1. AUTHORIZED USERS:

a. Authorized Users means (i) State of California government entities that participate in this MSA ("State Authorized Users"), and (ii) Local government entities that participate in this MSA ("Local Authorized Users"), (iii) any Authorized User participating under the WSCA States.

b. Pursuant to Government Code §11000, State of California government entities include every state office, officer, department, division, bureau, board, and commission. Pursuant to Public Contract Code §10298, and for purposes of this agreement, a Local government entity is any city, county, district, or other local governmental body or corporation empowered to expend public funds for the acquisition of goods, information technology, or services. Further, for purposes of this agreement, reference to Local government entities will also include the California State Universities (CSU) and University of California (UC) systems, school districts and community colleges.

c. The State of California works collaboratively with its Western States Contracting Alliance "WSCA" or "WSCA State") partners to make this Agreement available to any WSCA State wishing to participate. The participating WSCA State will agree to the same terms and conditions of this Agreement, and any mutually agreeable specific terms and conditions as outlined below in Section 1-f. Therefore, a WSCA participating addendum will be mutually developed between the Contractor and the interested WSCA state(s).

d. This Master Services Agreement (MSA) is available for State of California government entities that seek to acquire credit card payment acceptance services. Each entity is required to adhere to Department of General Services (DGS) contract and procurement policy and procedures. See the following link for the State of California Agency List (exclude any local government agencies described above): http://www.ca.gov/About/Government/agencyindex.html

e. This MSA is available for local government and WSCA State entities' use. Contractor may enter into this MSA with such local government and WSCA States entities, after Contractor determines, in its sole discretion, that such local government and WSCA State entities have been credit approved by Contractor. Local government entities may execute a contract under this MSA using the standard form Std. 213 or appropriate equivalent contract form. WSCA states may execute using a participating addendum form. Upon execution of the respective contract forms and/or the Selected Services Signature Page, Exhibit D Attachment III, they shall become Authorized Users and the provision of services by the Contractor to such Authorized Users will be governed by the terms of this MSA.

f. However, the Contractor and Local government and WSCA entities may negotiate the specific provisions cited below. If the parties cannot mutually agree, neither party shall be obligated to enter into an agreement.

- Amount of SLA Penalty (Exhibit A, Section 4 a. 6)
- Invoicing and Payment Provisions (Exhibit B, Section 1)

- Governing Law, Jurisdiction (Exhibit C, Section 17)
- Authorized User's additional agency specific terms and conditions (noted in Exhibit D, Section 2)
- First Data Merchant Services Standard Proposed WSCA/Local Negotiation Language (Appendix 1)

2. AUTHORIZATION TO RENDER SERVICES:

Contractor may not decline a State of California government entity's request to utilize services offered under this Agreement.

Prior to rendering services, Contractor and each Authorized User (as applicable) must execute a separate subscription agreement that incorporates the terms of this MSA by reference and may contain additional agency specific terms and conditions, none of which may alter, rescind, or be in conflict with the terms and conditions of this MSA. For State Authorized Users, such Subscription Agreement shall be in the form of the standard agreement, Std. 213. The duly executed Std. 213 and the appropriate equivalent contract form for Local/WSCA Authorized Users are herein referred to as the "Subscription Agreement".

The Subscription Agreement shall describe the particular requirements of the Authorized User, usually reflected in detailed scope of work and invoicing contact information. State Authorized User's Subscription Agreements shall be processed in accordance with State contracting laws, policy, and procedures. Further, Authorized Users will be required to complete the Authorized User Participation form by selecting services and providing the applicable related information (See Exhibit D Attachment I). In addition, both the Authorized User and Contractor must sign the signature blocks for each corresponding selected service on the Selected Services Signature Page (See Exhibit D Attachment II for State Authorized Users or Attachment III for Local/WSCA Authorized Users), which should directly follow the signed STD 213 document (or other applicable contract page 1) in the Authorized User's Subscription Agreement.

3. ORDER OF PRECEDENCE:

In the event of any inconsistency between articles, attachments, specifications or provisions which constitute this Agreement, the following order of precedence shall apply:

a. All federal, state, local laws and regulations

b. Exhibit C Terms & Conditions

c. Exhibit A Scope of Services

d. Exhibit B Budget and Payment Provisions

e. Exhibit D Special Terms & Conditions

f. State of California Standard Agreement (STD 213)

g. Exhibit E Fees and Costs

h. Exhibit F Equipment

i. Exhibit G Agreement For Merchant Processing Services

j. All Association rules, Debit Networks rules, and NACHA rules.

k. Exhibit H-K (as applicable)

4. SECURITY, PRIVACY, DISCLOSURE, & HIPAA COMPLIANCE:

The parties acknowledge that this Agreement is subject to the California Public Records Act (Govt. Code section 6250 et seq.), California Government Code sections 6164 and 11019.9; and California Civil Code Section 1798 et seq; and the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (Code of Federal Regulations (CFR), Title 45, Sections 164.501 et seq. and HIPAA requirements posted on the California Office of HIPAA Implementation (CalOHI) webpage at: http://www.hippa.com/legislation/45CFR-164.501.html

Authorized Users agree not to disclose Cardmember account numbers and/or Card Identification Numbers ("CIDs") unless required by law or other legal process, or for internal State purposes.

Contractor agrees it will not use the names, addresses, and any other personally identifying information of State, city, county, school, or other public employees for any purpose not directly related to this Agreement.

5. REGULATORY AUTHORITIES (Industry Related Rules and Regulations):

Contractor and State warrants and certifies that prior to, and in the performance of this Agreement, it will acquire, maintain, and remain in compliance with all mandatory regulatory approvals with respect to its performance under this Agreement required by any applicable governmental agency having jurisdiction. If such regulatory approvals are not obtained prior to the performance of this Agreement, this Agreement shall be of no force or effect.

6. LICENSES AND PERMITS:

Contractor shall be responsible for obtaining and maintaining at its expense all applicable licenses, registrations, permits, and certifications applicable to its performance under this Agreement during the entire term of this Agreement required by federal law, the State of California, and local jurisdictions in California.

7. INSURANCE & BONDING:

Contractor agrees that the liability insurance herein provided for and employee fidelity bond insurance policies covering all employees engaged in the performance of this Agreement shall be in effect at all times during the term of this Agreement. If insurance or bonding coverage expires at any time during the term of this Agreement and those Subscription Agreements executed directly with the

Authorized Users, Contractor agrees to provide to the Authorized Users, upon expiration of coverage, a new certificate of insurance evidencing the renewal of such insurance coverage as provided for herein. New certificates of insurance are subject to the approval of the Department of General Services, such approval not to be unreasonably withheld.

The Contractor agrees to maintain commercial general liability, and employee fidelity bond insurance policies of not less than $1,000,000 per occurrence and $3,000,000 in aggregate and worker's compensation insurance in accordance with applicable statutory requirements.

The Contractor shall furnish to the State and/or Authorized Users certificates of insurance stating each type and amount of insurance, as set forth above, is presently in effect for Contractor.

8. SUBCONTRACTORS:

Each party (Contractor or Authorized User) is responsible, without recourse to the other party, for the settlement and satisfaction of its own contractual and administrative obligations arising out of each party's respective subcontracts to render (in the case of Contractor) or receive (in the case of Authorized Users) the services outlined in this Agreement.

9. TERMINATION:

a. The State may terminate the MSA and any Authorized User may terminate its respective Subscription Agreement for cause upon a reasonable and good faith determination that the Contractor failed to perform the requirements of this Agreement at the time and in the manner herein provided.

b. In the event of a breach, the State or Authorized User may elect to send the Contractor a notice specifying the breach and providing the Contractor an opportunity to cure the breach within a period of time no less than thirty (30) days "Cure Period". If the breach is not cured within the Cure Period, the State or Authorized User has the right to terminate the Agreement upon thirty (30) days notice to the Contractor.

c. The State may terminate the MSA without cause upon sixty (60) days advance written notice to the Contractor. Authorized Users may terminate their respective Subscription Agreements without cause upon sixty (60) days advance written notice to the Contractor. In the event of a termination without cause, Contractor shall not be responsible for any costs to the State or an Authorized User associated with such termination and any sum due the Contractor under this Agreement (which sum due to the Contractor shall include, but not be limited to, fees as set forth in this Agreement) for Charges up to the date of a termination shall be paid to the Contractor within thirty (30) days of termination, excluding any Chargebacks, fees, fines or penalties owed by the State or Authorized User after termination.

d. After receipt of a notice of termination by the State, or an Authorized User, and except as otherwise directed by the State or Authorized User, Contractor shall:

(i) Stop work as specified in the notice of termination.

(ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Agreement.

(iii) Terminate all subcontracts to the extent they relate to the work terminated.

(iv) After receipt of a notice of termination and prior to the contract termination effective date, Contractor agrees to diligently proceed without interruption in the performance of this Agreement. Contractor's failure to diligently proceed in accordance with this Agreement shall be considered a material breach of this Agreement.

e. Unless otherwise provided in the Authorized User's Subscription Agreement, in the event the State of California MSA is terminated, such termination shall have no effect on the Local/WSCA Authorized Users and the terms and conditions of the MSA shall continue to remain in full force and effect with respect to Local/WSCA Authorized Users.

10. PHASE IN & PHASE OUT TRANSITION SERVICES:

Prior to the end of this Agreement's contract term, or if this Agreement is terminated by the State, Contractor agrees to reasonably assist in transitioning the services provided under this Agreement within a period of time, not to exceed one hundred eighty (180) day calendar period. Contractor shall cooperate with any new contractor(s) and State staff in effectuating an orderly transition.

11. DISPUTE RESOLUTION:

In the event a dispute arises with respect to the interpretation or performance of, or the relationship created by, all or any part of this Agreement, the parties will attempt in good faith to resolve the dispute.

12. FINANCIAL AND OTHER INFORMATION:

a. Authorized User may elect to make its financial statements readily available to the public. However, with respect to State Authorized Users, the posting of such financial information at the http://www.ebudget.ca.gov website (or any successor website thereto) shall be deemed to fulfill this requirement. Upon request, Authorized User shall provide to Contractor or their representatives reasonable access to Authorized User's facilities and records for the purpose of performing any inspection and/or copying of Authorized User's books and/or records pertaining to the Services in this MSA.

b. Authorized User will provide Contractor with written notice of Authorized User's intent to liquidate, substantially change the basic nature of its business, transfer or sell any substantial part (25% or more in value) of its total assets, Authorized

User will also notify Contractor of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of Authorized User's total assets not later than three days after Authorized User obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.

13. WARRANTIES; EXCLUSION OF CONSEQUENTIAL DAMAGES; LIMITATION ON LIABILITY:

a. **Disclaimer of Warranties.** THIS MSA AND ANY AMENDMENTS IS AN AGREEMENT FOR SERVICES AND EXCEPT AS EXPRESSLY PROVIDED IN THIS MSA AND ANY AMENDMENTS, CONTRACTOR AND ITS AFFILIATES DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO AUTHORIZED USER OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

b. **Exclusion of Consequential Damages**. NOTWITHSTANDING ANYTHING IN THIS MSA AND ANY AMENDMENTS TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. NOTICES:

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if delivered (a) personally, (b) via facsimile, electronic mail or overnight express service or (c) by certified or registered mail, postage prepaid, return receipt requested, in each case, to the addresses, facsimile numbers and/or electronic mail addresses set forth below the signatures of each party hereto. The parties hereto may change their street addresses, facsimile numbers and electronic mail addresses for purposes of this Agreement by notifying the other party in the manner specified in this section.

15. PROPRIETARY RIGHTS AND PERMITTED USES:

Neither party may issue any press release about this Agreement or the State without the other party's prior written consent. Notwithstanding anything to the contrary,

neither party has any rights in the other party's Marks, nor may one party use the other party's Marks without its prior written consent, except that we may use your name, address, (including your website addresses or URLs), and customer service telephone numbers where we communicate where the Card is accepted. State acknowledges that that an affiliate of Contractor has a limited, minority, non-controlling, equity interest in Ronald A. Katz Technology Licensing L.P., an entity owning certain patent applications and patents which may apply to interactive or automated voice response products or services provided by Contractor.

16. INTERPRETATION:

In construing this Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to;" (iv) the term "day" means "calendar day"; (v) any reference to any agreement (including this Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; and (vi) all captions, headings, and similar terms are for reference only.

17. SEVERABILITY:

To be effective, the waiver by either party of a breach of any provision contained herein shall be in writing and shall in no way be construed as a waiver of any subsequent breach of such provision or the waiver of the provision itself. If any provision of this Agreement shall be held illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

18. WAIVER &CUMULATIVE RIGHTS:

Either party's failure to exercise any of its rights under this Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, will not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights will constitute a waiver thereof. No waiver of any term of this Agreement will be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

19. FORCE MAJEURE:

Neither party shall be held responsible for any delays in or failure or suspension of service caused, directly or indirectly, or any the nonperformance, delay or error of any third party or other causes reasonably beyond the control of either Party.