforceable against the State, including any authorized user, state agency, local unit of government, or its officers, directors, employees, or agents:

1. Permitting Vendor to assign, subcontract, delegate, transfer or otherwise convey the contract resulting from RFP 14-OSC-2023-02-MCS, or any of its rights and obligations thereunder, to any entity without the prior written consent of the State and in accordance with RFP Attachment B., Section 1, Paragraph 15) "Assignment".

2. Obligating the State to pay early termination fees or termination fees.

3. Obligating the State beyond approved and appropriated funding.

4. Allowing Vendor to deduct or to set off amounts, obligations, or funds owed by the State to the Vendor against any funds Vendor owes to the State or allowing Vendor to initiate debits against the State's Settlement Account or any other bank account, account, or fund, by whatever name called.

5. Requiring the State to establish, maintain, or fund a cash reserve.

6. Permitting termination by Vendor of the contract resulting from RFP 14-OSC-2023-02-MCS or the licenses granted thereunder or under Vendor's Agreement, or permitting suspension of services by Vendor, except pursuant to an order from a court of competent jurisdiction or in accordance with RFP 14-OSC-2023-02-MCS, Attachment B, Section 1, Paragraph 21) Termination, subparagraph (c).

7. Renewing or extending the contract beyond the initial term or automatically continuing the contract period from term to term.

8. Granting Vendor a security interest in property of the State, including but not limited to equipment purchased from the Vendor.

9. Requiring that the State, which is tax exempt, be responsible for payment of any taxes, duties, or penalties.

10. Requiring the State to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury, or to waive its right to assert any defense.

11. Imposing interest charges, late fees, or delinquency charges.

12. Obligating the State to pay the cost of collection or attorney's fees.

13. Requiring the payment of liquidated damages.

F. The following provisions shall supersede Vendor's Agreement and conflicting provisions in the Vendor's Agreement shall have no force or effect:

1. Vendor shall be responsible for any damages caused by the Vendor or its agent(s) to individuals, the building, its contents, or the surrounding grounds as the result of delivery and installation of equipment that is purchased, leased, or rented by the State.

2. Vendor shall retain all right, title and interest in leased and rented equipment and integrated or installed software during the term of the lease or rental; provided, however, that Vendor shall not pledge said property as security for any third party, suffer any lien or attachment of said property, nor otherwise encumber the property in any manner that may compromise the Agency's use of said property. Title to the equipment will be conveyed to the State effective upon Agency's exercise of any available purchase option and payment therefor.

3. Risk of loss or damage shall remain with the Vendor for the duration of the lease or rental term. The Lessee shall be relieved from property risks including: loss or damage to all Leased or Rented Item(s) during the periods of transportation, installation, and the Lease or Rental Term except when loss or damage is due to the negligent acts of the Lessee. It is the responsibility of the Vendor to insure all equipment.

4. The State is covered under a program of self-insurance.

5.   All equipment leased or rented shall be removed from an Agency's location within ten (10) business days after expiration of the lease or rental term at Vendor's expense. All equipment removal shall be coordinated with the Agency.

G. Vendor's Affiliates. For avoidance of doubt, the term "Vendor" includes FDMS's affiliates. Vendor represents and warrants that it has authority to bind its Affiliates to all terms and conditions in this BAFO and RFP 14-OSC-2023-02-MCS and by executing this BAFO, accordingly binds its Affiliates. Affiliates include those entities identified in Schedules 1 through 16 of Vendor's Agreement.

Section 2. A. VENDOR OBLIGATIONS. Vendor shall append a copy of this executed BAFO when entering and executing the Vendor Agreement, Payment Solutions Agreement ("PSA"), pages 1-9 with the State and Sponsor Bank.

B. PURCHASING AGENCY OBLIGATIONS. Inclusion of the signed PSA will be through an amendment to the contract resulting from this RFP. The purchasing agency will submit a draft contract amendment and the signed PSA for approval to the NCDIT Statewide Information Technology Procurement (SITP).

Section 3. Modifications to the RFP Terms and Conditions and to Vendor's Offer Proposal. The parties agree to the following modifications in response to Vendor's Exceptions in Appendix J of Vendor's Response Proposal.

A. RFP 14-OSC-2023-02-MCS, Section 3.1.1.D, requires that the Vendor must coordinate and cooperate with any PCI security assessment vendor that the State may contract with, to ensure all participants and gateways are PCI compliant. For avoidance of doubt, the parties agree that the State performs PCI security assessments   on the State's system and gateways. Vendor's Offer Proposal Response to RFP 14-OSC-2023-02-MCS, Section 3.1.1.(D) is supplemented with the following statement: Vendor will make available third-party assessments of its system and gateways. FDMS provides, and shall provide, an annual Attestation of Compliance ("AOC") for all products that have PCI scope.

B. RFP 14-OSC-2023-02-MCS, Attachment B, Section 1, Paragraph (18) Confidentiality, subparagraph (b) is amended as follows as shown by strikethroughs for deletions and underlining for insertions:

Vendor warrants that all its employees and any approved third-party Vendors or subcontractors are ~~subject to a~~ bound by Vendor-required non-disclosure and confidentiality obligations ~~agreement enforceable in North Carolina~~ that meet the requirements in RFP 14-OSC-2023-02-MCS and the DIT Terms and Conditions. ~~Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S. §132-1 et seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution.~~ If either party requests the other's execution of a non-disclosure agreement, the parties will negotiate a non-disclosure agreement in good faith, however, both parties acknowledge that such is subject to North Carolina Public Records laws. 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 Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

C. RFP 14-OSC-2023-02-MCS, Section 7.6 Disclosure of Litigation and Section 7.7 Criminal Conviction are Reserved, where "Reserved" removes such term as void.

D. RFP 14-OSC-2023-02-MCS, Attachment B, Section 1, Paragraph 4) SUBCONTRACTING is modified as follows as shown by strikethroughs for deletions and underlining for insertions:

The Vendor may subcontract the performance of required Services with Resources under the Agreement only with the prior written consent of the State contracting authority. ~~Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors.~~ The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor and the Agreement. ~~Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the Agreement; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor.~~ Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor. For purposes of this Section 1, Paragraph 4, subcontractors shall be only those entities that contract with Vendor to specifically perform under this Agreement.

E. RFP14-OSC-2023-02-MCS, Attachment B, Section 2, Paragraph (10) Transition, subparagraph (e) is amended, to add the following sentence at the end of the paragraph, as shown via underlining for the insertion: Vendor may retain documents in accordance with this Agreement for time periods in excess of the State's document retention schedules if required by the Visa, MasterCard or other network rules applicable to the Services or Vendor's document retention policies. Vendor shall notify the State in writing of such retention.

F.   RFP 14-OSC-2023-02-MCS, Attachment B Section 2, Paragraph (18), Security of State Data, subparagraph (e)(iii) is modified as follows as shown by strikethroughs for deletions and underlining for insertions:

> iii) That the Services will ~~comply~~ <u>materially align</u> with the following applicable requirements:

G.   RFP 14-OSC-2023-02-MCS, Attachment B Section 2, Paragraph (18) Security of State Data, subparagraph (g) is modified as follows as shown by strikethroughs for deletions and underlining for insertions:

> Breach Notification. In the event the Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the Vendor shall, at its own expense, without unreasonable delay <u>but no more than 24 hours</u>, (1) ~~immediately~~ notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon; (2) investigate such Security Breach; (3) provide a remediation plan~~, acceptable to the State~~, <u>to</u> address the Security Breach and prevent any further incidents; (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.

H.   RFP 14-OSC-2023-02-MCS, Attachment B Section 2, Paragraph (18) Security of State Data, subparagraph (i) is modified as follows as shown by strikethroughs for deletions and underlining for insertions:

> The Vendor shall allow the State reasonable access to Services ~~security logs~~, latency statistics, and <u>may share</u> other related Services security data that affect this Agreement and the State's Data <u>as reasonably requested</u>, at no cost to the State.

I.   RFP 14-OSC-2023-02-MCS, Attachment B Section 1, Paragraph 21) Termination is modified by adding a new subparagraph (c), shown by underlining for the insertion, which reads as follows:

> (c) <u>Vendor may suspend or terminate this Agreement if its Sponsor Bank or any of the Card Association brands requires such action. Vendor shall provide the State with reasonable advance written notice of the cause for such suspension or termination and shall provide the State ten (10) business days to cure to the extent permitted by the Card Association or Sponsor Bank. Suspension shall be temporary and Services shall be restored as soon as practicable after the reason for suspension has been remedied and Vendor is permitted to do so by the Card Association or Sponsor Bank. Notwithstanding the foregoing, the State may terminate this Agreement, if in the sole opinion of the State, the Vendor fails to timely restore its Services in accordance with this Agreement or Vendor's suspension of its Services otherwise makes the continuation of this Agreement impractical.</u>

J.   The parties agree that the following text, shown by underlining, replaces in its entirety the original text in "Indemnification" Paragraphs 14.1 and 14.2 of the Payment Solutions Agreement found in Vendor's Appendix C of Vendor's Response Proposal:

<u>Responsibility</u>

14.1 <u>Subject to and without waiving any provision, right, privilege or defense of law provided to the State under North Carolina law, the State will be responsible for (and First Data will not be responsible for) losses, damages, costs, or expenses (together, Losses) due to third party claims that result from the State's or their third party service providers gross negligence, willful misconduct, or breach of this Agreement. Subject to and without waiving any provision, right, privilege or defense of law provided to First Data under North Carolina law, First Data will be responsible for (and the State will not be responsible for) Losses due to third party claims that result from First Data's gross negligence, willful misconduct, or breach of this Agreement.</u>

14.2 <u>The non-responsible party will promptly notify the responsible party of any third party claim that is subject to this Section 14. The responsible party will have the opportunity to defend these claims using counsel it selects and will have the authority to enter into a settlement for monetary damages provided that it pays such amounts. The parties will cooperate with regard to any other conditions of settlement as well as in providing records, access to personnel or other information reasonably necessary to defend any indemnified claims.</u>

K.   Unless agreed to above, Vendor's exceptions to RFP Sections and Terms and Conditions are rejected and are deemed withdrawn.

Section 4. The State encourages the Vendor to supply more competitive prices. Vendor should submit its most competitive prices via this BAFO using the Cost Format from the RFP.