

**MASTER CONTRACT
FOR EPAYMENT SOLUTIONS AND SERVICES**

Between the Department of Financial Services and Bank of America, N.A., national banking association, and Banc of America Merchant Services, LLC

THIS MASTER CONTRACT ("Master Contract") is entered into by and between Florida Department of Financial Services, Division of Treasury, [REDACTED] Tallahassee, Florida 32399-0344 (hereinafter referred to as "Department") or its successor, and Bank of America, N.A., national banking association ("BANA"), and Banc of America Merchant Services, LLC ("BAMS") (hereinafter referred to collectively as "Contractor"), effective as of the last date signed below.

WHEREAS, Section 215.322, Florida Statutes, explicitly authorizes and encourages state agencies, the judicial branch, and units of local government to accept credit cards, charge cards, debit cards, or electronic funds transfers, and mandates the Department to develop or approve a standard contract for the acceptance of credit cards, charge cards, debit cards, or electronic funds transfers and

WHEREAS, Section 215.322, Florida Statutes, provides that Agency Participants and Local Government Participants may use such payment processing services upon the same terms and conditions as agreed to by the Department, and

WHEREAS, the Contractor, as an independent contractor of the Department, has the expertise and ability to faithfully perform such services; and

NOW THEREFORE, in consideration of the services to be performed and payments to be made, together with the mutual covenants and conditions set forth, the parties agree as follows:

I. Services and Deliverables

The Contractor agrees to render to Participants the services or other units of deliverables ("Services") as set forth in the Scope of Work, Attachment A.

II. Contract Documents, Order of Precedence

A. The Contract is an integrated agreement composed of the documents listed below. The Contract will be posted on the Internet according to the State of Florida's Transparency Act Florida Accountability Contract Tracking System (FACTS). The Contract supersedes all prior negotiations, representations, statements and agreements, whether written or oral, regarding the services provided through the Contract. Documents signed by the Participant include the Authorization and Agreement for Treasury Services, the Treasury Services Delegation of Authority Form, the Participation Agreement, and applicable optional service agreements in Attachment C. The Department will sign only the Master Contract. In the event of conflict between provisions among the documents which compose the Contract, the following order of precedence shall govern:

1. This Master Contract
2. Participation Agreement, (except relating to termination notice which will supersede the Master Contract), substantially in the form attached as Attachment D
3. The Scope of Work (Attachment A)
4. PUR Form 1000 and PUR Form 1001
5. Price Schedule (Attachment B)
6. A Participant's purchase order
7. Payment Card Organization Rules aka Card Organization Rules
8. Service Agreements (Attachment C), any documents or material referenced in the documents provided by the Contractor, as contractor services agreement whether or not listed:
 - a) Terms and Conditions
 - (1) If using RPO, PCG, AND ACH for State of Florida (used by Participants using RPO or PCG and ACH) - negotiated version including CIP (used by Participants using RPO or PCG). If using banking services (only for Remote Payments Online (RPO), Payment Collection Gateway (PCG) and ACH) use the Authorization and Agreement for Treasury Services and the Treasury Services Delegation of Authority Form.
 - (2) If using merchant services, Master Services Agreement ("MSA") a negotiated version and their addenda attached hereto;
 - (3) Bank of America Merchant Services Operating Procedures Guide if using MSA.
 - b) Optional Services Agreements
 - (1) Optional services - Addendum to the MSA and elected by the Participant:
 - (i) Account Updater Service
 - (ii) TransArmor Service
 - (iii) Data File Manager Service
 - (v) MobilePay Service
 - (vi) PayPoint Service

(iv) Amendment to the BankCard Addendum - Dynamic Currency Conversion Service

(2) Optional Service not subject to the MSA:

(i) eCheck guarantee services under a TeleCheck Agreement -

Telecheck agreement is fully contained in the Telecheck Agreement

9. Any documents or material referenced in the documents provided by the Contractor as Contractor's services agreements whether or not listed.

- B. The Contract shall not contain any provisions, and such provisions are expressly negated in the Contract, which:
1. are inconsistent with Florida law, except where pre-empted by federal law;
 2. exclude, prohibit, or negate other Contract documents or that is not subject to the order of precedence of this Master Contract;
 3. subject the State of Florida to the jurisdiction of another state; or
 4. provide that the Department or Participants will indemnify the Contractor or any other person. In the event of a conflict among the documents the parties shall attempt to harmonize the reading of the language. If harmony cannot be reasonably achieved, the language in document earlier in the order of precedence shall prevail over the conflicting language in a document later in the order of precedence (i.e. 1. prevails over 2, 3, 4, ...), except to the extent that language is inconsistent with applicable law. No documents or materials other than those listed above shall become a part of this contract except by express written agreement of the parties. Provisions in any of the documents composing the Contract that are contrary to applicable law are void but severable from the remainder of the Contract. Signatures on incorporated documents do not serve to negate the prevailing provisions of the Master Contract.

III. Definition

Terms used in this document and not further defined herein shall be interpreted in accordance with the definitions in Attachment A, the Scope of Work.

IV. Term and Renewal

The term of the Contract is five years. By mutual written agreement of the parties, and pursuant to section 287.057(13), Florida Statutes (F.S.), the Department may renew the Contract for one or more periods not exceeding a total of five years collectively. Any renewal is subject to the same terms and conditions as the original contract and shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds.

V. Payment

- A. Subject to the terms and conditions established by this Contract and the billing procedures established by the Department, the Participant agrees to pay the Contractor for services rendered. Payment under the Contract is in accordance with Attachment B - Price Schedule, which shall contain all pricing, inclusive of charges for materials, work, hardware, software, and other expenses except as specified as pass through items in Attachment B - Price Schedule in accordance with Attachment A, Scope of Work and no other fees apply except as pass-through fees allowed under the Payment Card Organization Rules, the Services Agreement, or approved in writing by the parties. Interchange, dues, assessments, fees, fines and penalties are subject to change by the Payment Card Organizations, as well as debit networks, or other pass-through costs identified on the Price Schedule, Attachment B. The Department will not accept any inflation increases during the initial term. Any and all Contractor assertions of a right to security interest, reimbursement or setoff (except as noted below) are void, unless expressly authorized in the Master Contract, Scope of Work or Participation Agreement. However, Contractor shall have the right to setoff chargebacks as defined in Master Services Agreement. Local Government Participants may pay for Services via Contractor setoff against Local Government Participants' accounts; however, Agency Participants shall be invoiced. Contractor shall not setoff, retain payments, nor deduct from the Department's Account, the Participant's account, or any other State account to offset its claims against the Account except for chargebacks and refunds as provided in the Scope of Work.
- B. Vendor Rights. Contractors providing goods and services to an Agency Participant should be aware of the following prompt payment standard time frames. Upon receipt, an Agency Participant has five (5) Business Days to inspect and approve the goods and services, unless the Contractor's specifications, purchase orders or Contract specifies otherwise. An Agency Participant has 20 Calendar Days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 Calendar Days are measured from the date the invoice is received after the goods or services are received, inspected and approved. The Department is to approve the invoice in the State financial system within 20 Calendar Days.

If a payment is not available within 40 Calendar Days, a separate interest penalty, computed at the rate determined by the State of Florida Chief Financial Officer pursuant to section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the Vendor. To obtain the applicable interest rate, please refer to <http://www.myfloridacfo.com/aadir/interest.htm>. Invoices returned to a Contractor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the Agency Participant with the proper tax payer identification information documentation to be submitted before the prompt payment standards are to be applied. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. The invoice payment requirements do not start until a properly completed invoice is

provided to the Agency Participant with the proper tax payer identification information documentation to be submitted before the prompt payment standards are to be applied.

A Vendor Ombudsman has been established with the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from an Agency Participant. The Vendor Ombudsman may be reached at (850) 413-5516.

- C. **Taxes.** The Department and Participants are exempt from payment of Florida state sales and use taxes and Federal excise tax. The Contractor, however, shall not be exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by the Contractor to suppliers for taxes on materials used to fulfill its contractual obligations with the Department or Participants. The Contractor shall not use the Department's exemption number in securing such materials. The Contractor shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract. The Department will provide its tax exemption certification upon request. The Contractor shall provide the Department its taxpayer identification number upon request.
- D. **Payment Processing.** All charges for Services rendered or for reimbursement of expenses authorized by the Participant shall be submitted to the Participant in sufficient detail for a proper pre-audit and post-audit to be performed. All payments for professional services will be paid to the Contractor only upon the timely and satisfactory completion of all services and other units of deliverable such as reports, findings and drafts, which are required by Paragraphs 1 and 2 above and upon the written acceptance of said services and units of deliverables such as reports, findings and drafts by the Participant's designated Contract Manager. Travel expenses will not be reimbursed. Interim payments may be made by the Participant at its discretion under extenuating circumstances if the completion of services and other units of deliverables to date have first been accepted in writing by the Participant's Contract Manager.
- E. **Contingency.** If the terms of this Contract extend beyond the current fiscal year, the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.
- F. **MyFloridaMarketPlace (MFMP).** Unless exempted under Rule 60A-1.030-.032, Florida Administrative Code each Contractor doing business with the State of Florida shall submit reports and be assessed a Transaction Fee of one percent (1.0%) on its payments under a Contract, which must be remitted within 40 Calendar Days after receipt of payment for which such fees are due or the Contractor shall pay interest at the rate established under section 55.03(1), Florida Statutes, on the unpaid balance from the expiration of the 40-day period until the fees are remitted. (see PUR 1000 ¶14). The Department shall assist the Contractor in seeking any applicable exemption from the MFMP transaction fee through the Florida Department of Management Services.

VI. Acceptance

The Department and Participant will review deliverables pursuant to 215.322 (6), F.S., and reserve the right to reject deliverables as outlined in the Scope of Work as incomplete, inadequate or unacceptable due in whole or in part to Contractor's lack of satisfactory performance under the terms of this Contract.

VII. Data Security, Confidentiality and Payment Card Industry / Data Security Standards

- A. Contractor, its employees, subcontractors and agents shall comply with the applicable provisions in the sections titled "Payment Card Industry/Data Security Standard Certifications and Requirements" and "Data Management and Security" as defined in section 2.19 of the Scope of Work. To the extent required by Payment Card Organization Rules and applicable law, the Contractor shall provide immediate notice to the Department and affected Participants in the event it becomes aware of any security breach and any unauthorized transmission of data. Except as required by law, legal process, Payment Card Organization Rules, or to provide the Services, and after notice to the Department and the Participant, Contractor shall not divulge to third parties any confidential information obtained or created by Contractor, its employees, subcontractors or agents in the course of performing the Services. Contractor shall not be required to keep confidential information that is publicly available through no fault of Contractor, material that Contractor developed independently without relying on the State's confidential information or information that is otherwise obtainable under state law as a public record.
- B. The Contractor shall ensure all access is promptly terminated for every Contractor staff engaged by Contractor and under Contractor's control upon completion of assignments.
- C. The Contractor is responsible for security of all services outlined within the Contract and the Scope of Work which are in Contractor's control.
- D. **Loss of Data.** In the event of loss of any State Data or Shared Data where such loss is due to the negligence of Contractor or any of its subcontractors or agents, Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Department at Contractor's sole expense, in addition to any other damages the Department or Participants may be entitled to by law or the Contract. Further, failure to maintain security that results in certain data release will subject the Contractor to the sanctions for failure to comply with section 817.5681, F.S., together with any actual costs of the Department or Participants for responding to such a breach of security caused by the Contractor.

- F. **Data Protection.** No State Data, as defined in Contract Scope of Work – Section One, or information will be transferred or stored offshore or out of the United States of America. The Contractor may use offshore services for its other administrative activities, not associated with handling of State Data or access to the Department's network. Subject to Master Contract section 15, State Property Disposition, Confidential Information may be disclosed by the Contractor: (i) to any directors, officers, employees, accountants, attorneys or agents of the Contractor or its affiliates for whom it is necessary or appropriate to know such information to effect the proper performance by the Contractor of its services hereunder, and (ii) as required by applicable law, regulation or judicial or regulatory process, the rules of any stock exchange or regulatory or self regulatory organization.
- G. **Data Access.** Access to State Data shall only be available to approved and authorized staff. If that need changes, then access shall be removed promptly. The Contractor shall encrypt all data transmissions. Remote data access must be provided via a trusted method such as SSL, TLS, SSH, VPN, IPsec or a comparable protocol accessible by the Participant or the Department. Unless otherwise agreed by the Department in writing, Contractor and Subcontractors shall not (i) save any State Data or Shared Data on a laptop, personal computer, PDA or other portable computer or data storage device unless such device has "full disc" encryption, (ii) save any State Data on any USB/PIN drive, CD, DVD, or similar device, (iii) send any copies of State Data via unencrypted email, (iv) obtain remote access to any State Data except through a secure, dedicated line or through a trusted method using current authentication and encryption technologies.
- H. **Confidential Information.** Notwithstanding any provisions or definitions of information, materials or confidentiality to the contrary, Confidential Information means documents and electronic information that is confidential or exempt under section (s.) 119.07 (1), Florida Statutes (F.S.), Article I, Section 24, of the Florida Constitution, or pre-empting federal law. The parties will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information, under Florida law, of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. The Contractor shall not divulge to third parties any Confidential Information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or the Department; or Participants; except as necessary to provide the Services, in response to legal process, or as required by applicable law, regulation or lawful Payment Card Organization Rule; and restrictions on disclosure of public records shall be pursuant to section 8 below. To the extent permitted by law, the parties agree that all Customer information that qualifies as "Non-public Personal Information" under the Gramm-Leach-Bliley Act of 1999 or its state law equivalents ("NPI") is Confidential Information.

VIII. Public Records Disclosure

- A. **Public Records.** Chapter 119, Florida Statutes, mandates disclosure of public records, with specified exceptions, by agencies of the state including private contractors acting on behalf of the state. Chapter 119, Florida Statutes, and other applicable law shall prevail over any contrary provisions in this Contract. The parties shall not be required to disclose to the public any materials protected by law, and disclosure of any Confidential Information received by the State of Florida will be governed by the provisions of the Florida Public Records Act, Chapter 119, Florida Statutes, and exceptions thereto and other provisions of Florida law creating confidentiality. The Contract will be posted on the Internet according to the State of Florida's Transparency Act, with appropriate redaction of Confidential Information by the Contractor. Should the Contractor provide technology security systems and procedures, and other information deemed confidential or exempt from the Florida Public Records Act, then the Contractor shall place such information in an encrypted electronic form or a sealed separate envelope and provide the Department or Participant with an additional copy of its documentation containing such information that has been redacted to conceal only that information that the Contractor claims to be confidential. If a public record request is made for documentation related to this Contract, the Department or Participant will notify the Contractor of such request if the Contractor has provided the Department or Participant with a notice of trade secret or other confidentiality as noted above, and the Contractor shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law. The Contractor acknowledges that the protection afforded by s. 815.045, F.S., is incomplete, and it is hereby agreed that no right or remedy for damages arises from any disclosure based on the Contractor's failure to promptly legally protect its claim of exemption and commence such protective actions within ten (10) days of receipt of such notice from the Department or Participant. The Contractor shall retain records relating to the Contract and its performance in accordance with the Payment Card Organization Rules subject to applicable law.
- B. **Trade Secret or other Confidential Information.** Pursuant to section 812.081, Florida Statutes, a person who claims that information is a trade secret must take measures to protect such information and to prevent it from becoming generally available. As such, if Contractor submits to the Department or Participant information that Contractor considers to be a trade secret that meets the definition provided in section 812.081, Florida Statutes, Contractor shall file a notice of trade secret with the Department or Participant that puts the Department or Participant on notice that Contractor has provided trade secret information. Furthermore, if a Contractor reserves the right to assert that a portion of its documentation is a trade secret, Contractor shall either:
 - 1. provide the Department or Participant with an additional copy of the material that has been redacted to conceal only that information that Contractor claims to be a confidential trade secret meeting the definition of a trade secret as provided in section 812.081, Florida Statutes, and is clearly identified as having had trade secret information redacted; or

2. segregate such confidential trade secret information and place it in a sealed, separate envelope that is labeled "CONFIDENTIAL TRADE SECRETS."

If a public record request is made for trade secrets or other Confidential Information, the Department or Participant will notify the Contractor of such request if Contractor has provided the Department or Participant with a notice of trade secret. If the Department or Participant receives a public records request related to such material, the Contractor shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law. Contractor acknowledges that the protection afforded by section 815.045, Florida Statutes, is incomplete, and it is hereby agreed that no right or remedy for damages arises from any disclosure. (Modifies PUR 1000 ¶33 and PUR 1001 ¶19).

IX. Insurance

During the Contract term, the Contractor at its sole expense shall provide commercial insurance, of such a type and with such terms and limits as may be reasonably associated with the Contract, which, at a minimum, shall be: workers' compensation and employer's liability insurance per Florida statutory limits (currently \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate) covering all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$500,000 (defense cost shall be in excess of the limit of liability); and automobile liability insurance covering all vehicles, owned or otherwise, used in the Contract work, with minimum combined limits of \$500,000, including hired and non-owned liability; or otherwise provide protection satisfactory to the Department. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. The Contract shall not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. Upon request, the Contractor shall provide its certificate of insurance. All insurance policies shall be through insurers authorized to write policies in Florida. As an alternative to the insurance requirements herein, for those risks where self-insurance is permitted by applicable law, Contractor may through a program of self-insurance assume in whole or in part such risks upon written consent of the Department's contract manager. Such consent shall not be unreasonably withheld.

X. Termination

- A. The Contractor, in its sole discretion, may terminate the contract at any time by giving twelve (12) months written notice to the Department. The Department, in its sole discretion, may terminate the contract at any time by giving twelve (12) months written notice to the other party.
- B. All services performed by the Contractor prior to the termination date of this Contract shall be professionally serviced to conclusion in accordance with the requirements of the Contract. Failure to comply with the requirements of the Contract may subject the Contractor to a default proceeding in accordance with Rule 60A-1.006, F.A.C.
- C. As provided in section 287.058, Florida Statutes, the Department may terminate the Contract immediately in the event that the Department requests in writing that the Contractor allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, which are made or received by the Contractor in conjunction with the Contract, and the Contractor refuses to allow such access. However, nothing herein is intended to expand the scope or applicability of Chapter 119, Florida Statutes, to the Contractor. The Contractor shall not be required to disclose to the public any proprietary copyrighted trade secrets or other materials protected by law as pursuant to Section 119.07, Florida Statutes.
- D. Scrutinized Companies. The Contract may be terminated at the option of the Department if the Contractor is found to have submitted a false certification required by s. 287.135, F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Notice: Section 287.135, F.S. would operate to make businesses ineligible to contract with the State of Florida in specified circumstances. Currently, the 2012 changes to this section have been enjoined by a court of law. If ultimately upheld by the court, the Contractor who is awarded this contract may be required to amend the contract to certify compliance with the law, i.e. that the business is not and will not engage in business operations in Cuba or Syria.
- E. If at any time the Contract is canceled, terminated, or has expired, or a contract is subsequently executed with a firm other than the Contractor, the Contractor has the affirmative obligation to assist in the smooth transition of Contract services to the subsequent contractor. The Contractor agrees to provide, for up to six (6) months after termination or until the subsequent provider is fully operational, whichever occurs first, all reasonable termination assistance requested by the Department to facilitate the orderly transfer of such services to the Department or its designees. Such termination assistance shall be at no additional charge to the Department or Participant if the termination is due to Contractor default and if associated with technology services shall not exceed Contractor's current maintenance rates for such services. Contractor shall assist in transition of data as provided in Paragraph 14 below. For avoidance of doubt, Department or Participant, as applicable, shall continue to pay all applicable fees and other amounts due under the Contract for the extended time period according to section 30 g, survival of exit transition tasks.
- F. The Participant shall notify, in writing, the Contractor and the Department's Contract Manager when the Contractor fails to adhere to Contract terms and conditions. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure within timeframes specified in Scope of Work - Attachment A. The notification will also provide that, should it fail to perform within the time provided, the Contractor will be found in default and removed from the Department's approved vendor list. If the Contractor defaults in the performance of any covenant or obligation contained in the Contract, including without limitation the minimum requirements contained in the Scope of

Work, or in the event of any material breach of any provision of the Contract by the Contractor, the Department may, in its sole discretion, provide notice and an opportunity to cure the default rather than exercise the remedy of termination. If the default or breach is not cured within thirty (30) days after written notice, unless otherwise specified in the Scope of Work, is given to the Contractor specifying the nature of the alleged default or breach, then the Department, upon giving written notice to the Contractor, shall have the right to terminate the Contract effective as of the date of receipt of the default notice, unless otherwise specified in the Scope of Work.

- G. After receipt of a notice of termination or partial termination, and except as otherwise directed by the Department, the Contractor shall stop performing services on the date, and to the extent specified, in the notice. The Contractor shall accept no further work or new services related to the affected Deliverables, and shall, as soon as practicable, but in no event longer than thirty (30) Calendar Days after termination, unless otherwise specified in the Scope of Work, terminate any orders and/or subcontracts related to the terminated Deliverables and settle all outstanding liabilities and all claims arising out of such termination of orders and/or subcontracts, with the approval or ratification of the Department to the extent required, which approval or ratification shall be final for the purpose of this section.
- H. Non-Appropriation. The following provisions apply to termination for non-appropriation when applicable under s. 287.0382, F.S.:
 - 1. Failure to pay by reason of non-appropriation shall initiate a termination of Services;
 - 2. The Department shall terminate this Contract in part with respect to all Services for which a Non-Appropriation has occurred.

XI. Events of Default

- A. Provided such failure is not the fault of the Department or Participant, or not outside the reasonable control of the Contractor, the following events, acts, or omissions, not cured within the time frames required by the Scope of Work or the applicable Implementation Plan, shall include but are not limited to, events of default:
 - 1. Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Contract;
 - 2. Failure to complete and maintain, within the timeframes specified between the Department and the Contractor, the applicable system installation, ongoing performance, maintenance, and provision of Services;
 - 3. The commitment of any material breach of this Contract by the Contractor, failure to timely deliver a material deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;
 - 4. Knowing employment of an unauthorized alien in the performance of the work which is not cured within thirty (30) days from receipt of notice from the Department;
 - 5. One or more of the following circumstances, uncorrected for more than thirty (30) days unless within the specified thirty (30) day period, the Contractor (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract:
 - a) Entry of an order for relief under Title 11 of the United States Code;
 - b) The making by the Contractor of a general assignment for the benefit of creditors;
 - c) The appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property;
 - d) An action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation;
 - e) Entry of an order revoking the certificate of authority granted to the Contractor by the State or other licensing authority;
 - f) The Contractor makes or has made an intentional material misrepresentation or omission in any materials provided to the Department or Participant or fails to maintain the required insurance.
- B. Termination by the Contractor. If, and only if, the Department fails to pay the Contractor when due undisputed charges totaling at least two months' charges under the Contract and fails to make such payment within 30 days after receiving a notice of nonpayment from the Contractor referencing this section and expressly stating the Contractor's intent to terminate the Contract if the past due amount is not paid within such 30 day time period, the Contractor may terminate the Contract as to the defaulting Participant, as of a date specified in a separate written notice of termination given to the Department, but subject to the provisions of Contract section regarding the termination or exit transition services to be provided by the Contractor. For the avoidance of doubt, this section states the only circumstances in which, and the only grounds on which, the Contractor has the right to terminate the Contract prior to its expiration. The Contractor's termination notice will not be effective unless it references this Contract section and expressly states that the Contractor intends to pursue termination of the Contract if the Department's failure to pay undisputed amounts due and owing is not cured within the applicable cure period. The Department's failure to perform or material delay in performing any of the Department's responsibilities under this Contract (or causing to be performed by the applicable third party) will not constitute grounds for termination of the Contract. However, the Contractor may obtain a schedule delay in accordance with PUR 1000 §24, Force Majeure with reasonable notice of such nonperformance and, if so requested by the Department, shall use commercially reasonable efforts to perform notwithstanding such Department failure.

Notwithstanding the foregoing, Contractor BAMS may terminate the Contract, or suspend the Contract for a period of time necessary for the Department or Participant to remediate the risk to BAMS' satisfaction for any or all Services provided by Contractor BAMS to the Department or Participant(s) effective on not less than thirty (30) days' notice, or

such lesser time as required or permitted under the Card Organization Rules or permitted by Applicable Law, and Contractor BAMS will send Department or Participant(s) written notice of the termination, upon the occurrence of any of the following events: (i) violation of Applicable Law by the Department or Participant, (ii) as expressly required by Card Organization Rules, (iii) the Department's or Participant's insolvency in accordance with section 11 (v), (iv) a Participant's failure to maintain chargeback levels lower than "excessive" chargebacks as defined by the Card Organization Rules, (v) a Participant's failure to pay third party fees or (vi) fraud, intentional torts, willful misconduct (including intentional breach of contract), or gross negligence of or by the Department or Participant (or an entity or person for whom the Department or Participant is responsible, pursuant to the Master Contract) in regards to the Department's or Participant's use of these services.

Termination under this Section 11(b) maybe limited to one or more specified Participants.

XII. Remedies, Liability and Indemnification

- A. The Contractor's failure to complete work tasks both in an acceptable manner to the Department and on time will result in substantial damage to the Department or Participant; however, the amount of damages resulting from such failure cannot be calculated with certainty. Each such failure to complete a work task both correctly and on time is hereinafter referred to as a default. Defaults shall be deemed corrected on the date that the work task has been correctly completed. For each default, the Department may apply financial consequences as a remedy, not as a penalty, for failure to meet the applicable requirement, as set forth in the Scope of Work, unless such failure to meet the performance requirements was due to causes not within the ability of the Contractor to control, avoid, or mitigate through reasonable prudent action.
- B. PUR 1000, section 19 is replaced with the following, and additionally the following provisions apply - (i) No provision in this Contract shall require the Department or Participants to hold harmless or indemnify the Contractor, insure or assume liability for the Contractor's negligence, waive the Participants' or the Department's sovereign immunity under the laws of Florida, or otherwise impose liability on the Department or Participants for which it would not otherwise be responsible under the Master Contract; Scope of Work or Payment Card Organization Rules. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract. Notwithstanding language to the contrary in any other document governing the contractual relationship between the parties, the Department and Participants are prohibited by Article VII, Section 10, of the Florida Constitution, from pledging the credit of the state and therefore cannot and does not indemnify any person. The parties do however, acknowledge that section 215.322, Florida Statutes, explicitly authorizes and encourages state agencies, the judicial branch, and units of local government to accept credit cards, charge cards, debit cards, or electronic funds transfers, and mandates the Department to develop or approve a standard contract for the acceptance of credit cards, charge cards, debit cards, or electronic funds transfers. The parties further acknowledge that in the Payment Card Organization Rules it is standard industry practice for the acceptance of such transaction modes to entail certain contingent liabilities which are often labeled as "indemnifications." Rather than "indemnifications," despite being labeled as such, it is the intent of the parties that any such contingent liabilities flowing through this Contract to the State of Florida, its branches, agencies, or units are the direct liabilities of each signor of a Participant Agreement, to the extent of the Participant's use of the Services. The parties recognize that the implementation of this intent may be impacted by judicial decisions or statutory changes. The Department shall notify the Contractor of any such decisions or changes as soon as reasonably possible upon the Department's awareness of them, so that the parties may discuss the implications of such events upon the contractual relationship.
1. Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Participants from any suits, actions, damages, and costs of every name and description arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to (1) a Participant's misuse or unauthorized modification of Contractor's products; (2) a Participant's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order; or (3) Participant's use of a Contractor provided Deliverable only to the extent of its hosted portion of processing transactions through a partially hosted or hosted gateway, or software in combination with computer programs, processes, hardware, software, data, systems, or services owned, licensed, or provided by Contractor's subcontractor or other partner in providing the Services, which use is not contemplated by the Contract or subsequent Change Order. If any product is the subject of an infringement suit or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Participants the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Participants the right to continue using the product, the Contractor shall remove the product and refund the Participants the amounts paid in excess of a reasonable rental for past use. The Participants shall not be liable for any royalties.
 2. The Contractor's obligations under the preceding paragraph with respect to any legal action are contingent upon the State or Participants giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Participants in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.
- C. Contractor agrees to protect, indemnify, defend and hold harmless the Department from and against any and all costs, claims, demands, damages, losses and liabilities arising from or in any way related to Contractor's breach of data

security or the negligent acts or omissions of Contractor related to this subsection provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent acts or omissions of a Participant.

- D. **Liability of the Parties.** Each party acknowledges that it is liable to the other subject to the limitations as set forth in paragraph 20 of PUR-1000 as modified herein, for claims, damages, or losses arising from the negligence of its employees, agents, and representatives, including both actions and failure to act (i) in accordance with the requirements of this Agreement, including the Payment Card Organizations Rules, and (ii) any violation of any applicable law, regulation, or order. "Losses" includes, but is not limited to, reasonable costs, assessments, fees and fines from the Payment Card Organizations. For avoidance of doubt, in the instance of losses arising out of a party's negligence, that party will be liable to the other party even if the losses involve the actions of a third party. For example, should a party fail to secure cardholder data and a third party is able to obtain and misuse such data, the party whose negligence resulted in the wrongful possession or misuse of the data will be liable to the other for losses related to the cardholder data compromise, assessments, fees and fines from the Card Organizations.
- E. The provisions of the General Contract Conditions of PUR 1000, section 20 shall apply but, for the avoidance of doubt, the limitations and exclusions of liability will not apply to exclude or limit the recovery of any damages required by Rule 60A-1.006, F.A.C., or attributable to any of the following:
1. fraud, intentional torts, willful misconduct (including intentional breach of contract), unlawful conduct, or gross negligence of or by the Contractor (or an entity or person for whom the Contractor is responsible) subject to a reasonable notice and cure period; or
 2. the Contractor's cessation or abandonment of any Services without providing Exit Transition Services substantially in accordance with the Contract.
 3. amounts due pursuant to Section §17.5681, F.S., resulting from a data breach caused by the Contractor. The parties understand that in no event shall Contractor be liable for payment of actual costs which Contractor has already paid for such data breach. Also, for avoidance of doubt, the maximum dollar amount attributable to direct damages in section 20 of PUR1000 will be the greater of (A) \$100,000 or (B) total cost calculated using the amount of fees and charges paid by the Department as to the Master Contract, or Participant as to the Participation Agreement, minus fees and charges paid by Contractor to necessary third parties, such as Card Organizations, and which are identified in the Price Schedule and required to be paid to such third parties.

The Department's and a Participant's maximum liability for any damages, regardless of form of action, shall in no event exceed the total cost of the Contract to the Contractor for the relevant products or services giving rise to the liability. Provided, however, that the foregoing limitation shall not apply to the following:

- (a) fraud, intentional torts, willful misconduct (including intentional breach of contract), unlawful conduct, or gross negligence of or by the Department or Participant (or an entity or person for whom the Department or Participant is responsible) subject to a reasonable notice and cure period;
- (b) amounts due resulting from a violation of Applicable Law or Card Organization Rules;
- (c) amounts due resulting from a data security breach caused by the Department or Participant,
- (d) the Department's or Participant's liability for chargebacks; or
- (e) the Department's or Participant's liability for payment of any and all third party fees as described in the Master Contract (Price Schedule - Attachment B)

XIII. Damages for Service Level Deficiencies

Remedies for Deliverables deficiencies are addressed in the Scope of Work in Attachment A.

XIV. Exit Transition Responsibilities

In the event of an expiration or termination of this Service, the Contractor shall provide 120 days' notice prior to the expiration or termination and provide a specific and detailed technical transition plan to the Department prior to any termination or data return. At a minimum, the technical transition plan shall include but not be limited to knowledge transfer for any technology support needed by the Department or its designee to continue services. In an effort to avoid any financial loss to the Department, the Contractor shall conduct such transition with the same degree of care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use.

XV. State Property Disposition

- A. Title to all property furnished by the Department or Participant under this Contract shall remain with the Department or Participant, and the Contractor shall surrender to the Department or Participant all property of the Department or Participant prior to settlement upon completion, termination, or cancellation. The parties shall settle any transfers of property which may have been required to be furnished to the Department or Participant or which otherwise belongs to the Department or Participant; and the Contractor shall provide written certification to the Department or Participant that the Contractor has surrendered all said property.
- B. Subject to Card Organization Rules and applicable superseding law that mandates otherwise, all Deliverables shall become and remain the Department's property upon receipt and acceptance. As between the parties, data provided to the Contractor by the Department (State Data as defined in Attachment A) will be and remain the property of the Department regardless of whether Contractor or the Department is in possession or control of the State Data. The State Data and Shared Data will be made available to the Department, upon its request, in the form and format reasonably

requested by the Department. Contractor and its representatives will not sell, assign, lease, or otherwise dispose of any State Data to third parties or commercially exploit the State Data other than for the benefit of the Department and Participants as authorized by the Contract or Payment Card Organization Rules, nor will any employee of the Contractor other than those on a strictly need to know basis have access to the State's data. Neither Contractor nor any of its representatives will possess or assert any lien or other right against or to any State Data in any circumstances.

Participants are not acquiring a copyright, patent, or other intellectual property right in any Service to the extent that they are solely commercial off-the-shelf products copyrighted by the Contractor, and licensed to the Participants during the term of the Contract, such as partially and fully hosted gateways.

XVI. Additions, Deletions and Substitutions

In the event services are required to be performed or equipment required to be purchased that are not set out in the Contract, but are within the general scope of the requirements, the Department and the Contractor will negotiate the terms covering the required services or equipment by adding or deleting any item from the terms of the Contract on a periodic basis as necessary when deemed in the best interest of the Department. The Contractor or Department will be responsible for submitting requests on a timely basis with sufficient documentation to allow evaluation of the request. The Department will consider changes by the Contractor to contract items, provided revisions are in accordance with the conditions and specifications contained in the Contract.

XVII. Contract Modification

This Contract may be amended only by a written agreement between both parties subject to the provisions of chapter 287, Florida Statutes. If a particular service or deliverable is inadvertently omitted or not clearly specified but determined to be operationally necessary, such service or deliverable will be provided by the Contractor through the contract amendment process.

XVIII. Nonexclusive Contract

This Contract is not an exclusive license to provide the services described in the Contract. The Department may, without limitation and without recourse by the Contractor, contract with other Vendors to provide the same or similar services as specified in Section 215.322, F.S.

XVIII. Statutory Notices

The Department shall consider the knowing employment by any contractor of unauthorized aliens a violation of Section 274A (e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. An entity or affiliate who has been placed on the public entity crimes list or the Discriminatory Vendor list may not submit a Response on a contract to provide any goods or services to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287, Florida Statutes.

XX. Compliance with Federal, State and Local Laws

The Contractor as well as its employees, subcontractors, and agents shall comply with all applicable federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, worker's compensation, licenses and registration requirements.

XXI. Background and Employment Eligibility Verification

The Contractor is responsible for payment of costs if any, and retaining records relating to, employment eligibility verification, which records are exempt from Chapter 119, F.S., and which verification requires the following:

- A. The Contractor must participate in the federal E-Verify Program for Employment Verification under the terms provided in the "Memorandum of Understanding" with the federal Department of Homeland Security governing the program if any new employees are hired to work on this Contract during the term of the Contract. The Contractor agrees to provide to the Department, within thirty days of hiring new employees to work on this Contract, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen, which contains proof of enrollment in the E-Verify Program. Information on "E-Verify" is available at the following website:
http://www.dhs.gov/files/programs/gc_1185221678150.shtm.
- B. The Contractor further agrees that it will require each subcontractor that performs work under this contract to enroll and participate in the E-Verify Program upon hiring new employees during the term of this Contract. The Contractor shall obtain from the subcontractor(s) a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify Program and make such record(s) available to the Department upon request.
- C. Compliance with the terms of this Employment Eligibility Verification provision will be an express condition of the Contract and the Department may treat a failure to comply as a material breach of the Contract.
- D. Background checks - Contractor must provide an attestation that a background check has been or will be conducted on the team members who will work on site at DFS. Background checks are to be obtained by the Contractor online from FDLE at http://www.fdle.state.fl.us/Criminal_History. In their Implementation Plan the Contractor will explain how they will assure that their staff will meet the standards before the requested staff may work on site under the Contract. The Contractor is responsible for payment of, and retaining records relating to, employee security checks, which

records are exempt from Chapter 119, F.S. It is not anticipated that any workers will be required to work on-site. Attending meetings with Department or Participant personnel at a Department or Participant facility does not constitute working onsite.

XXII. Electronic Accessibility

If applicable, Section 508 of the Rehabilitation Act Amendments, 29 USC Sec. 794, compliance information on the supplies and services in this contract are available on a website indicated by the Respondent in the Response or resulting Contract. The Electronic and Information Technology standard can be found at: <http://www.section508.gov/>.

XXIII. Duty of Continuing Disclosure of Legal Proceedings (Information Regarding Litigation or Regulatory Action)

The Contractor shall provide information to the Department regarding any material litigation brought against Contractor, which would cause a reasonable party to be concerned about the Contractor's performance, or if Contractor is engaged in conduct that would constitute a breach of this Contract or a violation of Florida law, regulations or public policy. One method that the Contractor can provide this information is for the Contractor to make all disclosures required by its regulators, including all required disclosures in its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, which are updated in Reports on Form 8-K, all of which are filed with the Securities and Exchange Commission. Those Reports include disclosures of material litigation, investigations and other matters as required by federal law and are publicly available ("Proceeding"). In the event that any such Proceeding disclosed by the Contractor, or of which the Department or a Participant otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about the ability of the Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or whether the Contractor (or a Subcontractor hereunder) in performing Services for the Department or Participant is engaged in conduct which is similar in nature to conduct alleged in such proceeding, which conduct would constitute a breach of this Contract or a violation of Florida law, regulations or public policy, then the Contractor shall be required to provide the Department all reasonable assurances requested by the Department to demonstrate that the Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions.

XXIV. Auditing and Compliance Standards

The Contractor must maintain accurate and complete financial records of its activities and operations relating to this Contract and Participation Agreements, complete books, documents, accounting records and other evidence, that specifically relate to this Contract, in accordance with generally accepted accounting principles. The Contractor shall retain such records, and shall make available to the Department, upon reasonable request, during the term of this Contract and the Contractor shall retain records relating to the Contract and its performance in accordance with the Payment Card Organization Rules subject to applicable law. In the event any litigation, claim or audit is instituted prior to the expiration of the required period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to the Department upon request and inspection allowed pursuant to PUR 1000-18.

XXV. No Advertising or Endorsements

The Contractor's services to the Department may be generally stated and described in the Contractor's professional resume. The Contractor may not give the impression in any event or manner that the Department recommends or endorses the Contractor. This clause replaces any and all other agreements regarding publicity. Any and all limitations of speech regarding a party are void.

XXVI. Export Control

Contractor certifies that by entering into this contract, it is, and during the term will ensure it remains, in compliance with the U.S. export control laws.

XXVII. Authorization of Business Third Parties to Access State Data

The Department hereby authorizes the Contractor to provide access to the Department or a Participant's staff hired via staff augmentation or other contracted service related to the state's performance of its duties under the Contract (Business Third Parties), to the State Data and the Contractor represents that such access shall be in accord with the following: (i) each Business Third Party shall respond affirmatively to nondisclosure requirements protecting the Department's Confidential Information as set forth in a Nondisclosure Acknowledgment; (ii) all Business Third Parties accessing the State Data shall be licensed as named users; (iii) Business Third Parties are expressly limited to screen access to the State Data; (iv) in no circumstances may Business Third Parties have access to modify State Data; (v) in no circumstances shall Business Third Parties Use the State Data in their operations or management of the business of such Business Third Parties; and (vi) such use shall not constitute an unauthorized exportation of any Confidential Information under U.S. Government laws and regulations.

The Department or the applicable Participant will assist the Contractor in resolving software malfunctions by providing the Contractor: (i) temporary remote electronic access to the Department's system (within the parameters allowed by the Department's Project Management Office) for the sole purpose of conducting maintenance in accordance with the Contract

(ii) information and evidence of the malfunction (iii) and appropriately qualified personnel available to answer questions and perform remedial functions.

XXVIII. Functional Equivalents and Substitutions

The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Department shall determine whether a product is acceptable as an equivalent. Minimum qualifications for acceptance of substitutions include: (i) the substitute item shall meet or exceed the applicable requirements and specifications set forth in this Contract or Scope of Work; (ii) any substitute item shall be compatible with the existing deliverable at the time the substitute is proposed for use; (iii) the substitute item or service shall have the capacity and performance characteristics equal to or better than those of the item it is to replace; (iv) the substitute item or service shall offer the same or increased functionality as the item it is to replace; and (v) the substituted item must be approved, in advance, by the Department.

With any commodity offered as an equivalent, the Contractor must certify that it has consulted with the manufacturer and can represent it is not scheduled to be discontinued by the manufacturer within the next year; and if the manufacturer does discontinue the commodity, the Contractor shall certify that it will replace such commodity at no cost to the Department or Participant. This is not intended to restrict upgrades contemplated by the Scope of Work.

XXVIII. Contractor Requirements and Responsibilities

Subcontractors may be used. However, the Contractor will be responsible for meeting the requirements and timeframes provided regardless of delays or non-performance caused by a subcontractor. Assignment is allowed upon notice to the Department and amendment to substitute the assignee as party to the Contract. It is mandatory for the Contractor's assignee to assume full responsibility of delivery, installation, maintenance, and support Services and all other provisions of the Contract.

XXX. Miscellaneous

- A. This Contract includes the Master Contract document and all other documents listed in Section 2 of the Master Contract document which embodies the entire agreement of the parties. There are no other provisions, terms, conditions, or obligations. This Contract supersedes all previous oral or written communications, representations or agreements on this subject. In any conflict between this Contract and any referenced or attached addendum the terms and conditions of this Contract shall take precedence and govern. Acceptance of Service or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.
- B. Dispute Resolution: any dispute concerning performance of the Contract, other than card disputes or other dispute processes required by the Payment Card Organization Rules or NACHA regulations shall be subjected to the following process:
 1. Representatives of the Contractor and the Department shall meet as often as the parties reasonably deem necessary to gather and furnish information regarding the issue in dispute which the parties regard as appropriate to resolve the dispute;
 2. The party representatives shall discuss the matter and negotiate in good faith to resolve the matter;
 3. In the event that an agreed upon resolution is not reached through negotiation, the Department's designated Contract Manager, shall make a determination about the matter and reduce the decision to writing and send a copy to the Contractor at a previously provided address;
 4. In the event the Contractor is dissatisfied with the Department's decision, the Contractor may initiate a formal alternative dispute resolution mechanism or escalation procedures, if such is authorized by the Scope of Work; however no mandatory mediation nor arbitration is authorized and any provisions to the contrary do not apply to this Contract; and
 5. Failing success of both the informal and formal dispute resolution processes identified above, jurisdiction for any dispute arising under the terms of the Contract will be in the courts of the State of Florida, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract.Disputes regarding card disputes or other dispute processes required by the Payment Card Organization Rules or NACHA regulations will be more particularly identified in the Department's Implementation Plan.
- C. The laws and rules of the State of Florida and the U.S. Federal Law govern this Contract.
- D. The Contractor agrees that no funds received by it under this Contract will be expended for the purpose of lobbying the Legislature or a State Agency pursuant to section 216.347, Florida Statutes, except that pursuant to the requirements of section 287.058(6), Florida Statutes, during the term of any executed contract between the Contractor and the Department, the Contractor may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that contract.
- E. The Contractor is an independent contractor, and is not an employee or agent of the Department or Participant.
- F. All contracted services, entailing access to the Department's secure information or facilities, are to be performed solely by the Contractor and may not be subcontracted or assigned without the prior written consent of the Department. The Department may refuse access to or require replacement of any Contractor employee, subcontractor or agent, for cause, including but not limited to, technical or training qualifications, quality of work, change in security status, or non-

compliance with a Department policy or other requirement. Such action shall not relieve Contractor of its obligation to perform all work in compliance with the Contract. The Department may reject and bar from any facility for cause any of Contractor's employees, subcontractors or agents. This paragraph does not apply to the Contractor's general use of subcontractors who are not given access to the Department's secure information or facilities, nor does it apply to the attendance of meetings by contractors, employees, agents, or subcontractors, within the Department's secure facilities, unless the basis of the Department's denial of access is based on safety or security considerations.

- G. The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations regarding exit transition processing and settlement of card transactions, confidentiality, proprietary interests, data security obligations, data access, and limitations of liability shall survive termination, cancellation or expiration of this Contract.
- H. If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.
- I. During the term of this Contract, Contractor shall not knowingly employ, subcontract with or sub-grant to any person (including any non-governmental entity in which such person has any employment or other material interest as defined in Section 112.312 (15), Florida Statutes) who is employed by the State or who has participated in the performance or procurement of this Contract except as provided in Section 112.3185, Florida Statutes.
- J. No unilateral acts by the Contractor are authorized and all tasks asserted to be in the Contractor's discretion are applicable only if the acts are authorized by the Master Contract or Scope of Work, and will be only upon prior notice to the Department. There is no deemed acceptance of Deliverables. All Deliverables must be received and accepted in writing by the Contract Manager before payment. No Contractor documentation that is referenced but not attached to the Contract will apply unless agreed to in the final Master Contract or a final Participation Agreement. Notwithstanding any provisions to the contrary, no "click-wrap" Software License shall be effective upon downloading unless and until the Department has reviewed it and agreed to its terms in advance of download. Contractor shall provide all information that the Department or Participants cannot easily obtain in order to make its determination.

XXXI. Execution in Counterparts; Authority to Sign.

This Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

XXXII. Contract Administration

- A. The Department Contract Manager is: [REDACTED]
- B. The Contractor Contract Managers are:
1. For Bank of America: [REDACTED]
 2. For Bank of America Merchant Services: [REDACTED]
- C. All written and verbal approvals referenced in this Contract must be obtained from the parties' Contract Managers designated in this Section or designees. Notices required to be in writing must be delivered or sent to the intended recipient by hand delivery, certified mail or receipted courier and shall be deemed received on the date received or the date of the certification or receipt.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Contract.

Florida
Division
Chief

Signature

Title:

Date:

CDS

6/12/13

Bank of America, N.A.

Contract

Signature

Title:

Date:

Senior Vice President

4-23-2013

Bank of America Merchant Services, LLC
Contractor Representative(s)

Signature

Title:

Date:

SVP

4/17/13

INSERT DOCUMENTS IN THE FOLLOWING ORDER

Attachment A – Scope of Work

Attachment B – Price Schedule

Attachment C – Service Agreements

1. Current Terms and Conditions RPO, PCG, AND ACH for State of Florida (used by Participants using RPO or PCG),
2. Master Services Agreement (MSA)
3. Bank of America Merchant Services Operating Procedures Guide if MSA is used
4. Account Updater Addendum to the MSA
5. TransArmor Addendum to the MSA
6. Data File Manager Addendum to the MSA
7. Dynamic Currency Conversion Addendum to the MSA-
8. MobilePay Addendum to the MSA
9. PayPoint Addendum to the MSA
10. eCheck guarantee services under a TeleCheck Agreement
Telecheck agreement is fully contained in the Telecheck Agreement

Attachment D – Participation Agreement

Attachment E – PUR Forms 1000 and 1001

Attachment F – Volumes, Equipment and ePayment Solutions

**ATTACHMENT D
PARTICIPATION AGREEMENT
BETWEEN**

and

This Participation Agreement is entered into between _____ ("Contractor") and _____, Participant as defined in the Scope of Work, Attachment A to the Master Contract with the Department of Financial Services. The Master Contract together with the Merchant Services terms and conditions and other attachments and incorporated documents are collectively referred to herein as the "Master Contract". Signatures on incorporated documents do not serve to negate the prevailing provisions of the Master Contract.

I. PARTICIPATION TERMS AND CONDITIONS

- A. All defined terms in the Master Contract apply to this Participation Agreement.
- B. By signing this Participation Agreement, the Participant and the Contractor agree to be bound by the terms of this Participation Agreement, and the Master Contract, in the performance of their obligations. By signing below, Participant represents that a copy of the Master Contract has been provided or made available to it.
- C. If Participant is an Agency Participant, Participant hereby authorizes Contractor to share any and all information related to the Master Contract, excluding personally identifiable information of a cardholder, it has or obtains pursuant to this Participation Agreement and the Master Contract with representatives of the State of Florida and the specific Agency of the State of Florida to which it reports. If a Participant is a Local Government Participant, Participant hereby authorizes Contractor to share with the Department information that is required in the Dashboard under the Master Contract, excluding personally identifiable information of a cardholder.
- D. The parties shall retain copies according to their retention schedules under applicable law.
- E. Participants who elect specialized services that are subject to additional agreement terms offered as optional services under the Master Contract, are subject to those terms; however additional agreement terms do not serve to negate the prevailing provisions of the Master Contract.

II. MERCHANT SERVICES TERMS AND CONDITIONS

Participant will provide Contractor with updated business and financial information concerning Participant, including evidence of required licenses and other information and documents Contractor may reasonably request from time to time. All material marked Confidential that Contractor receives from Participant will be used only by Contractor, or Card Organizations or other third parties necessary to perform services under this Participation Agreement or related services and reporting. At any reasonable time, Contractor or any Card Organization may audit Participant's records relating to this Participation Agreement. Florida law, as applied to agreements made without reference to conflict of law provisions, governs the Master Contract and this Participation Agreement.

III. FEES TO BE PAID TO CONTRACTOR

- A. The Participant agrees to pay the Contractor all fees and charges in Attachment B of the Master Contract.
- B. Such fees and charges will be billed monthly to the Agency and Local Government Participants via an invoice process, unless a Local Government Participant elects to have the Contractor debit their Settlement Account.

IV. EFFECTIVE DATE AND TERMINATION

- A. This Participation Agreement will become effective on the date it is signed by all parties.
- B. Unless earlier terminated by one of the parties, this Participation Agreement remains in full force and effect until the earlier of (i) termination of the Master Contract or (ii) any date provided here: _____, not to exceed the expiration or termination of the Master Contract.
- C. In the absence of a default by the other party, either party may terminate this Participation Agreement at any time by giving the other party ninety (90) days prior written notice. Either party may terminate this Participation Agreement after a default by the other party as provided in the Master Contract.
- D. In the event of non-payment of fees because of insufficient funds in the Settlement Account or non-payment of an invoice for forty (40) days or more, Contractor may cease processing following 10 days notice from Contractor according to the Master Contract. If Participant is an Agency Participant, payment shall be pursuant to section 215.422, F.S. If Participant is a Local Government Participant, payment shall be pursuant to legal requirements applicable to a Local Government Participant.

V. NOTICES

- A. Any notice required or permitted to be given under this Participation Agreement or the Master Contract from one party to the other will be in writing and will be given and deemed to have been given when actually received, if hand delivered, delivered by telephonic facsimile transmission equipment and confirmed by telephone with and original mailed or hand-delivered thereafter or mailed by certified or registered mail with postage prepaid to the party or their successor at the address specified as follows:
1. Participant:
 2. Contractor:
 3. Routine notices given by Contractor to Participant, such as transaction details, changes in terms required by systems updates or Payment Card Organization changes and any reasonable notice required by the Contractor's services agreement or addenda, schedules, and attachments, may be delivered by electronic mail to the address provided by Participant above.
- B. Either party may change the address to which notices are to be delivered by giving to the other party not less than ten (10) Business Days prior written notice thereof.

VI. ELECTION OF OPTIONAL SERVICES

Participant hereby elects to receive the following optional services pursuant to the terms and conditions contained in the various service addenda which are incorporated by reference in the Master Contract and attached thereto. The terms and conditions contained in a particular addenda shall not apply to Participant unless and until Participant elects, by indicating herein, or by future written election signed by the parties, to utilize such optional service.

- ☐ Account Updater
- ☐ Data File Manager
- ☐ Dynamic Currency Conversion
- ☐ MobilePay
- ☐ PayPoint
- ☐ TransArmor

VII. MISCELLANEOUS PROVISIONS

- A. This Participation Agreement, incorporating the terms of the Master Contract, contains the entire understanding of the parties and supersedes any and all previous discussions,

proposals, or agreements, if any, between the parties with respect to the subject matter hereof.

- B. This Participation Agreement may not be amended except by an instrument in writing signed by an authorized representative of each of the parties.
- C. Limitation of liability shall be according to PUR 1000-20 as modified in the Master Contract.
- D. This Participation Agreement is binding on the parties and their successors and assigns.

Participant's

Name: _____

Select One: ☐ Agency Participant ☐ Local Government Participant

By: _____

Printed Name: _____

Title: _____

Date: _____

Contractor's Name: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Contractor's Name: _____

By: _____

Printed Name: _____

Title: _____

Date: _____