

Exhibit D – Special Terms and Conditions

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”).
- 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, city and 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. This Master Services Agreement (MSA) is designated as mandatory for State of California government entities that seek to acquire American Express® Card acceptance services and are 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>
- d. Local government entities’ use of this MSA is optional. A Local government entity may execute a contract under this MSA using the standard form Std. 213 or appropriate equivalent contract form, in which case such Local government entity shall become a Local Authorized User and the provision of services by the Contractor to such Local Authorized User will be governed by the terms of this MSA. However, the Contractor has authorization to negotiate with Local government entities the specific provisions cited below.
 - i. Invoicing and Payment Provisions:
 - Exhibit B - 1 (a-c), Exhibit F - 5 (b)
 - Exhibit F Schedule A - 4 (c)
 - Agency Authorized User Participation - Set Up Form
 - ii. Termination:
 - Exhibit D - 12
 - Exhibit F - 9
- e. In the event the Contractor and a Local government entity are unable to reach an agreement with respect to the terms of any of the specific provisions listed above, the Contractor reserves the right to decline such Local government entity’s request to execute a contract for services under this Agreement. To the extent a provision of this MSA is not listed above, neither a Local Authorized User nor Contractor may negotiate such provision with the other. Contractor may

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directly provide a Local government entity that is a prospective Local Authorized User with a copy of this MSA.

2. AUTHORIZATION TO RENDER SERVICES:

Unless otherwise provided in this Agreement, Contractor may not decline a State of California government entity's or a local government entity's request to utilize services offered under this Agreement.

Prior to rendering services, Contractor and a State of California government entity or a local government entity (as applicable) must execute a separate subscription agreement that incorporates all of 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; and, for Local Authorized Users shall be in the form specified in Section 1.c above. The duly executed Std. 213 and the appropriate equivalent contract form for Local 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 payment provisions. State Authorized User's Subscription Agreements shall be processed in accordance with State contracting laws, policy, and procedures.

3. ENTIRE AGREEMENT & AMENDMENTS

This Agreement constitutes and contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any prior oral or written agreements. Each party acknowledges and agrees that the other has not made any representations, warranties or agreements of any kind or nature, except as expressly set forth herein. This Agreement may not be modified or amended, including by custom, usage of trade, or course of dealing, except by an instrument in writing signed by duly authorized officers of both parties hereto.

4. 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. Exhibit C: The State's General Terms and Conditions (GTC 307 / CCC 307)
- b. State of California Standard Agreement (STD 213)
- c. Exhibit B: Budget and Payment Provisions
- d. Exhibit D: Special Terms and Conditions

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- e. Exhibit A: Scope of Work
- f. Exhibit E: Fees and Costs
- g. Exhibit F: Agreement for American Express® Card Acceptance (including Authorized Users Participation Set Up Form)

5. 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 Health Insurance Portability and Accountability Act of 1996 (Code of Federal Regulations (CFR), Title 45, Sections 164.501 et seq. and HIPPA requirements posted on the California Office of HIPAA Implementation (CalOHI) webpage at: <http://www.hipaa.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.

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

Contractor 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 over Contractor. If such regulatory approvals are not obtained by Contractor prior to the performance of this Agreement, this Agreement shall be of no force or effect.

7. 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.

8. 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

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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.

9. LIMITATION OF LIABILITY:

The liability of the State of California Authorized Users when executing Authorized User Subscription Agreements shall not exceed the amount of funds appropriated for such Authorized User Subscription Agreements by the California Legislature.

10. 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.

11. WAIVER & 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.

12. TERMINATION

The State may terminate the MSA and any Authorized User may terminate their 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. All costs to the State shall be deducted from any sum due the Contractor under this Agreement (which sum due to the Contractor shall include, but not be limited to, the Discount as set forth in this Agreement for Charges up to the date of a termination for which Authorized User receives payment from Contractor), and the balance, if any, shall be paid to the Contractor within 30 days of Contractor's request.

In addition to the termination rights specified in the preceding paragraph, in the event of a material 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 by notice to the Contractor.

The State may terminate the MSA without cause upon one hundred twenty (120) 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, the Discount as set forth in this Agreement for Charges up to the date of a termination for which Authorized User receives payment from Contractor) shall be paid to the Contractor within 30 days of Contractor's request.

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) Settle all outstanding liabilities arising from the termination of subcontracts.
- (v) 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.

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13. 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.

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.