REFERENCE AWARD **BID # XC-0606-13**

Subject: Piggyback State of Florida Contract # DFS (TR) ITN 11/12-17TR175 for Electronic Payment Receipts System for Credit Card Fees and Services

Department: Treasury

Description of Purchase: Recommend approval to increase the piggyback award with Bank of America through the State of Florida Contract DFS (TR) ITN 11/12-17TR175 for Electronic Payment Receipts System for Credit Card Fees and Services in the amount of $1,298.00 ($649.00 each) for the purchase of two (2) credit/debit card electronic systems. Total revised estimated expenditure in the amount of $265,000.00.

Funding Source: Various Accounts - To be executed by formal contract amendment through the Office of General Counsel

Reference Award To: Bank of America

Price Justification: See Attached

Total Award: $265,000.00 Requisition # **N/A**

Attachments: Recommendation Memo and Previous Awards

Concurrence By: Patrick Greive, Treasurer

THE ABOVE PURCHASE IS RECOMMENDED FOR AWARD IN ACCORDANCE WITH CHAPTER 126.107.

Analyst: Annette Burney

For - Gregory Pease, Chief
Procurement Division

APPROVAL OF GENERAL GOVERNMENT AWARDS COMMITTEE

"ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS"

CHAIRMAN ***DATE***

ACTION OF AWARDING AUTHORITY DATE: _____

APPROVED_____ DISAPPROVED _____

OTHER _____

SIGNATURE OF AUTHENTICATION _____

CITY OF JACKSONVILLE
NEIGHBORHOODS

10/28/16 12:52:20
Procurement Division

October 28, 2016

To: Gregory Pease, Chief, Procurement Division
Finance Department

Through: James Crosby, Division Management Consultant
Animal Care & Protective Services Division

10/28/16

From: Chuck McNeil, Finance Manager
Office of the Director

RE: **Request to Amend Award XC-0606-13, Bank of America with Addendum to Agreement: Special Provisions Regarding Clover Service**

This request is to amend award XC-0606-13, Electronic Payment Receipts System - Piggybacking. The Animal Care and Protective Services Division will purchase two credit/debit card electronic systems recommended by the Council Auditor's Office.

The estimated price at this time to purchase two units is $649.00/each for a total of $1,298.

Jim McCain from the Office of General Counsel has reviewed the addendum and recommended GGAC approval for award authorization for the Mayor's signature. Once the addendum has been signed the equipment can be ordered.

If you have questions or need further assistance, please contact James Crosby at 255-7391, thank you.

Attachments: Addendum to Agreement: Special Provisions Regarding Clover Service
Award XC-0606-13
Email from OGC

Leslie-Burney, Annette

From: Greinke, John
Sent: Tuesday, November 01, 2016 10:34 AM
To: Leslie-Burney, Annette
Subject: FW: 345542646889 - ANIMAL CARE&PROTECT SVCS

See below for email quote.

John Greinke
ACPS Administrative Coordinator
Animal Care and Protective Services
W. (904) 255-7392 C. (904) 813-5630

From: Griffis, Brent (BAMS) [mailto:Brent.Griffis@bankofamericamerchant.com]
Sent: Thursday, August 11, 2016 3:33 PM
To: Greinke, John
Subject: 345542646889 - ANIMAL CARE&PROTECT SVCS

Hello John,
Per our conversation:

For the stand alone non- wireless devices
Clover Mini –
Purchase option: $649 per unit in 1 payment (this includes shipping costs)
$629x2 = 1298 plus local tax rate

For the WIRELESS unit (wifi/ 3g/4g)
Clover Mobile-
Purchase option: $849 per unit in 1 payment (this includes shipping costs)
$829x2 = 1698 plus local tax rate

Please let me know if you have any questions.

Return/ contact information,

Brent Griffis
Senior Product Specialist, Business Consultant
Bank of America Merchant Services
Office 509.455.1405 Fax 402.932.9469
Brent.Griffis@bankofamericamerchant.com

===
This message w/attachments (message) is intended solely for the use of the intended recipient(s) and may contain information that is privileged, confidential or proprietary. If you are not an intended recipient, please notify the sender, and then please delete and destroy all copies and attachments, and be advised that any review

or dissemination of, or the taking of any action in reliance on, the information contained in or attached to this message is prohibited.

Unless specifically indicated, this message is not an offer to sell or a solicitation of any products or services, an official confirmation of any transaction, or an official statement of Sender. Subject to applicable law, Sender may intercept, monitor, review and retain e-communications (EC) traveling through its networks/systems and may produce any such EC to regulators, law enforcement, in litigation and as required by law.

The laws of the country of each sender/recipient may impact the handling of EC, and EC may be archived, supervised and produced in countries other than the country in which you are located. This message cannot be guaranteed to be secure or free of errors or viruses.

References to "Sender" are references to any subsidiary of Banc of America Merchant Services, LLC. Banc of America Merchant Services, LLC is not a bank, does not offer bank deposits, and its services are not guaranteed or insured by the FDIC or any other governmental agency. Attachments that are part of this EC may have additional important disclosures and disclaimers, which you should read.

```
<<
        image001.png    (10.7KB)

        (10.7KB)
 >>
```

Addendum to Agreement: Special Provisions Regarding Clover Service

This Addendum to Agreement: Special Provisions Regarding Clover Service (this "**Addendum**") supplements, and is hereby made a part of, the merchant services agreement (the "**Agreement**") you have entered into with Banc of America Merchant Services, LLC ("**Processor**") and Bank of America, N.A. ("**Bank**") or their respective predecessors. This Addendum governs the provision of the Clover Service (as defined below) to you by Processor. By signing below you are electing to receive the Clover Service and you agree to the terms and conditions set forth in this Addendum.

The Clover Service is provided to you by Processor and not Bank. Bank is not a party to this Addendum, and you acknowledge that Bank is not liable to you in any way with respect to the Clover Service. For the purposes of this Addendum, the words "we," "our" and "us" refer only to the Processor and not the Bank.

The Clover Service, transactions processed, and other matters contemplated under this Addendum are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Addendum directly conflict with another provision of the Agreement, in which case the terms of this Addendum will control.

1. **Definitions**. Capitalized terms used herein shall have the meanings given to such terms as set forth in this Addendum or as defined elsewhere in the Agreement.

"**Clover Marks**" means the trademarks or service marks used in connection with the Clover Service.

"**Clover Service**" means (i) the website associated with the Clover Service, if any, but not any website associated with an application marketplace accessible via the Clover Service; (ii) the object code version of the software applications resident on a Device at the time we provide you with the Device or "pushed" to your Device by us, but excluding any such software applications developed by the Bank; (iii) the object code version of the software that enables such applications listed in (ii) above; (iv) Processor-provided internet-based services, and (v) any related updates (including software maintenance or bug fixes), materials, documentation and derivative works released by Processor from time to time, all of which are designed to assist with the management of your business and facilitate the provision of certain Services (e.g., payment processing) under the Agreement. For the avoidance of doubt, the term software in the preceding sentence does not include any software that may be obtained by you separately from the Clover Service (e.g., any applications downloaded by you through an application marketplace). The Clover Service is deemed part of the "Services," as defined in and provided under the Agreement.

"**Customer**" means a Person who makes a purchase of goods or services from you, the transaction for which utilizes the Clover Service.

"**Customer Information**" means information about your Customers (e.g., name, mailing address, e-mail address, telephone number) obtained in connection with your use of the Clover Service.

"**Device**" means a tablet, smartphone, or other mobile or fixed form factor identified by Processor from time to time as compatible with and capable of supporting the Clover Service. For the avoidance of doubt, the Device is deemed to be "Equipment" or "Merchant Equipment" as defined in the Agreement.

"**Third Party Services**" are the services, products, promotions or applications provided by someone other than Processor, including, for example, an application marketplace.

2. **License Grant**. During the term of this Addendum, Processor grants you a personal, limited, non-exclusive, revocable, non-transferable sublicense, without the right to further sublicense or assign in any way, to electronically access and use the Clover Service solely in the United States to manage your establishment and conduct associated point of sale activities within the United States in accordance with this Addendum. For purposes of this Addendum "United States" does not include U.S. Territories or possessions. The Clover Service is for your internal business use only. This Addendum does not grant you any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain our, our vendors', or our licensors' (as applicable) sole and exclusive property, and any and all right, title and interest associated with the Clover Service not expressly granted by Processor in this Addendum are deemed withheld.

3. **Restrictions**. You may not, nor may you permit any third party to do any of the following: (a) access or attempt to access the Clover Service (or any part) that are not intended or made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Clover Service (or any part), except to the extent that such restriction is expressly prohibited by law; (c)

modify, translate, or alter in any manner, the Clover Service (or any part) or the Clover Marks; (d) create derivative works of or based on the Clover Service (or any part) or the Clover Marks; (e) except for backup and archival purposes, directly or indirectly copy the Clover Service (or any part); (f) republish, upload, post, transmit, disclose, or distribute (in any format) the Clover Service (or any part) except as permitted herein; (g) access or use (in any format) the Clover Service (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of law or otherwise; (i) use or ship the Clover Service (or any part) outside of the United States, or access the Clover Service (or any part) from outside the United States, without in any case obtaining our advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Service (or any part) or the Clover Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of the Clover Service, prevent access to or use of the Clover Service by other users, or in our reasonable judgment impose an unreasonable or disproportionately large load on our infrastructure, network capability or bandwidth; or (l) use the Clover Service (or any part) except as permitted in Section 2.

4. **Clover Service Limitations and Requirements**.

4.1. You may access the Clover Service through your Device using a wired (ethernet) or wireless (wifi or cellular) connection to the Internet. You are solely responsible for the payment of any fees that may be imposed by your Internet/data provider. Your use of the Clover Service may be subject to: (a) the terms of your agreements with your Internet/data provider; and (b) the availability or uptime of the services provided by your Internet/data provider.

4.2. You may use the Clover Service to conduct point of sale activities offline; transactions initiated offline will be queued and submitted for authorization when Internet connectivity to the Clover System is restored. However, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Clover Service is used offline.

4.3. The Clover Service does not function with every mobile device. Processor may alter which Devices are approved as compatible with the Clover Service in our discretion from time-to-time.

4.4. We or our service providers may perform maintenance on the Clover Service from time to time which may result in service interruptions, delays, or errors. You may be offered new services or software that may be in beta testing phase and not final. As such, the Clover Service may contain errors and "bugs" that may result in failure. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we or our service providers may contact you in order to assist you with the Clover Service and obtain information needed to identify and fix any errors.

4.5. You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Clover Service that are posted on the Clover website or otherwise provided or made available to you.

4.6. You are solely responsible for compliance with all laws, rules, and regulations that are applicable to your business, and notwithstanding your use of the Clover Service to facilitate the management of your business, we disclaim any and all liability for your failure to comply with such laws, rules, and regulations.

4.7. You are solely responsible for ensuring the accuracy of all information and data regarding your business that you provide to us or our service providers in connection with the Clover Service (e.g., menus loaded onto the Device). In addition, you are solely responsible for verifying that all information and data loaded onto a Device by us or our service providers at your request are accurate prior to your business use of such Device. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.

4.8. You shall comply with the following requirements in connection with your use of the Clover Service:

a) With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device himself; you are NOT permitted to add or modify any Customer Information (including but not limited to phone number and email address) on behalf of a Customer.

b) With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent check box displayed on the Device himself; you are NOT permitted to add or modify a Customer's consent indication on his behalf.

c) You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer's provided phone number, street address, and/or email address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.

d) NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE CUSTOMER INFORMATION AND TO ALLOW YOUR CUSTOMERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM YOU, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED HIS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIMES STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

5. **Fees**. You shall pay Processor the fees for the Clover Service as set forth below.

Fee	Description
Clover Services Fee: $0.00 /month	The Clover Services Fee is charged monthly for the license of the Clover Service for the quantity of Devices you have leased or purchased as of the effective date of this Addendum. Additional Devices are available for an additional charge. This fee will appear on your Merchant Account statement as one amount for all Devices (including additional Devices requested after the date hereof).
Load fee: $0.00	The Load Fee is charged for each time we load your menu or list of services or products to your Device.
Processing Fees	Processing fees for transactions processed using the Device are the same as for non-Clover Service transactions, which are set forth in your Agreement.

6. **Equipment**. If you purchase your Device and other equipment and/or peripherals related to the Clover Service (collectively, the "**Clover Equipment**") from us, the terms of the Clover Equipment Purchase Agreement set forth in Schedule A to this Addendum will apply to you with respect to the Clover Equipment described therein. In such event, Schedule A will be deemed to be part of this Addendum and your Agreement, it will govern your purchase of Clover Equipment, and it will supersede any other language in the Agreement or elsewhere with respect to your purchase of Clover Equipment. If you lease your Clover Equipment, you must enter into a separate lease agreement with First Data Merchant Services Corporation (through its business unit, First Data Global Leasing). If you lease your Clover Equipment or if you provide your own equipment to use with the Clover Service (as approved by Processor), Schedule A will not apply to you. Please note that such lease agreement may have a different term length than your Agreement.

7. **Term and Termination**. This Addendum shall become effective on the day we begin providing the Clover Service to you and shall end when terminated as set forth herein. This Addendum may be terminated at any time by either party upon thirty (30) days' written notice to the other party. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, we may suspend the Clover Service or terminate this Addendum if (i) we determine that you are using Clover Service for any fraudulent, illegal, or unauthorized purpose, (ii) you violate the terms of this Addendum or an Event of Default occurs under the Agreement, (iii) we terminate our agreement with any third parties that are involved in providing the Clover Service, or (iv) Processor otherwise decides to discontinue providing the Clover Service. You acknowledge and agree that an occurrence of (i) or (ii) above may be deemed an Event of Default under the Agreement, thereby affording Processor and Bank all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Agreement (and this Addendum) without notice. Further, this Addendum will terminate automatically upon the termination of the Agreement. Upon termination of this Addendum for any reason, you may remain responsible for the full amount of the Clover Service License Fees through the end of the calendar month in which such termination is effective.

8. **Account Registration.** We may require you to register and create a "Member" or "Merchant" account to use the Clover Service. If and when prompted by our registration process, you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true,

accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, we have the right to terminate your Clover Service account ("**Account**") and refuse any and all current or future use of the Clover Service.

9. **Privacy and Data Use**. All data that you provide or are collected from you in connection with your use of the Clover Service (collectively, "**Account Data**"), are collected by Clover Network, Inc. and not Processor or Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Network, Inc. Privacy Policy (available at https://www.clover.com/privacy_policy). You acknowledge and agree that Processor and Bank may access such Account Data upon our request to Clover, and our use of your Account Data is governed by the terms set forth in the Agreement. You grant us permission to anonymously combine your Account Data with that of other merchants in order to improve our services to you. Subject to compliance with applicable legal requirements and Card Organization Rules and notwithstanding any language to the contrary in the Agreement, certain data collected by us or our service providers in connection with the Services may be shared with third parties, and used by us, our service providers, or third parties for the purpose of providing additional products and services to you, other merchants, or other third parties.

10. **Third Party Services**. The Clover Service may contain links to Third Party Services (e.g., an application marketplace). If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). If you elect to use Third Party Services, information you submit in your application to use Third Party Services will be provided to the provider(s) of such Third Party Services and not to us. Your access of any Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Addendum or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND ANY APPS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT YOUR OWN RISK. PROCESSOR WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND PROCESSOR EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. PROCESSOR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PROVIDER OF A THIRD PARTY SERVICE, OR ANY THIRD PARTY SERVICE OR THIRD PARTY PRODUCT ADVERTISED OR OFFERED THROUGH THE CLOVER SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND PROCESSOR WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

11. **Protecting Your Information**. You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access the Clover Service are kept safe and confidential. You must prevent unauthorized access to and use of any Account Data. You are responsible for all electronic communications sent to us or to any third party (including Clover Network, Inc.) containing Account Data. When we receive communications containing Account Data, we assume you sent it to us. You must immediately notify us if you become aware of any loss, theft or unauthorized use of any Account Data (see Clover Service support center contact information below). We reserve the right to deny you access to the Clover Service, in whole or in part, if we believe that any loss, theft or unauthorized use of any Account Data or access to information has occurred.

12. **Clover Service Disclaimer**. USE OF THE CLOVER SERVICE AND CLOVER EQUIPMENT IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOVER SERVICE IS PROVIDED "AS IS" AND PROCESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE CLOVER SERVICE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SERVICE WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT THE CLOVER SERVICE IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

13. **Indemnity**. Without limiting your indemnification obligations in the Agreement, you agree to indemnify and hold us harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to:

a) Your failure to comply with all terms and conditions in this Addendum;

b) Your use, sharing or disclosure of any Customer Information obtained in connection with your use of the Clover Service;

c) The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of the Clover Service; or

d) Any other party's access and/or use of the Clover Service with your unique username, password, or other appropriate security code.

14. **Notices**. We may provide notices and other information regarding the Clover Service to you via the method(s) described in the Agreement or in the E-Sign Consent Agreement set forth below. Your notices to us shall be delivered via the method(s) described in the Agreement.

15. **Amendment.** We have the right to change or add to the terms of this Addendum at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Clover Service with notice provided to you as set forth in the Notices section of this Addendum. Any use of the Clover Service after our publication of any such changes shall constitute your acceptance of this Agreement as modified.

16. **Ideas**. You may choose or we may invite you to submit comments or ideas about the Clover Service, including, without limitation, about how to improve the Clover Service ("**Ideas**"). By submitting any Idea, you agree that: (a) we expressly disclaim any confidentiality obligations or use restrictions, express or implied, with respect to any Idea, (b) your submission will be non-confidential, and (c) we are free to use and disclose any Idea on an unrestricted basis without notifying or compensating you. You release us from all liability and obligations that may arise from our receipt, review, use or disclosure of any Ideas or portion of any Idea.

17. **Third Party Beneficiaries**. Processor's Affiliates and any Persons Processor uses in providing the Clover Service are intended third party beneficiaries of this Addendum, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this Addendum, nothing in this Addendum is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Addendum.

18. **Support**. For all Clover Service support (including questions related to the Device), please contact the dedicated Clover support center at 1-800-430-7161 or at cloversupport@firstdata.com.

E-SIGN CONSENT AGREEMENT FOR NOTIFICATION OF DISCLOSURES RELATED TO THE CLOVER SERVICE AND THE AGREEMENT

1. Consent

By signing this Addendum, you consent and agree that:

a. Processor can provide disclosures required by law and other information about your legal rights and duties to you electronically.

b. Where required or requested, your electronic signature (via "click-through" or other method) on agreements and documents relating to the Clover Service has the same effect as if you signed them in ink.

c. Processor can send all communications, billing statements, amendments to this Addendum, notices, and other disclosures or information regarding the Clover Service or your use of the Clover Service or in connection with the Agreement, including but not limited to any Card Organization notices (collectively defined as "**Disclosures**") to you electronically (1) via e-mail, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.

d. If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.

e. This consent applies to all future Disclosures sent to you in connection with this Addendum, the Clover Equipment Purchase Agreement (if applicable), the Agreement, or your use of the Clover Service or the Services as defined in the Agreement.

2. Legal Effect

By consenting, you agree that electronic Disclosures have the same meaning and effect as if Processor provided paper Disclosures to you. When Processor sends you an email or other electronic notification alerting you that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as

if Processor provided a paper Disclosure to you, whether or not you choose to view or print or download the Disclosure.

THIS SERVICE AGREEMENT HAS BEEN EXECUTED BY PROCESSOR (WITHOUT WET SIGNATURE) AND ON BEHALF OF AND BY THE AUTHORIZED MANAGEMENT OF CLIENT.

BY SIGNING BELOW, YOU SEPARATELY CONSENT TO THE E-SIGN CONSENT AGREEMENT ABOVE, WHICH YOU ACKNOWLEDGE IS REQUIRED FOR YOUR ACCEPTANCE OF THE CLOVER SERVICE AND PROCESSOR'S ACCEPTANCE OF THIS ADDENDUM.

PROCESSOR: Banc of America Merchant Services, LLC

CLIENT NAME: ANIMAL CARE&PROTECT SVCS

By: _____
Name: _____
Title: _____
Date: _____

Schedule A

Clover Equipment Purchase Agreement

Clover Equipment Location (Address, City, State, Zip Code)	Equipment	Quantity
2020 FOREST ST JACKSONVILLE FL 32204	MINI	2

Description Manufacturer/Model	Quantity	Purchase Price/ Monthly Payment
CLOVER MINI WIFI	2	$649.00
		$
		$
		$
		$

1. **Definitions**. All capitalized terms used in this Clover Equipment Purchase Agreement and not defined herein shall have the meaning given to them in the Addendum to Agreement: Special Provisions Regarding Clover Service.
2. **General**. This Clover Equipment Purchase Agreement is incorporated by reference into the Addendum and governs the Clover Equipment identified above that is sold to you by Processor to use in connection with the Clover Service under the Addendum. THE CLOVER EQUIPMENT IS BEING SOLD TO YOU FOR USE IN YOUR BUSINESS USE ONLY AND SHALL NOT BE USED FOR HOUSEHOLD OR PERSONAL USE. Sales of Clover Equipment are made by Processor.
3. **One Year Limited Warranty**. The Clover Equipment is warranted against material defects for a one year period after the original date of purchase. This warranty does not include damage to the Clover Equipment resulting from accident or misuse or any other breach of this Clover Equipment Purchase Agreement. If the Clover Equipment should otherwise become defective within the warranty period, we will replace it free of charge (except that appropriate shipping charges may apply). This warranty does not apply to Clover Equipment that has become obsolete. Notwithstanding this limited warranty, it may be necessary for you to upgrade your Clover Equipment or purchase new Clover Equipment from time to time, for which you will be charged. This warranty is non-transferable. For more information on making a claim under the limited warranty, please contact the dedicated Clover support center as set forth in the Addendum.
4. **Incompatibility**. YOU ACKNOWLEDGE THAT THE CLOVER EQUIPMENT AND ANY SOFTWARE RESIDENT ON THE CLOVER EQUIPMENT YOU PURCHASE FROM US MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE THE CLOVER EQUIPMENT AND/OR SOFTWARE COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THIS ADDENDUM, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE CLOVER EQUIPMENT AND/OR SOFTWARE PURCHASED UNDER THIS ADDENDUM.
5. **Purchase; Taxes; Payment.** We agree to sell to you, and you agree to buy from us, the Clover Equipment identified above free and clear of all liens and encumbrances (subject to Section 8 below) except that any software resident on a Device at the time of purchase or "pushed" to your Device by us will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of, Section 2 of the Addendum. You agree to pay the purchase price specified for the Clover Equipment at the prices listed above. You may also purchase from us, at prices determined by us, supplies related to the Clover Equipment that we make available. In addition to the purchase price for any Clover Equipment or supplies due hereunder, you will be responsible for any taxes, levies, shipping fees, duties or assessments, however designated, levied or based on such charges or on the Clover Equipment or use thereof, including, without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income. You

hereby authorize us to collect all amounts due from you under this Equipment Purchase Agreement by initiating debit entries for such amounts to your settlement account or by deducting such amounts from amounts due to you under the Agreement.

6. **Delivery and Acceptance**. We will deliver the Clover Equipment to the site designated by you. You will be deemed to have accepted each piece of Clover Equipment when it has been delivered to you.
7. **Support and Maintenance**. Help desk support for Clover Equipment may be obtained by contacting the dedicated Clover support center as set forth in the Addendum. We or Persons designated by us will only provide help desk support for Clover Equipment purchased from us under the Equipment Documents. We will not provide any such support or related services for any other products or equipment. Maintenance and repair of Clover Equipment purchased from us is your responsibility. You acknowledge and agree that from time to time we may "push" software updates to your Clover Equipment remotely and automatically in connection with your use of the Clover Service.
8. **Security Interest; Financing Statements.** You hereby grant to us a security interest in all Clover Equipment and the related software to secure payment of the purchase price, and authorize us to file financing statements with respect to the Clover Equipment and the related software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.
9. **Limitation on Liability.** Notwithstanding any provision of the Agreement to the contrary, and in addition to the limitations and disclaimers set forth in the Agreement, our liability arising out of or in any way connected with the Clover Equipment or related software will not exceed the purchase price paid to us for the particular Clover Equipment involved.
10. **Indemnification.** You will indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, resulting from the purchase, delivery, installation, acceptance, rejection, ownership, possession, use, operation, condition, liens against, or return of the Clover Equipment. You acknowledge and agree that the "use" and "operation" of the Clover Equipment for which you will indemnify and hold us harmless will include, but not be limited to, your loading additional software onto Clover Equipment or using such software, or using Clover Equipment or Software to access the Internet, or using the Clover Equipment for purposes that are not in compliance with this Clover Equipment Purchase Agreement or the Clover Services Agreement. .
11. **Default; Remedies.** If any debit of your settlement account initiated by us for charges due hereunder is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, it will be deemed an event of default under the Agreement.

REFERENCE AWARD

BID # XC-0606-13

Subject: **ELECTRONIC PAYMENT RECEIPTS SYSTEM - PIGGYBACKING**
Department: **TREASURY**

Description of Purchase:
RECOMMEND APPROVAL TO RATIFY PERIOD OF SERVICE FROM JUNE 30, 2013 THROUGH DATE OF AWARD.

RECOMMEND APPROVAL OF AWARD TO UTILIZE STATE OF FLORIDA CONTRACT DFS (TR) ITN 11/12-17 CONTRACT TR175, FOR ELECTRONIC PAYMENT RECEIPTS SYSTEM FOR CREDIT CARD FEES AND SERVICES WITH BANK OF AMERICA. PERIOD OF SERVICE FROM DATE OF AWARD THROUGH JUNE 30, 2018 WITH FIVE (5) ONE (1) YEAR RENEWAL OPTIONS. TOTAL ESTIMATED EXPENDITURE NOT TO EXCEED $145,000.00.

Reference Award To: **BANK OF AMERICA**

Price Justification:
SEE ATTACHED

Total Award: **$145,000.00** Requisition #

Attachments:
RECOMMENDATION MEMO, STATE OF FLORIDA CONTRACT, PARTICIPATION AGREEMENT

THE ABOVE PURCHASE IS RECOMMENDED FOR AWARD IN ACCORDANCE WITH CHAPTER 126.107.

Buyer: **ANNETTE BURNEY**

Gregory Pease, Chief
Procurement Division

APPROVAL OF GENERAL GOVERNMENT AWARDS COMMITTEE

"ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS"

CHAIRMAN

07/18/13
DATE

ACTION OF AWARDING AUTHORITY DATE: 7/18/13

APPROVED ✓ DISAPPROVED _____

OTHER _____

SIGNATURE OF AUTHENTICATION

Karen Bowling
Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2013-04

FORM GB-112, Revised 12/2007

XC-0606-13

DEPARTMENT OF FINANCE

Jacksonville
Where Florida Begins.

DATE: July 12, 2013

FOR: Procurement

FROM: Alea Tukes

THRU: C. Ronald Belton
CFO

TO: Annette
Procurement

SUBJECT: Piggyback Request for the State of Florida, Dept of Financial Svcs DFS (TR) ITN 11/12-17 Contract TR175 - Electronic Payment Receipts System with the Bank of America

---

Pursuant to the Purchasing Code Chapter 126 Sections 211 and 309 and the Purchasing Administrative Code Memorandum #07-07, the Treasury Division is requesting approval to use (piggyback) the State of Florida Dept of Financial Services DFS (TR) ITN 11/12-17 Contract TR175 - Electronic Payment Receipts System contract (State Contract) with the Bank of America (BOA).

Florida Statutes Chapter 215.322 (5) allows Local Governments to receive the same terms as those offered to the State through separate agreements. The Vendor shall make the services provided for under this contract available to Local Governments.

The contract term is five (5) years with the option to renew for 5 additional 1 year periods ratifying from 6/30/13 to date of award with the initial 5 year term expiring 6/30/18.

The approximate yearly expenditure is $145,000.

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, 200 East Gaines Street, 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, Section215.322, 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 40Calendar 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 Paragraph14 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. 287.0582, 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 PUR1000 ¶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 Participants 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 Participants' misuse or unauthorized modification of Contractor's products; (2) a Participants' 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 817.5681, 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.

XVIIII. 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.

XXVIIII. 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 I 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: Andrea Hoffman, Division of Treasury, located at 1801 Hermitage Boulevard, telephone number 850/413-2752, email address: Andrea.Hoffman@myfloridacfo.com.

B. The Contractor Contract Managers are:

1. For Bank of America: Kristin Harrison, Senior Vice President, Senior Treasury Solutions Officer Bank of America Merrill Lynch, Bank of America, N.A. located at 315 South Calhoun Street, 2nd Floor, FL8-260-02-5, Tallahassee, FL 32301, telephone number 850-561-5911, email address: kristin.harrison@baml.com.
2. For Bank of America Merchant Services: Michelle Whalen, CCM (Certified Cash Manager), Relationship Manager, Corporate and Commercial Services, Healthcare & Institutions and Public Sector Markets, Bank of America Merchant Services, located at 9219 Bimini Drive, Bradenton, FL 34210, telephone number 941-896-8881, email address: michelle.whalen@bankofamericamerchant.com.

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 Department of Financial Services
Division of Treasury
Chief Financial Officer or Designee:

Signature: [signature]

Title: COS

Date: 6/12/13

Bank of America, N.A.
Contractor Representative(s):

Signature: Kristin Harrison

Title: Senior Vice President

Date: 4-23-2013

Banc of America Merchant Services, LLC
Contractor Representative(s):

Signature: [signature]

Title: SVP

Date: 4/17/13

ATTACHMENT D
PARTICIPATION AGREEMENT
BETWEEN

BANK OF AMERICA, N.A.
BANC OF AMERICA MERCHANT SERVICES, LLC
and

_____

This Participation Agreement is entered into between Bank of America, N.A., Banc of America Merchant Services (together "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: Bank of America, N.A.

By: _____

Printed Name: _____

Title: _____

Date: _____

Contractor's Name: Banc of America Merchant Services, LLC

By: _____

Printed Name: _____

Title: _____

Date: _____