

Payment Solutions Agreement

This Payment Solutions Agreement (**Agreement**) is among the South Carolina State Treasurer (**STO**); SunTrust Merchant Services, LLC (**STMS**); and Truist Bank (**Bank**) and is effective December 20, 2021.

RECITALS

WHEREAS, S.C. Code §11-5-285 states: "The State Treasurer may enter into contracts allowing a state agency or institution to accept credit cards as payment for goods or services provided," and South Carolina Code §12-54-75 (B) states in part, "The State Treasurer may contract on behalf of the agencies with payment service providers for the processing of electronic payments, and may negotiate associated processing fees;"

WHEREAS, the STO seeks to to engage STMS to provide merchant card processing services to the STO and various public procurement units, in accordance with the terms and conditions of this Agreement; and,

WHEREAS, the STO's role will be that of the Sponsor of this Agreement and not as a Participant;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Definitions

Each capitalized term used in this Agreement (including the recitals hereof, exhibits, and schedules) shall have the respective meaning set forth below or as otherwise defined in the remainder of the Agreement. Terms defined in the singular form shall include the plural form and terms defined in the plural form shall include the singular form where the context so requires.

- 1.1. "*Acquiring Bank*" or "*Acquirer Bank*" is Truist Bank, N.A. (formerly SunTrust Bank, N.A.), unless changed as provided in the Agreement.
- 1.2. "*Affiliate*" is an entity that, directly or indirectly, (i) owns or controls a party to this Agreement, or (ii) is under common ownership or control with a party to this Agreement. For the purposes of this agreement Fiserv Solutions LLC is an affiliate.
- 1.3. "*Agreement*" is the Payment Solutions Agreement.

- 1.4. *"Business Day"* is Monday through Friday, excluding Bank holidays.
- 1.5. *"Card"* is a Credit Card or Debit Card.
- 1.6. *"Cardholder"* is the individual, entity, or association whose name is embossed on a Card and any authorized user of such Card.
- 1.7. *"Chargeback"* is a Card transaction dispute (or disputed portion) that is returned by the card issuer. Participant is responsible for payment of all Chargebacks.
- 1.8. *"Component Units"* are legally separate State entities that operate outside the direct management and oversight of central state government but are included in the State's CAFR as a result of each entity annually providing the Comptroller General's Office with a copy of its financial statements. There are major component units and nonmajor component units.
- 1.9. *"Contractor" which includes entities providing services through this Agreement and all the exhibits and schedules*, is Suntrust Merchant Services, LLC., or its Affiliates as identified in the relevant Exhibit or Schedule.
- 1.10. *"Annual Comprehensive Financial Report" (ACFR) or Comprehensive Annual Financial Report (CAFR)* is a set of U.S. government financial statements comprising the financial report of a state, municipal or other governmental entity that complies with the accounting requirements promulgated by the Governmental Accounting Standards Board (GASB); under this Master Services Agreement, State agencies and component units are part of the State's CAFR (or ACFR) but not Local Political Subdivisions.
- 1.11. *"Credit Card"* is an account that (i) may be presented in various form factors (including, but not limited to, mobile devices, cards, fobs or tags), (ii) bears the Mark of a Network, and (iii) enables the Cardholder to buy goods or services on credit.
- 1.12. *"Debit Card"* means Debit Cards and Signature Debit Cards.
- 1.13. *"Governmental Unit" or "Unit"* is an entity that the STO designates as eligible to participate in this Payment-Solutions Agreement, to include public procurement units recognized by the State Procurement Law; and for financial reporting purposes are further categorized as either a State Agency, a Component Unit, or a Political Subdivision.
- 1.14. *"Key Personnel"* are those staff who considered essential to successful contractor performance and identified in this Agreement as such.

- 1.15. *Local Political Subdivision* is a Governmental Unit that is not a State Agency or Component Unit and whose custodian of funds is the unit itself, not the STO;
- 1.16. *Merchant Identification Number* or *MID* (Merchant Identification Number) is a number assigned by STMS that identifies each Participant, or the Participant's location, outlet, or line of business.
- 1.17. *Network* is any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide (MasterCard), Visa U.S.A., Inc. (Visa), DFS Services LLC (Discover Network) and any applicable debit networks supported by STMS.
- 1.18. *Network Rules* are the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Network and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBTs, the Quest Operating Rules), applicable to Acquiring Bank, STMS, and Participant and the Services provided under this PSA.
- 1.19. *Participant* is an eligible governmental unit authorized by the STO to participate in this Agreement, functioning as a merchant, that has executed the prescribed Services Participation Agreement.
- 1.20. *Payment Card Industry Data Security Standard* (PCI DSS) is the set of requirements implemented and maintained by the Payment Card Industry Security Council pertaining to the security of cardholder data
- 1.21. *Payment Solutions Agreement* (PSA) is this agreement entered into among the STO, Bank and STMS including all exhibits and schedules incorporated herein.
- 1.22. *Public procurement unit* is a governmental unit recognized under the State Procurement Law which can be either: an entity whose custodian of its funds is the STO; or an entity whose custodian of its funds is the entity itself, to include State agencies, component units, and Local Political Subdivisions.
- 1.23. *Reserve* means an account established and funded at STMS's request or on a Participant's behalf, pursuant to the Reserve section of this Agreement.
- 1.24. *SC Terms and Conditions* means the STO's Standard terms and conditions attached hereto as Exhibit 1.

- 1.25. *"Services Participation Agreement"* (SPA) is the prescribed agreement executed by each Participant, STMS, and the STO containing terms and conditions under which services are provided the Participant under this Agreement; the SPA is identified herein as "Exhibit 2."
- 1.26. *"Settlement Account"* is an account or account(s) at a financial institution (depository bank) designated by Participant as the account to be credited and/or debited in accordance with this Agreement including as described in Section 6.12.
- 1.27. *"Sponsor"* is the STO's Office.
- 1.28. *"State Agency"* is a State entity that is under the direct management and oversight of central state government and whose financials are reported as a part of primary government in the State's CAFR.
- 1.29. *"STO"* or *"State Treasurer's Office"* is the office of the State Treasurer, the elected official who has the legislative authority to enter this contract and be the Sponsor of this Agreement.
- 1.30. *"Your Payments Acceptance Guide"* (Exhibit 5) is the manual prepared by STMS, which may be modified from time to time, containing operational procedures, instructions, and other directives relating to Card transactions, that are based on Network Rules, that the Participant as a merchant is required to adhere to, and the current version is attached hereto and incorporated herein by reference.

2. Services

STMS (along with the Bank or Debit Sponsor Bank, as described in this Agreement) will provide the Participants with services according to the terms of this Agreement, the services described in Schedule A (Services Subscribed to By Participant), as well as additional services that the parties agree to in writing (together, **Services**). STMS may provide the Services itself or through its affiliates pursuant to Exhibit 4; and, except for the Bank's or Debit Sponsor Bank's specific responsibilities described in this Agreement, STMS is solely responsible for the Services, except those Services provided under the Application Service Provider (ASP) Services Exhibit 4 which are the sole responsibility of the Affiliates. STMS shall provide all services in compliance with the applicable Network Rules.

3. Acquiring Services (Applicable to Participants)

3.1 Bank's Role. The Bank is a member of the Visa and Mastercard Networks, permitting it to acquire Visa and Mastercard payment transactions. The Bank

sponsors STMS as a Member Service Provider under the Network Rules, allowing STMS to process payment authorizations, transmissions, and settlement activities for Visa and Mastercard transactions under the Bank's direction. With respect to Visa and Mastercard transactions that are part of the Acquiring Services described below, references to STMS include the Bank; however, the Bank's responsibilities are limited solely to the sponsorship and settlement of certain card transactions submitted in accordance with this Agreement and the Visa and Mastercard Network Rules, and Bank will not have any obligation or liability of any nature in connection with any services of any kind provided by STMS or its affiliates. Specifically, the Bank is: (1) the only entity approved to extend Visa and Mastercard product acceptance to merchants; (2) responsible for educating merchants on applicable Visa and Mastercard Network Rules (available, respectively, at:

http://usa.visa.com/merchants/operations/op_regulations.html and <http://www.mastercard.com/us/merchant/support/rules.html>), which may be provided through STMS; and (3) responsible for all funds withheld from settlement. The Bank's interests or obligations under this Agreement may be assigned or otherwise transferred to another financial institution that is a member of the Networks; further, Bank may assign any of its rights or delegate any of its obligations under this Agreement to a subsidiary, affiliate, or entity that is acquiring all or any portion of its assets. If an assignment takes place the STO will have the option to terminate the contract for its convenience by giving 90 days notice.

3.2 STMS will acquire the Participant's electronic transactions for payment organizations and networks (together, **Networks**) identified below (**Acquiring Services**). STMS will be the STO's primary provider of the Services during the Term of this Agreement.

3.3 **Networks.** STMS will provide the Participant with Acquiring Services for the following Networks:

- Visa
- Mastercard
- American Express
- Discover

3.4 **Additional Card Acquiring Services.**

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

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

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

3.5 **Portal Contract.** STO and Participants may have a portal contract for service fee transactions (convenience fee) using a third party vendor as the service fee provider which also has a processing agreement with STMS. Participant must notify STMS if its transactions are subject to this paragraph as part of the Participation Agreement. STMS will process the Participant transactions under this Agreement and the Participant's MID and the third party vendor transactions (convenience fee) under the STMS agreement with the third party vendor and the third party vendor's MID issued under its agreement. The per transaction or per authorization fees and charges set forth in Schedule B under sections Interchange and Pass Through Fees, Authorization Fees, and Additional Services Fees will be not be billed to Participant. The third party vendor will be charged for these transaction fees in accordance with the STMS and third party vendor agreement. Participant will be responsible for all other sums owed under this Agreement for the transactions. If the third party vendor does not pay the transaction fees and charges above, Participant is responsible to pay them upon invoicing by STMS.

3.6 **Debit Transactions.** STMS will also provide the Participant with Acquiring Services for its debit Card transactions (**Debit Services**). STMS will process the Participant debit Card transactions based on: (1) availability of the debit

Networks; (2) whether a debit Card is enabled for a particular debit Network; or (3) other factors. STMS will have discretion to choose any available debit Network when routing a particular debit Card transaction for the Participant, subject to applicable Laws. STMS will provide the Debit Services using a financial institution (**Debit Sponsor Bank**) that is a member of a debit Network that is accessible to the Participant and can sponsor acceptance of the Participant debit Card transactions within the debit Network. STMS will choose the financial institution that acts as the Debit Sponsor Bank for the Participant transactions. The Debit Sponsor Bank may assign its interests or obligations under this Agreement to another financial institution that is a member of the debit Networks. STMS may also substitute, or assign, the Debit Sponsor Bank's interest or obligations under this Agreement to another financial institution that is a Member of the debit Networks. References to the term "Bank" in this Agreement include the Debit Sponsor Bank with respect to the Debit Services; however, the financial institution that is the Debit Sponsor Bank is only responsible for the performance obligations described as the Bank's under this Agreement with respect to the Participant debit Card transactions. If an assignment takes place the STO will have the option to terminate the contract for its convenience by giving 90 days notice. Network Rules. The Participant will comply with all rules, requirements, and standards of each of the Networks (together, **Network Rules**). Participant acknowledges receipt of STMS's current payments acceptance guide (**Your Payment Acceptance Guide**), which will assist the Participant with properly accepting and submitting its transactions for processing. Under Network Rules, the Participant does not own the Card account, Cardholder, personal, or other payment transaction information generated when a payment transaction is processed using the Acquiring Services. The Participant will not use, retain, disclose, sell, or disseminate any Card or Cardholder information (including, names, addresses, and Card account numbers) obtained in connection with payment transactions except for (1) authorizing, processing, and settling transactions; or (2) resolving chargebacks, retrieval requests, or similar issues related to its transaction. The Participant will not reproduce electronically captured Cardholder signatures except as requested by STMS or the Networks. A **Cardholder** is the individual who was issued a Card.

3.7 Locations. STMS will perform the Acquiring Services for payment transactions submitted from all the Participant retail locations in the United States (excluding Puerto Rico, and other U.S. territories).

3.8 Excluded Transaction Types. The Participant must inform STMS if it wants to accept telephone, mail order, or Internet based payment transactions or transactions in Puerto Rico, other US territories or outside of the US; all of which must be approved in writing by STMS and may be subject to additional requirements and fees.

3.9 Submitting Transactions. The Participant is responsible for:

- 3.9.1 properly transmitting the transaction data (including all transaction detail required by the Networks) to STMS's systems using the format and specifications provided by STMS (the Participant will maintain and update the systems that it uses to accommodate changing Network requirements as specified by STMS);
 - 3.9.2 all payment transactions submitted for processing under its MID, including, without limitation, all returns, refunds, or chargebacks, whether charged back by Cardholders or Card issuers;
 - 3.9.3 preventing its employees, agents, and others from submitting returns or refunds that do not reflect valid returns or refunds corresponding to prior transactions;
 - 3.9.4 retaining transaction records according to the timelines required by the Network Rules or applicable Laws; and
 - 3.9.5 maintaining transaction fraud and chargeback rates below thresholds established by the Networks.
- 3.10 **Transaction Acceptance.** The Participant will only accept and submit transactions where:
- 3.10.1 the transaction represents a genuine sale of the Participant's goods or services (including fees and fines as permitted by Network Rules) to the Cardholder;
 - 3.10.2 the transaction is not materially different than the transactions the Participant has described to STMS with regard to the products or services sold, the procedures for payments acceptance, or the fulfillment of obligations to the Cardholder;
 - 3.10.3 the transaction complies with all requirements of the applicable Network Rules, the laws of all relevant jurisdictions, and all other requirements of this Agreement;
 - 3.10.4 the transaction is not a duplicate of any other transaction;
 - 3.10.5 the transaction is authorized by the rightful Cardholder for the amount of the transaction in satisfaction of the Cardholder's obligations to the Participant;
 - 3.10.6 the transaction is in payment of goods or services provided simultaneously with the payment transaction (except for delayed delivery, advance deposit, or other partial transactions specifically allowed under the Network Rules and explicitly authorized by STMS in writing);
 - 3.10.7 the transaction is not a refinancing of an existing obligation;

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

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

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

3.11 **Sales Drafts.** The Participant will provide STMS a copy of any sales draft(s) upon request.

3.12 **Settlement.**

3.12.1 The Participant will identify a bank account held in the Participant's name (the **Settlement Account**) that STMS will use in connection with all Services. The Participant authorizes STMS to initiate: (1) credits to the Settlement Account for proceeds of transactions submitted, and (2) debit chargebacks as defined by the Network Rules; fines, fees, penalties and other liabilities to the Networks as a result of Participant's acts or omissions; and all other amounts due that are not monthly invoiced from the settlement proceeds prior to depositing in the Settlement Account. STMS will process credits to the Settlement Account via Automated Clearing House (**ACH**) entry unless the parties agree to transfer funds by wire. STMS will process debits to the Settlement Account via ACH entry. The authorized bank account for a Participant shall fall into one of two categories: a) Participants whose custodian is the STO; or b) Participants whose custodian is the Participant itself. The SPA executed by the Participant shall indicate which category the Participant falls under.

3.12.2 The depository bank account where settlement funds are deposited must be owned by the Participant or by the Participant's custodian as authorized by law. Upon establishing any outlet MID, the Participant must provide STMS with the bank account which the Participant is authorized to deposit funds. Only authorized representatives of the Participant may request any change in bank accounts once established. The authorized bank account for a Participant shall fall into one of two categories: a) Participants whose custodian is the STO; or b) Participants whose custodian is the Participant itself. The SPA executed by the Participant shall indicate which category the Participant falls under.

3.12.3 The Participant may identify one bank account as the Settlement Account for each MID.

3.12.4 Each banking day, STMS will initiate a transfer to the Settlement Account of the funds that the Networks deliver for the Participants' Card payment transactions. Chargebacks will be debited from the Settlement Account.

STMS will invoice each Participant for STMS fees, pass through expenses, or other obligations. STMS shall provide Participant notice of fines assessed promptly upon receipt of notice of fines.

- 3.12.5 The Participant does not have a property or other ownership interest in any proceeds of transactions or funds received by STMS in connection with the Participant's Card transactions (including any funds held in a Reserve) until those funds are transferred to the Settlement Account. STMS's obligations to fund the Participant's account represents a general obligation and not a property interest in any specific funds.
- 3.12.6 All deposits into the Settlement Account are provisional. Cardholders, Card issuers, and the Networks have the right to require reimbursement of transactions, to impose obligations relating to violations of the Network Rules, to assess additional interchange or other assessments, and to impose fees, fines, or charges relating to the qualification of transactions.
- 3.12.7 The Participant must promptly notify STMS if it fails to receive any settlement funding or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if the Participant provides inaccurate information about, or fails to notify STMS of changes to, the Settlement Account. STMS is not responsible for settlement errors that arise if the Participant provides inaccurate information about, or fails to notify STMS of changes to, the Settlement Account.

3.13 **MATCH Reporting.** Under some circumstances, STMS may be required to report the Participant to the Member Alert to Control High Risk (**MATCH**Error! Bookmark not defined.) listing or similar listings maintained by the Networks. The Participant agrees that STMS will not be liable for any losses, damages, or liabilities that may result from that reporting.

3.14 **Mark License, Network Decals.**

- 3.14.1 STMS grants the STO and Participants a revocable, royalty free, non-exclusive, limited license that cannot be assigned, transferred, or further sublicensed to use the Networks' trademarks and service marks (together, **Protected Marks**) in the United States according to the applicable Network Rules. This license does not grant the STO and Participants any other intellectual property right, title, interest, or claim (express or implied, by estoppel, or otherwise) to the Protected Marks. The STO and Participants will not take any action that impairs an owner's intellectual property rights in its Protected Marks.
- 3.14.2 The STO and Participants will discontinue use of the Networks' decals, Protected Marks, promotional, or other materials immediately after termination of this Agreement.

3.14.3 The STO and Participants will not indicate that its products or services are endorsed by any of the Networks.

4 Financial Information; Audit Financial and Other Information

To accommodate underwriting requirements placed upon the STMS by the Acquiring Bank, the Participant shall, on an annual basis, make publicly available its annual financial statements which shall be prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") as applicable to governments. Such financial statements shall be prepared in compliance with the standards established by the Government Accounting Standards Board ("GASB") for financial accounting and reporting for state and local government entities. For each Participant, STMS shall accept such required financial statements in accordance with the type of governmental unit: a) State Agency or Component Unit – Comprehensive Annual Financial Report (CAFR) or the Annual Comprehensive Financial Report (ACFR) prepared by the South Carolina Office of the Comptroller General. b) Political Subdivision - The audited financial statement required under South Carolina Code 5-7-240, or equivalent financial statement acceptable to STMS. Upon request, and to the extent allowed by applicable public records laws, the Participant shall make available to Provider or their representatives reasonable access to the Participant's facilities and records for the purpose of performing any inspection and/or copying of Participant's books and/or records related to the Card transactions contemplated under the MSA. In the case of a Political Subdivision, based upon the Participant's financial condition, or due to a future material adverse change in the financial condition, STMS reserves the right not to provide or to discontinue providing Card processing services to the Participant; or if deemed appropriate, require the Participant to establish a reserve account.

5 Notice of Material Changes; Third Parties

The Participants will provide STMS with written disclosure identifying the third parties, systems, and services the Participants use to receive, transmit, process, or otherwise manage information or its information technology systems (e.g., without limitation, encryption or firewall providers) related to the transaction information or payment data processed in connection with this Agreement (these third parties must be registered providers with the Networks).

6 Payment Obligations

Participants will pay STMS for:

- (1) all fees and charges described on Schedules B and C for the Services;
- (2) all transactions that are charged back by Cardholders, Card issuers, or the Networks;

- (3) all refunds submitted in connection with the Participant's transactions;
- (4) all costs, liabilities, or other obligations imposed on STMS by the Networks or other third parties as a result of transactions submitted by the Participants or the actions taken (or not taken) by the Participants or any of their third party service providers; and

7 Reserve

The Participant agreement with participants, other than State Agencies and Component Units, authorize STMS to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 10. The amount of such Reserve Account shall be set by STMS and Bank, in their sole discretion, based upon Participant's processing history and the anticipated risk of loss to STMS and Bank.

The Reserve Account shall be fully funded upon three days notice to Participant, or in instances of fraud or an Event of Default, reserve account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to Participant's Settlement Account or any other accounts held by BANK or any of its Affiliates; (ii) one or more deductions or off sets to any payments otherwise due to Participant; (iii) Participant's delivery to STMS and Bank of a letter of credit; or (iv) if STMS and Bank so agree, Participant's pledge to STMS and Bank of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to STMS and Bank and shall be in a form satisfactory to STMS and Bank. In the event of termination of this Agreement by either Participant or STMS and Bank, an immediate Reserve Account may be established without notice. STMS shall provide notice to the Participant if a Reserve is created and, upon request, STMS shall provide the STO with a status update on Participants with a Reserve.

State Agencies and Component Units shall not be required to establish a reserve account under any circumstance. In lieu of establishing such an account, they shall agree to remit payment for card network and third party fines and assessments within three business days of receiving notice of such fine or assessment. The remittance of any such amount shall not constitute agreement that the sum is due and the Agency, STO or Component Unit may request review and refund of the amount paid. STMS agrees to cooperate with STO, the Agency or Component Unit in obtaining information about the charge and in advising about and contesting the charge. If a refund is obtained the amount shall be promptly credited to the State Agency or Component Unit as applicable.

8. **Setoff and Priority**

All funds that STMS owes to the Participant under this Agreement are subject to the Participant's payment obligations under this Agreement. All obligations will be tendered without setoff.

9. **Statements, Reporting**

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

10. **Term of Contract**

10.1 This contract shall begin on December 20, 2021 and continue for a period of five years. It may be renewed annually thereafter.

10.2 This contract incorporates the SC Terms and Conditions which are attached hereto as Exhibit 1. Where the SC Terms and Conditions conflict with any term in this Agreement, those terms and conditions control. To the extent the SC Terms and Conditions and the Agreement address the same issue and the terms can be interpreted as complementary (i.e. data security and PCI compliance), the SC Terms and Conditions will be the minimum requirement and the Agreement may supplement the terms.

11. **Confidential Information**

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

keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

- 11.2 Disclosure. The recipient may disclose another's party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors or vendors) that need to know it in connection with the recipient's performance under this Agreement, and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, request from a regulator, or as required under applicable Laws, including but not limited to the S.C. Freedom of Information Act (S.C. Code § 30-4-10 et seq.), or Network Rules.

12. Data Security

- 12.1 The Participant is responsible for any unauthorized access to any transaction data from the Participant or from third parties retained by or on behalf of the Participant.
- 12.2 STMS is responsible for any unauthorized access to the Participant's transaction data on STMS's systems.
- 12.3 The Participant must comply with Payment Card Industry Data Security Standards (**PCI DSS**[Error! Bookmark not defined.](#)) and obtain timely certification of its systems and processes (which must be maintained during the Term) as required under the Network Rules. The Participant will comply with all additional standards that the Networks may require. The Participant will allow the Networks, STMS, or the Bank to audit its PCI DSS compliance and information technology systems related to the Services provided under this Agreement.
- 12.4 STMS must comply with all PCI DSS requirements and the Network Rules that apply to its performance under this Agreement.
- 12.5 Security Incident.
 - 12.5.1 If the Participant becomes aware that there has been unauthorized access to transaction data (a **Security Incident**[Error! Bookmark not defined.](#)), it will promptly notify STMS. If requested by STMS, the Participant will retain a reputable firm that is certified and approved by the Networks that provides forensic information security services and risk assessments in order to: (1) assess the nature and scope of the Security Incident; and (2) identify the access controls or transaction data involved in the Security Incident. The Participant will take appropriate steps to contain, control, stop, and remediate any Security Incident.
 - 12.5.2 The Participant will provide reasonable details regarding the Security Incident to, and cooperate with, STMS, any Networks, and the

forensics firms that are involved in the investigation and remediation of a Security Incident. The Participant will take all actions that the Networks require in connection with the investigation and remediation of a Security Incident.

12.5.3 STMS will facilitate communications between the Networks and any Participant that may experience a Security Incident that requires notifications to the Networks. Regardless, it is the Participant's obligation to ensure that all Networks' requirements are met.

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

12.6 Data Use. STMS may use transaction data obtained from providing the Services to the Participant to fulfill performance obligations under this Agreement and investigate fraud, or suspected fraud, related to the Participant's transactions. STMS may also use transaction data obtained from providing the Services under this Agreement in aggregated and anonymized form (as required by applicable Laws) for research and development, or to provide services generally. STMS may not sell or assign the rights to any third party without the written consent of the Participant.

13. **General Suspension of Participant SPA; Termination of Participant SPA**

13.1 General Termination. Either the STO or STMS may terminate a Participant's SPA authorized through this Agreement by giving 30 days' advance written notice if the Participant materially breaches this Agreement and fails to remedy the breach within 30 days of receiving notice of it.

13.2 Risk Termination. STMS may immediately suspend or terminate a Participant's SPA authorized through Agreement, in its discretion, upon notice to the STO, if the Participant:

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

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

13.2.3 experiences a material adverse change in its financial condition (including the failure to pay any of its debts or if the STO's accountants fail to deliver an unqualified audit opinion with respect to the STO's and its consolidated subsidiaries' annual financial statements when requested by STMS);

- 13.2.4 fails to provide notice of a material change in the nature of its business;
- 13.2.5 fails to disclose the third parties or systems it uses in connection with the transaction information or payment data processed under this Agreement;
- 13.2.6 fails to fund a Reserve when required under this Agreement;
- 13.2.7 experiences a Security Incident or fails to comply with PCI DSS or a material Network requirement;
- 13.2.8 materially changes its operations, products, services, or procedures for payments acceptance;
 - 13.2.8.1 sells substantially all of its assets, undergoes a change in ownership or control, merges, or effects an assignment without obtaining the prior consent of STMS;
- 13.2.9 defaults under any other agreement it has with STMS or its affiliates;
or
- 13.2.10 a Network, a governmental authority, or the Bank instructs STMS to suspend its performance under or terminate this Agreement (in which case the Early Termination Fee will not apply).

14. Responsibility

- 14.1 The Participant will be responsible for losses, damages, costs, or expenses (together, **Losses**) due to third party claims that result from the Participant's or their third party service providers gross negligence, willful misconduct, or breach of this Agreement. STMS will be responsible for Losses due to third party claims that result from STMS's gross negligence, willful misconduct, or breach of this Agreement.
- 14.2 The non-responsible party will promptly notify the responsible party of any third party claim that is subject to this Section 17. The responsible party will have the opportunity to defend these claims using counsel it selects and will have the authority to enter into a settlement for monetary damages provided that it pays such amounts. The parties will cooperate with regard to any other conditions of settlement as well as in providing records, access to personnel or other information reasonably necessary to defend any such claims.

15. Limitation on Liability.

Provider's liability to Customer for any cause whatsoever, and regardless of the form of action, shall not exceed an amount equal to the limitation of liability for a single

occurrence allowed in *S.C. Code Ann. §15-8-120(a)(3)* or any successor section set at the time such claim originates. The foregoing limitation on Provider's liability shall not apply to (i) direct claims for physical damage to real or tangible personal property, (ii) claims regarding personal injury, bodily injury, sickness or death, (iii) claims arising from the Provider's reckless or intentional misconduct, (iv) amounts due or obligations related to Provider's failure to comply with Section 15 Data Security to protect Payee Data or (v) damages associated with any payment orders, requests or instructions that are subject to Title 36, Chapter 4A of the South Carolina Uniform Commercial Code. Nothing herein shall be construed to waive any clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation of recovery provided by law.

16. Exclusion of Damages

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

17. Notices

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


Notices to the STO will be sent to: S.C. Treasurer's Office; Attn: Chief of Staff; 1200 Senate Street; Suite 214; Columbia, SC 29201 (EMAIL: Clarissa.adams@sto.sc.gov); with a copy to: S.C. Treasurer's Office; Attn: General Counsel; 1200 Senate Street; Suite 214; Columbia, SC 29201 (EMAIL: shelly.kelly@sto.sc.gov).

Notices to STMS will be sent to: SunTrust Merchant Services, LLC, Attn: Executive Vice President – Operations, 5565 Glenridge Connector NE, Atlanta, Georgia 30342; with a copy to: SunTrust Merchant Services, LLC, Attn: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065. Emailed notices to STMS will be sent to: legalpapers@fiserv.com


Notices to the Bank will be sent to: Truist Bank, Attn: Merchant Services, 7455 Chancellor Drive, 2nd Floor, MC: FL-Orlando-9214, Orlando, Florida 32809. The Bank's phone number is: 407-237-6727.

Authorized Signatures:

South Carolina State Treasurer

By: 
Name: Charissa T. Adams
Title: Chief of Staff
Date: 12/20/21

SunTrust Merchant Services, LLC

By: 
Name: Shane McCullough
Title: Authorized Signer
Date: 12/20/2021

Truist Bank

By First Data Merchant Services LLC pursuant to limited Power of Attorney

By: 
Name: Shane McCullough
Title: Authorized Signer
Date: 12/20/2021

Wells Fargo Bank, N.A.

*solely as Debit Sponsor Bank under
Section 3.6*

By First Data Merchant Services LLC pursuant to limited Power of Attorney

By: 
Name: Shane McCullough
Title: Authorized Signer
Date: 12/20/2021