

AMENDMENT NO. 3
to
AGREEMENT FOR ELECTRONIC FUNDS TRANSFER FINANCIAL SERVICES
between the STATE OF NORTH CAROLINA and
BANK OF AMERICA
(ITS-007062-1)

THIS AMENDMENT NUMBER 3 (“Amendment”) to the above-entitled agreement is made by and among the North Carolina Office of the State Controller and the North Carolina Department of State Treasurer (hereinafter referred to as the “State”) and Bank of America, N.A. (the “Vendor”) (hereinafter referred to collectively as the “Parties”) and shall be effective as of the latest date of signature below. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Agreement.

R E C I T A L S

WHEREAS, the Parties entered into an “Agreement for Electronic Funds Transfer Financial Services” (ITS-007062-1) effective June 24, 2013, with an initial term of five years and the option, at the State’s discretion, for two successive one-year renewal periods (the “Agreement”); and

WHEREAS, the Parties executed Amendment No. 1 to the Agreement effective November 18, 2014 to provide for overdraft fees and to make available the use of a Uniform Payment Identification Code and the use of Electronic Data Interchange; and

WHEREAS, the Parties executed Amendment No. 2 to the Agreement effective January 30, 2015 to make available the use of certain prepaid card services described individually as (i) CashPay Service, (ii) Higher Education Prepaid Debit Card Service, and (iii) Commercial Prepaid Card Service; and

WHEREAS, the Parties, in contemplation of the Agreement’s impending expiration date of June 24, 2018, wish to further modify the Agreement by extending its term for an additional period of one year;

WHEREAS, the Parties also wish to modify that portion of the Agreement setting forth the State’s Terms and Conditions to conform to legislation enacted by the North Carolina General Assembly since the effective date of the Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the State and the Vendor do mutually agree as follows:

1. Renewal.

(a) The Agreement shall be renewed for, and its term extended by, an additional period of one year, such period to commence on June 24, 2018.

(b) The State reserves the right to renew the Agreement for a second one-year period upon expiration of the renewal period commencing June 24, 2018. Nothing in the Agreement or any of its amendments shall be construed, however, as obligating the State to exercise such right.

2. State's Terms and Conditions. Paragraphs 25) c), 30), 33) b) and 34) c) of the State's Terms and Conditions (Appendix B to the Office of Statewide IT Procurement Request for Proposal issued January 3, 2013 (RFP No. ITS-007062)) are hereby amended, in the manner provided below, to conform to N.C. Sess. Law 2016-85, s. 1, which modified N.C. Gen. Stat. § 143B-1350 by adding subsection (h1):

(a) Subsection c) of Paragraph 25) is removed in its entirety 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.

(b) Paragraph 30) is removed in its entirety and replaced with the following:

30) 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 ten (10) days, or Vendor fails to meet the requirements of Paragraph 18) herein, the State may cancel the Contract. Default may be cause for debarment as provided in 09 N.C.A.C. 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.

(c) Subsection b) of Paragraph 33) is removed in its entirety and replaced with the following:

b) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Warranty compliance, 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 contribution among joint tortfeasors under Chapter 1B of the North Carolina General Statutes, 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.

(d) Subsection c) of Paragraph 34) is removed in its entirety 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.

Effect of Amendment. The Parties understand and agree that this Amendment modifies the Agreement only as expressly set forth herein. In all other respects, the terms and conditions of the Agreement shall remain in full force and effect, unaltered by this Amendment.

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

NORTH CAROLINA OFFICE OF THE STATE CONTROLLER

Dr. Linda Combs

Name

North Carolina State Controller

Title

DocuSigned by:

Dr. Linda Combs

Signature

7/5/2018 | 14:40 PM EDT

Date

NORTH CAROLINA OFFICE OF STATE TREASURER

Dale R. Folwell

Name

NC Treasurer

Title

DocuSigned by:

Dale Folwell CPA

Signature

7/5/2018 | 14:02 PM EDT

Date

BANK OF AMERICA, N.A.

Lora Prisock

Name

Director

Title

DocuSigned by:

Lora Prisock

Signature

7/5/2018 | 13:16 PM EDT

Date