

**AMENDMENT NO. 2 TO THE MERCHANT SERVICES BANKCARD AGREEMENT**  
**State of North Carolina and SunTrust Merchant Services**  
**Contract Number 14-008474**

This Amendment (“Amendment”) to that certain SunTrust Merchant Services Bankcard Agreement (“Agreement”), dated December 4, 2014, by and among the North Carolina State Controller and North Carolina State Treasurer as the State of North Carolina (collectively, the “State”), (**and together with entities signing Agency Participating Agreements “the CUSTOMER”**), and SunTrust Merchant Services, LLC (“STMS” or Provider) is made and executed as of the 1<sup>st</sup> day of November 2016 by and among Servicers and the State.

**WITNESSETH:**

**WHEREAS**, Participants of the Agreement wish to accept EBT (Electronic Benefit Transfer) payment cards, and the **STATE** desires to add this service to the current Agreement;

**NOW THEREFORE, FOR AND IN CONSIDERATION** of the performance by each of the Parties of its promises and obligations herein set forth, the **STATE** and **STMS** do hereby mutually covenant and agree as follows:

The Agreement is amended by adding the attached Electronic Benefits Transfer Transaction Addendum as Schedule N to the Master Service Agreement.

Schedule B shall be amended to reflect an EBT processing per transaction rate of \$.015 for all card types and an EBT balance inquiry fee of \$.015 per transaction. Schedule B is amended and replaced by the attached Schedule B, revised November 1, 2016.

The Agreement is amended to conform to recently enacted legislation SL 2016-85 which modified GS Chap. 143B to add GS §143B-1350 (h1). Paragraphs 20) (c), 25, 28) (b)(c), 29) (c) and 30 of Section VII Contractual Terms and Conditions of Agreement (ITS-008474) are replaced as indicated below:

**20) Patent, Copyright, and Trade Secret Protection:** c) Removed entirely and replaced with the following:

c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or other Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:

- i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
- ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.

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**25) Default:** Removed entirely and replaced with the following:

In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within thirty (30) days or Vendor fails to meet the requirements of Paragraph 13) herein, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.

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

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

**28) Limitation of Vendors Liability: b) c)** Removed entirely and replaced with the following:

b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.

c) The foregoing limitation of liability shall not apply to claims governed by Service Level Agreement, Warranty compliance, or other terms that specifically provide performance remedies, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

**29) Vendors Liability for Injury to Persons or Damage to Property: c)** Removed entirely and replaced with the following:

c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor.

**30) General Indemnity:** Reserved

This Amendment modifies the Agreement only as expressly set forth herein. In all other respects the terms and conditions of the Agreement remain unmodified and in full force and effect.

The parties may execute this Amendment in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by electronic mail is as effective as executing and delivering the Agreement in the presence of the other party.

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**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this Amendment as of the dates written below.

<p><b>NORTH CAROLINA STATE CONTROLLER</b></p> <p>DocuSigned by: <i>Linda Combs</i></p> <hr/> <p>Linda Combs State Controller</p> <p>Date: <u>11/22/2016   08:07 AM EST</u></p>	<p><b>NORTH CAROLINA STATE TREASURER</b></p> <p>DocuSigned by: <i>Janet Cowell</i></p> <hr/> <p>Janet Cowell State Treasurer</p> <p>Date: <u>11/18/2016   13:51 PM EST</u></p>
<p><b>SUNTRUST MERCHANT SERVICES, LLC ("STMS")</b></p> <p>DocuSigned by: <i>Jacie Engle</i></p> <hr/> <p>By: <u>Jacie Engle</u> 8CA97A4DFE894B5...</p> <p>Title: <u>Vice President</u></p> <p>Date: <u>11/14/2016   11:19 AM EST</u></p>	