Awarded Vendor
000055747
Bank of America
201 East Washington Street
Phoenix, AZ 85004

Telephone No.: 602-523-6996

Contract Number: 20-000-00-00085
Contract Amendment No.: Four
Term: October 1, 2012 – June 30, 2020

Ship to:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested

For questions regarding this Contract please contact:
Savannah Quintana (505) 827-0483

Title: Procurement Card Services

This Contract Amendment is to be attached to the respective Contract and become a part thereof.

In accordance with Contract provisions, and by mutual agreement of all parties, this Contract is extended from July 1, 2018 to June 30, 2020 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Accepted for the State of New Mexico

Date: 4/16/2018

New Mexico State Purchasing Agent
STATE OF NEW MEXICO

Procurement Card Services Contract # 20-000-00-00085
New Mexico Department of Finance and Administration
CONTRACT AMENDMENT No. 4

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Department of Finance and Administration Department hereinafter referred to as the “Agency” or “DFA,” and Bank of America, N.A., the successor to FIA Card Services, N.A., a Bank of America company, by merger of October 1, 2014, hereinafter referred to as the “Contractor” or “Bank of America”.

IT IS AGREED BETWEEN THE PARTIES:

20. Term:
   THIS CONTRACT AS AMENDED BY THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE STATE PURCHASING AGENT. This contract is extended for two (2) additional years under the same terms and conditions, from July 1, 2018 through June 30, 2020, unless terminated pursuant to paragraph 20 of the contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date it is approved by the State Purchasing Agent or the State Purchasing Agent’s designee.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION

By:  
Duffy E. Rodriguez  
Cabinet Secretary  

Date: 10 April 2018

By:  
Paul Chipperfield  
DFA Legal Counsel  

Date: 3/28/18

CONTRACTOR

By:  
David Randolph, Vice President of Card Services  

Date: 4/3/18
The records of the Taxation and Revenue Department reflects that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

TAXATION AND REVENUE DEPARTMENT  
ID NUMBER: 02-411455-00-3  
By: [Signature]  
Date: 3/17/18  

Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

GENERAL SERVICES DEPARTMENT, STATE PURCHASING DIVISION  
By: [Signature]  
Date: 4/11/18  
Lawrence O. Maxwell  
State Purchasing Agent
Awarded Vendor
000055747
Bank of America
201 East Washington Street
Phoenix, AZ 85004

Telephone No.: 602-523-6996

Contract Number: 20-000-00-00085

Contract Amendment No.: Three

Term: October 1, 2012 - June 30, 2018

Procurement Specialist: India Garcia

Telephone No.: (505) 827-0483

Ship to:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested

For questions regarding this Contract please contact:
India Garcia 505-827-0483

Title: Procurement Card Services

This Contract Amendment is to be attached to the respective Contract and become a part thereof.

In accordance with Contract provisions, and by mutual agreement of all parties, this Contract is extended from July 1, 2016 to June 30, 2018 at the same price, terms and conditions.

Additionally, see attached for clarification of paragraph 17 of Contract.

Change vendor address and phone number From: 303 Roma Avenue, Albuquerque, NM 87120

505-282-7693

To: 201 East Washington Street, Phoenix, AZ 85004

602-523-6996

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 06/23/2016

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472
STATE OF NEW MEXICO

Procurement Card Services Contract # 20-000-00-00085
New Mexico Department of Finance and Administration
CONTRACT AMENDMENT No. 3

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Department of Finance and Administration Department hereinafter referred to as the “Agency” or “DFA,” and Bank of America, N.A., the successor to FIA Card Services, N.A., a Bank of America company, by merger of October 1, 2014, hereinafter referred to as the “Contractor” or “Bank of America”.

IT IS AGREED BETWEEN THE PARTIES:

17. Other Governmental Entities:
   Services offer under this agreement shall be limited to departments, agencies, commissions, boards, branches, instrumentalities and institution of the government of the State of Mexico that are part of the primary government and are not separate legal entities. This would exclude the Institutions of Higher Education and entities termed Component Units of the State. All other terms and conditions will remain in effect for terms of this agreement.

20. Term:
   THIS CONTRACT AS AMENDED BY THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE STATE PURCHASING AGENT. This contract is extended for two (2) additional years under the same terms and conditions, from July 1, 2016 through June 30, 2018, unless terminated pursuant to paragraph 20 of the contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date it is approved by the State Purchasing Agent or the State Purchasing Agent’s designee.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION

By:  
Duffy E. Rodriguez
Acting Cabinet Secretary

Date: 21 June 2016

By:  
DFA Legal Counsel

Date: 6/1/16
CONTRACTOR

By: David Randolph, Vice President of Card Services

Date: 6/15/10

The records of the Taxation and Revenue Department reflects that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

TAXATION AND REVENUE DEPARTMENT
ID NUMBER: 02-411455-00-3

By: Raymond Ramos

Date: 6/17/10

GENERAL SERVICES DEPARTMENT, STATE PURCHASING DIVISION

By: Lawrence O. Maxwell

Date: 6/17/10

State Purchasing Agent
State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
0000055747
Bank of America
303 Roma Avenue
Albuquerque, NM 87120
Telephone No. (505) 282-7693

Price Agreement Number: 20-000-00-00085
Price Agreement Amendment No.: Two
Term: October 1, 2012 - June 30, 2016

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice: As Requested

Procurement Specialist: India Garcia
Telephone No.: (505) 827-0483

Title: Procurement Card Services.

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from July 1, 2014 to June 30, 2016 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

[Signature]
Date: 06/27/2014

New Mexico State Purchasing Agent

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472
State of New Mexico
General Services Department
Purchasing Division

Contract Amendment

Awarded Vendor
0000055747
Bank of America
303 Roma Avenue
Albuquerque, NM 87120

Telephone No. 9505) 282-7693

Contract Number: 20-000-00-00085
Contract Amendment No.: One
Term: October 1, 2012 thru June 30, 2014

Procurement Specialist: Brenda Chacon
Telephone No.: (505) 827-0488

Ship to:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As requested

For questions regarding this Contract please contact:
Brenda Chacon (505) 827-0488

Title: Procurement Card Services

This Contract Amendment is to be attached to the respective contract and become a part thereof.

This amendment is issued to reflect the following effective immediately.

Change term from: October 1, 2012 - June 3, 2014
to: October 1, 2012 - June 30, 2014

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Accepted for the State of New Mexico

Brenda S. Chacon
New Mexico State Purchasing Agent

Date: 09/25/12

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472
State of New Mexico
General Services Department

Contract

Awarded Vendor
0000055747
Bank of America
303 Roma Avenue
Albuquerque, NM 87120

Telephone No. (505) 282-7693

Contract Number: 20-000-00-00085
Payment Terms: See contract
F.O.B.: See contract
Delivery: See contract

Procurement Specialist: Brenda Chacon
Telephone No.: (505) 827-0488

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As requested

For questions regarding this contract please contact:
Brenda Chacon (505) 827-0488

Title: Procurement Card Services

Term: October 1, 2012 thru June 3, 2014

This Contract is made subject to the “terms and conditions” shown on the reverse side of this page, and as indicated in this Contract.

Accepted for the State of New Mexico

Date: 09/21/12

New Mexico State Purchasing Agent

Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472
AM
STATE OF NEW MEXICO
SERVICES PRICE AGREEMENT
FOR
PROCUREMENT CARD SERVICES

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Department of Finance and Administration, hereinafter referred to as the "Agency" or "DFA," and FIA Card Services N.A. the successor to Bank of America, N.A. (USA) by merger of October 20, 2006 (a national banking association), a Bank of America company, hereinafter referred to as the "Contractor" or "Bank of America".

A. Contractor is a member of MasterCard® International Incorporated ("MasterCard") and Visa ® U.S.A. Inc. ("Visa") with full power and authority to issue cards for business and commercial use;

B. Contractor issues and services corporate purchasing cards for business and commercial use; and

C. Agency desires to obtain and use, and Contractor desires to issue to Agency, one or more corporate purchasing card accounts which will be subject to the terms and conditions in this Contract.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

A. General.

Acceptance - means approval, after a test period, of the procurement cards, processing procedures, systems, reporting or any other component Program.

Account - means each MasterCard or Visa Corporate Purchasing Card account, including a Cardless Account, which Contractor (i) issues pursuant to this Agreement or (ii) issued (and still outstanding as of the Effective Date of this Agreement) pursuant to a previous agreement no longer in effect. Each reference in this Agreement to "the Account" will mean Company's Account, a Participant's Account, a Cardholder's Account, or any combination of them, as applicable.

Affiliate - means any entity that, directly or indirectly, is controlled by or under common control with Contractor Corporation.

Agency - means the Department of Finance and Administration (DFA), Financial Control Division/Office of the State Controller.

Billing Statement - means the official invoice provided to Agency, State Agency and/or Cardholder which identifies each Transaction posted during the billing cycle, the date of each Transaction and the applicable fees and charges. Unless other wised determined by the Contractor, the official invoice is in paper, not electronic, medium.

Business Use - means use for business-related purposes.
Card – means each plastic charge card which Contractor issues or has issued for the account.

Cardholder – means an employee of Agency or of a State Agency who Agency or State Agency designates in writing and who Contractor approves to receive an Account or a Card. If a Cardholder or Contract Manager makes a card available for use by another employee of the Agency or State Agency, that person will be considered a Cardholder.

Contract - means an agreement for the procurement of items of tangible personal property or services or professional services. “Contract” and Agreement” are used interchangeably, and both refer to this agreement.

Contract Manager - is the individual named by the Secretary of the Department of Finance and Administration to be responsible for the administration of the Contract and the Program to request Contractor to add or delete Cards and to communicate with Contractor and take other action needed to maintain the Account.

Contractor – means the selected Offeror who has entered into a contract with the State for the provision of items of tangible personal property or services or professional services.

DFA means the New Mexico Department of Finance and Administration.

Determination - means the written decision of the AGENCY or the written agreement of the parties that becomes part of this Agreement.

Documentation - refers to procedure manuals, handbooks, and other publications that the Contractor created or provides to support the Program.

Effective Date – The date on which this Agreement becomes effective by virtue of being approved by the State Purchasing Agent or the State Purchasing Agent’s designee.

Emergency Card – means a card restricted and used only for emergency situations by state agencies addressing situations which have been declared as emergencies through an “Executive Order” issued by the Governor of New Mexico.

Employee - an employee of the State of Mexico.

GSD – means the General Services Department/State Purchasing Division of the State of New Mexico.

Interface - means the transmission of data that will allow for efficient and logical interaction with other applicable systems.

Integrate - means components of the system shall function efficiently and logically with all applicable existing systems.

Internal Controls - are the structure, policies, and procedures put in place to provide reasonable assurance that management meets its objectives and fulfills its responsibilities through effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.

Licensed Software – is the computer software in all representations, along with documentation and manuals that are owned by the licensor.

Other Governmental Entity -- means a New Mexico institution of higher education or a political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards, and municipalities.
Payment Due Date – means the payment due date shown on the Account Billing Statement which date shall be the last day of the Settlement Period.

Project Plan - refers to a mutually agreed upon and maintained document which identifies software requirements and delineates project deliverables, and responsibilities of both parties. The project plan delineates specific dates and occurrences of milestones and tasks. At a minimum, the project plan must include a Review Schedule that includes tasks to be performed and the time frame for completion of each task in relation to the purchase card program. All work under this Agreement shall be performed in accordance with the approved Project Plan.

Program - refers to the procurement card issuance, documentation, reports, interfaces, database, transaction processing and all directly related services furnished by Contractor under the terms and conditions of this Contract.

Program Administrator – means the employee at the Agency or a State Agency who is responsible for overseeing the procurement card project for that agency and who serves as the main point of contact between the agency and the Contractor.

Settlement Period – means the number of days after the statement closing date within which payments is due.

SHARE – is defined as the State of New Mexico’s Statewide Human Resource, Accounting, and Management Reporting System.

State Agency - means any department, institution, board, bureau, commission, district or committee of the government of the State, except institutions of higher education, authorized by DFA to participate in the Program.

State – means the State of New Mexico.

Services - refers to support services, educational services, services required for the processing of procurement card transactions

Task - means a specific piece of work or activity.

Transaction – means a purchase or reservation of goods or services made or facilitated by use of a Card or Account.

Unauthorized Use – means the use of the Account or a Card by a person (i) who is not a Cardholder, (ii) who does not have actual, implied or apparent authority to use the Account or Card, and (iii) whose use does not result in a direct or indirect benefit for Agency, a State Agency or Cardholder.

B. Additional Definitions for Schedules A and B. In addition to the applicable definitions in Paragraph 1(A) of this Agreement and in Schedules A and B, the following definitions apply to Schedules A and B to this Agreement:

Basis Point or BPS – means 0.01% or .0001 stated as a decimal. Ninety (90) basis points are therefore 0.90% or .0090.

Card Agreement – means this Agreement.

Company – means the Agency and each State Agency and Other Governmental Entity issued an Account under this Agreement.

Local Public Body – means Agency, State Agency, or Other Government Entity; provided, however, that for purposes of qualifying for and calculating the amount of an annual rebate or a
Transaction Volume Growth Incentive rebate, the Transaction Volume of all State Agencies meeting the non-transaction volume rebate conditions shall be added together.

**MM** – means million. $5mm is therefore $5,000,000.

**Political Subdivision** – means all State Agencies meeting the non-transaction volume rebate conditions or Other Governmental Entity. For the avoidance of doubt, for purposes of qualifying for an annual rebate and determining the annual volume in the Standard Transactions Rebate Multiplier Table of Schedule B, the Transaction Volume of all State Agencies meeting the non-transaction volume rebate conditions shall be added together.

**# of Open Accts** – means the number of cards included in a Works Instance actively using Works Receipts Imaging during the month for which a Works Receipts Imaging fee is imposed. This definition applies only to the Pricing Schedule for Works Receipts Imaging in Schedule A.

**Receipt Imaging Fee** – means the monthly fee for Works Receipts Imaging for a single Works Instance. This definition applies only to the Pricing Schedule for Works Receipts Imaging in Schedule A.

2. **This paragraph left blank intentionally.**

3. **SCOPE OF WORK**

(1) The scope of work shall consist of the following:
   a) The Contractor shall provide DFA with procurement card services.
   b) The Contractor shall implement the Program.
   c) If necessary, the Contractor shall implement a conversion process (for twenty-seven State Agencies) to transfer from the current procurement card service provider to the new procurement card service provider. This includes but is not limited to providing procurement card corporate account numbers, individual procurement card account numbers, merchant category codes, and establishing new participating state agencies in the Program.
   d) Should DFA authorize their participation in the Program, the Contractor shall expand the Program to State Agencies that do not currently participate in the Program.
   e) The Contractor shall update policies, procedures and methods required for DFA to successfully maintain and administer the Program.

(2) The Contractor shall provide software and other tools that, at a minimum, include the capabilities of the software presently used by the Program.

(3) The Contractor shall provide an automated reconciliation tool and a method for electronic submission of payments for the Program by State Agencies.

(4) The Contractor shall provide for the conversion of procurement card services that the existing twenty-seven State Agencies have implemented. The conversion should be done in such a manner that the purchase card services are not interrupted.

(5) The Contractor shall provide the necessary electronic transaction files via system interface into the SHARE, PeopleSoft System for State Agencies for cost allocation expenditures and financial reporting.

(6) The scope of work for the conversion of the twenty-seven State Agencies shall be completed within 30 days of the effective date of this Contract.
4. DELIVERABLES

A. The Contractor agrees to prepare and submit the Project Plan to Contract Manager for approval within 20 calendar days of contract execution, unless the parties agree that a Project Plan is not necessary. The Project Plan shall include all phases defined in the scope of work.
B. Other deliverables may include, but are not limited to hardware, software, progress reports, and procedure manuals.
C. Receipt of the deliverables contemplated under this Agreement shall assist the Agency in meeting its statutory obligations as set forth in Section 6-5-9.1 NMSA 1978,

5. SCOPE OF CONTRACT

The scope of this Contract includes the hardware, software, maintenance, technical support and training for the continuation and operation of the Program for the State of New Mexico.

6. OWNERSHIP OF SOFTWARE

The DFA acknowledge that all copyrighted software provided by Contractor for the performance of the Program is owned by Contractor and shall be deleted or returned at the conclusion or termination of this Contract in accordance with written instructions provided by Project Manager. All custom software developed for the Agency shall be owned by the Agency.

7. MAINTENANCE AGREEMENT

A. The Contractor will furnish DFA with any required software maintenance releases or upgrades on a timely basis at no cost to DFA.
B. The Contractor will repair or replace any equipment required for the efficient operation of the program at no cost to DFA. This does not include standard desk top or laptop computers and internet connectivity.

8. PROJECT MANAGEMENT

A. The duties and responsibilities of the Contract Manager will include, but are not limited to, the following:
   1. Receive, review and approve all Contract deliverable work products.
   2. Approve all project plans, change orders or modifications.
   3. Approve changes in Contractor personnel.
   4. Approve invoices prior to payment.
   5. Approve the format and content on the procurement card.
   6. Provide Contractor with the names of Employees who are authorized to receive and use the procurement cards.
   7. Set limits on the use of procurement cards.
B. The Agency shall, within 24 hours, notify Contractor of the resignation or termination of any Employee/Cardholder, and notify Contractor to cancel card of such Employee.
C. The DFA reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of DFA, serving the needs of the State of New Mexico adequately.
D. The Contractor agrees to designate a Project Manager for the work to be performed under the Contract.

9. PROJECT REPORTING

The Contractor will prepare a weekly written status report for submittal to the Contract Manager through the installation phase, and monthly written status reports thereafter. Written status report(s) will include:

a. Projects in progress
b. Project Status and target results pursuant to the Final Project Plan
c. Problems encountered and recommended solutions
d. Action being taken to address delays
e. Identification of policy or management questions
f. Requested project plan adjustments

In addition, the Contractor's Project Manager will provide weekly updates to the Contract Manager. At the discretion of the Contract Manager, the updates will be in person or by other means. The Contractor's Project Manager will periodically be required to prepare and present project status to DFA management.

10. USE OF ACCOUNT AND CARDS

A. The Account and Cards will be used only for Transactions in connection with the procurement of goods and services incidental to User Agency’s business or business activities, including travel expenses.

B. The Account will be used for Business Use only, and Agency will so advise and require each Cardholder and each State Agency accordingly. Agency will pay for Transactions and fees which Contractor applies to the Account or Cards.

C. Agency and each State Agency will follow, and will take all steps necessary or prudent to require each Cardholder to follow, the following procedures:

1. A Cardholder using a Card for a Transaction may sign a sales draft which the merchant’s financial institution processes. However, failure to sign a sales draft or receive a sales receipt will not relieve Agency of its obligations under this Contract. Agency should retain or should direct each Cardholder to retain each sales draft as a record of the Transaction.

2. A Card will not be used before the Card’s valid date or after the Card’s expiration date.

3. Agency and each Cardholder will check to see that the information embossed on a new Card and sent to Agency or Cardholder is correct. If there is an error, Agency will notify Contractor immediately.

D. If Agency or State Agency desires to terminate the Account or Card use by a Cardholder, Agency or State Agency, as applicable, will notify Contractor and will destroy the Cards issued or provided to that Cardholder. Agency may exclude a State Agency from the Account by giving Contractor written notice, and Contractor will have a reasonable period of time to act on any such notice. If this Contract terminates, Agency will be responsible for promptly destroying all Cards for the Account.
E. A Transaction may require the merchant, supplier or financial institution to seek prior authorization from Contractor before completing the Transaction. If Agency advises Contractor in writing of its desire to restrict a certain type of Transaction identified by a certain merchant category ("Merchant Category Code"), Contractor will take reasonable steps to withhold a requested authorization of that Transaction type, provided it is identified by the appropriate Merchant Category Code. However, Contractor will not be liable to Agency if merchants, suppliers or financial institutions nonetheless accept a Card or the Account for that Transaction type.

F. Contractor is not liable if a merchant or supplier does not honor a Card or if authorization is not given. Contractor will have the right to terminate any Account or Card which that Agency or State Agency’s Cardholders use.

G. Contractor may deny authorization for any Transaction if Contractor suspects fraudulent activity or Unauthorized Use, or for other reasonable and valid reasons. Contractor is not liable for any failure to authorize a Transaction.

11. MERCHANT/SUPPLIER CLAIMS AND DISPUTES

A. Agency will make a good faith effort to resolve with a merchant or supplier any claim or dispute arising from a transaction and waives any claim against Contractor for any merchant or supplier’s refusal to honor any Card.

B. In a dispute with a merchant or supplier, the rights of the Agency, any State Agency, and each Cardholder against the merchant or supplier will become the rights of Contractor, and Agency and State Agency will assign (and require the affected Cardholder to assign) to Contractor each of their rights to assert a billing error against the merchant or supplier. Agency and the State Agency will, and will require the Cardholder to, do whatever is necessary to enable Contractor to exercise those rights. Contractor may reverse from the Account any credits relating to the dispute.

12. CHARGE LIMIT

There will be one total charge limit for each State Agency account ("Aggregate Charge Limit"). Aggregate Charge Limit means $25,000 or as adjusted by the DFA Contract Manager in writing or email to the Contractor. Each card will have its own charge limit ("Card Limit"). In its sole discretion, Contractor may decrease any Aggregate Charge Limit or any Card Limit. No Agency will incur obligations which would cause an account’s unpaid balance to exceed the Aggregate Charge Limit. If the Aggregate Charge Limit or any Card Limit is exceeded, the excess will be deemed immediately due and payable at the option of Contractor subject to the funds having been appropriated by the New Mexico Legislature for such use. The State of New Mexico and DFA shall use their best efforts to facilitate payment to Contractor.

13. LIMIT OF LIABILITY FOR CHARGES

Each State Agency shall pay Contractor for all transactions regardless of the purpose for which a transaction is made; provided, however, for transactions which result from lost or stolen cards or other Unauthorized Use, liability shall not exceed $50.00 per card, if notice is given in accordance with Paragraph 26 (Lost or Stolen Cards).

14. CHANGE ORDERS

DFA may make changes or revisions to the scope of work in this Contract by written change order. The concept of the change order is a mutually agreed-upon exchange of level-of-effort.
Out-of-scope change orders may have a cost impact. If, in the opinion of the Contractor, the proposed change or revision would increase the cost of this Contract, the DFA reserves the right to negotiate in good faith adjustments to schedules, tasks, and/or deliverables. The Contractor shall have no obligation to commence work in connection with any change order until the price and/or schedule impact of the change is agreed upon by the parties in writing.

The Contract Manager may request the Contractor to provide the enhancements for testing at a cost agreed upon by both parties. If the Contract Manager determines that the enhancement is effective, he may request to have the Contract amended to reflect the increased cost, and the enhancement will be implemented by the Contractor under terms agreed to by the Contractor and DFA.

The DFA reserves the right to issue an RFP on any enhancements it may decide to undertake.

15. POLICIES AND PROCEDURES

The Contractor will follow mutually agreed-upon policies and procedures which may from time to time be established by DFA, in addition to those set forth in this Contract, for the efficient and cost-effective implementation of this Contract and preparation of statements.

16. PERIODIC REVIEW

During the term of this Contract, whenever Contractor requires public records from the State of New Mexico for the purpose of reviewing its ability to perform its obligations under this Contract, the State of New Mexico shall promptly furnish public records in accordance with the Public Records Act, sections 14-2-1 et seq. NMSA 1978.

17. OTHER GOVERNMENTAL ENTITIES

This Contract in no way obligates Contractor to provide procurement card services to Other Governmental Entities. Should Contractor offer procurement card services to Other Governmental Entities, it shall be pursuant to separate agreements between the Contractor and each Other Governmental Entity, pursuant to Section 13-1-129(A)(2) NMSA 1978. This controlling price agreement shall be identified on any purchase orders for such contracts. All fees and charges assessed based on the use of procurement card services by an Other Governmental Entity shall be the sole responsibility of the Other Governmental Entity. Without in any way limiting the generality of the foregoing, in no event shall the Agency or any State Agency be responsible for fees and charges assessed based on the use of procurement card services by an Other Governmental Entity.

18. RIGHT TO PUBLISH

Throughout the duration of this Agreement, Contractor will secure from the Agency written approval prior to the release of any information that pertains to the potential work or activities covered by this Agreement with the exception of information provided to credit transaction processing agents for the purposes of fulfilling the obligations under this Agreement.

19. PERFORMANCE, PATENT, COPYRIGHT, TRADEMARKS AND TRADE SECRET

INDEMNIFICATION

A. The Contractor shall defend, at its own expense, the DFA and its agencies against any claim that any product or service provided under this Contract infringes any patent, copyright or trademark in the United States, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any
third party obtains a judgment against a procuring agency based upon the Contractor's trade secret infringement relating to any product or service provided under this Contract, the Contractor agrees to reimburse the DFA for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Agency or State Agency shall:

1. Give the Contractor prompt written notice of any claim;
2. Allow the Contractor to control the defense or settlement of the claim;
3. Cooperate with the Contractor to facilitate the defense or settlement of the claim;
4. Not having made any admission of liability or agreement to any settlement or compromise to the claim of infringement. This indemnity shall not extend to any claim of infringement resulting from any unauthorized use or modification of the Software or Documentation as defined by any software agreement signed by Agency; and
5. Contractor's obligations under this indemnity are Contractor's only obligations with respect to any infringement claim in connection with Agency's or State Agency's use of the Software or Documentation.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

1. Provide DFA the right to continue using the product or service; or
2. Replace or modify the product or service so that it becomes non-infringing.

20. CONTRACT TERM

THIS CONTRACT SHALL NOT BE EFFECTIVE UNTIL APPROVED BY THE STATE PURCHASING AGENT OR THE STATE PURCHASING AGENT'S DESIGNEE. The term of the Contract shall be from the date of such approval to June 30, 2014, unless earlier terminated pursuant to the terms of this Contract. Agency reserves the option of renewing the Contract for additional terms of one or more years, up to a maximum term, including all renewals, of eight (8) years.

21. AGENCY LIABILITY; ACCEPTANCE OF CONTRACT

A. Each State Agency will pay Contractor for all Transactions and for applicable fees and charges described in the attached Schedule A, whether that Agency, State Agency or Cardholder is billed, regardless of the purpose for which the Transaction is made. (By this reference, Schedule A is incorporated into this Agreement as if set forth fully herein.)

B. A State Agency's responsibility for Card and Account usage will continue until: (1) receipt by Contractor of Agency's or a State Agency's written notice to close the Card or the Account; (2) actual closure of the Account by Contractor; and (3) payment to Contractor of all amounts due under this Contract.

C. Agency and State Agency acknowledge that the Program has additional features available that State and State Agency have elected not to utilize at this time. Agency and State Agency shall have policies and procedures that State or State Agency, or its agents or employees, at any time utilize such features whether or not it has actual knowledge, State Agency shall pay Contractor for all Transactions incurred through the use of the features. For the purposes of this provision, the term "feature" shall include (i) the ability to obtain cash advances through the use of a Card, check or other instrument, (ii) checks issued to Cardholders for use in connection with the line of credit available on a Card, and (iii) Accounts, whether or not a Card has been issued
or such Card contains the name of an individual or department in connection with the Account number.

D. Each party shall be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of this Contract. Each party shall be liable for its acts or failure to act in accordance with this Contract, subject to the immunities and limitation of the New Mexico Tort Claims Act.

E. Provided notice of lost or stolen card or Unauthorized Use as defined in this Contract is given in accordance with Paragraph 26 of this Contract, the Agency shall have no liability for Unauthorized Uses or purchases made on lost or stolen cards.

22. PAYMENTS

Each State Agency will pay Contractor the total amount of the new balance shown as due on each Billing Statement on or before the Payment Due Date shown on that Billing Statement. There is no right to defer any payment due on the Account.

23. BILLING STATEMENTS

A. Contractor will provide a Billing Statement to the Contract Manager or to such other State Agency employee or agent as the Contract Manager designates in writing.

B. Contractor may provide Agency and State Agency, as applicable, a monthly report listing each Cardholder who has an Account balance unpaid since the Payment Due Date shown on the most recent Billing Statement issued to the Cardholder and therefore is subject to cancellation of Account charge privileges ("Delinquency Report"). Providing the Delinquency Report shall not constitute waiver by Contractor of any rights and remedies it may have under this Contract.

24. REBATE SCHEDULE

The terms of the rebate are set forth in the attached Schedule B, which is incorporated into this Agreement by this reference as if set forth fully herein.

25. CARD ISSUANCE / TERMINATION PROCEDURES

The Contractor agrees to issue and terminate procurement cards in accordance with the following procedures:

Agencies shall instruct Cardholders that Procurement Cards shall be used for business purpose only.

A. Card Issuance

During implementation, the Contract Manager will provide the State Agencies’ Program Administrators with written implementation instructions and work with them to facilitate cardholder enrollment. Cardholder accounts set-up forms will be included with the implementation package instructions and will request information on each Cardholder, including name, Social Security number (optional), billing address (if different from business address), credit limit, authorization parameters, hierarchy information, the 22-digit fixed code assigned to each card and a written certification by the State Agencies’ Program Administrators. The State Agencies’ Program Administrators will complete and sign a set-up form for each new Cardholder and send it to the Contractor via fax, e-mail or U.S. mail.

Once the Cardholder information has been entered into Contractor’s system database, the procurement cards can be issued. Typically, cards will be issued within two (2) business days following receipt of the cardholder information. Large quantities of cards may require additional
time. The Contractor will send the cards to the State Agencies’ Program Administrators who will distribute the cards to the Cardholders, unless otherwise specified by the Agency.

B. Card Termination

The Agency Program Administrator or Contract Manager will have authority to cancel or terminate cards through one of the following three methods. It is the State Agencies’ responsibility to cancel recurring charges with the vendor. Cancellation or termination of a card or account will not prohibit recurring charges from posting. The State Agency shall be responsible for all recurring charges, regardless whether an account or card has been terminated.

1. The State Agencies’ Program Administrators can contact the Contractor or other telephone number designated by the Contractor. Once the Contractor is notified that a cancellation is necessary and such information is put into its system, the card will be suspended and further charges will not be authorized.

2. The State Agencies’ Program Administrators can terminate cards using the Contractor’s proprietary Card Program Administrative system. Contractor’s system is designated to allow State Agencies’ Program Administrators to automatically link Contractor’s system to perform routine Cardholder changes electronically.

3. The State Agencies will be able to submit to Contractor a batch file that will be used to systematically cancel existing cards. The cards will not be canceled until the batch file has been processed.

26. LOST OR STOLEN CARDS AND UNAUTHORIZED USE

A. Each Transaction resulting from use of a Card will be assumed to be an authorized Transaction unless Contractor has received prior written notice, in accordance with this Agreement, from the Agency or a State Agency, as applicable, that the Cardholder is no longer authorized to use the Account or the card is reported as lost or stolen or an Unauthorized Use, pursuant to Paragraph 26 B. herein.

B. If a Card is lost or stolen, or if there is possible Unauthorized Use, Agency shall require each State Agency and/or Cardholder to notify Contractor as soon as practically possible within the first 24 hours following discovery of the loss or theft or possible Unauthorized Use by phoning Contractor at the phone number provided for such notice on the Billing Statement, followed by written confirmation. Such notification to Contractor of the loss or theft or Unauthorized Use shall trigger the appropriate paperwork to be completed by Contractor and/or Agency thereby minimizing the liability. Additionally, the Agency or State Agency shall mark the card as lost or stolen which will begin blocking all authorizations against the card immediately. If notice is given, as set forth herein, as soon as practically possible within the first 24 hours, and the Agency or State Agency assists Contractor in investigating facts and circumstances relating to the loss or theft or possible Unauthorized Use of any Card, including without limitation, obtaining an affidavit or similar written, signed statement from the Cardholder, then Agency or State Agency, as applicable, will not be liable for Transactions resulting from loss or theft of Cards or other Unauthorized Use.

C. Upon receiving information of a lost or stolen card, Contractor will immediately block the card from any future transactions. Any balances will be transferred to a new card number and sent to the Agency or State Agency, as applicable, via U.S. postage.
27. SHIPMENT AND RISK OF LOSS

The Contractor will ship all hardware and software F.O.B. The Contractor will bear all risk of loss or damage until hardware and software has been successfully installed at DFA and approved and completely accepted by the Contract Manager.

The Contractor expressly and implicitly warrants that any deliverables provided will conform to any affirmation of fact made by the Contractor and be merchantable and fit for a particular purpose.

28. WARRANTIES

The Contractor warrants that the procurement card will maintain full serviceability for a period of two years, under normal usage conditions. The Contractor will replace, at no cost to the DFA or the cardholder, any issued procurement card that does not maintain a two-year serviceability.

29. CARDHOLDER INFORMATION

The Contractor shall not sell or distribute a list of participating agencies or Cardholders, or any other information to any person, firm, or other entity for any purpose, except for the information provided to credit transaction processing agents for the purposes of fulfilling Contractor’s obligations under this Agreement.

30. CONTRACT TERMINATION

The following provisions are applicable in the event that the Contract is terminated.

A. Termination

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency’s sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor’s receipt of the notice of termination, if the Agency is the terminating party, or the Contractor’s sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency of if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.**

B. Termination Management

Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval to the Agency; 2) comply with all directives issued by the Agency in the notice of
termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

C. Termination for Statutory Changes

It shall not be a breach of this Contract if the DFA fails to perform its part of the Contract because of statutory changes that render performance of the Contract contrary to or inconsistent with law.

D. DFA Rights after Termination

In the event the Contract expires or is terminated for any reason, the DFA shall retain the right to continue the use of all policy and procedure manuals and the procurement card design.

E. Contractor's Rights after Termination

In the event the contract expires or is terminated for any reason, Contractor shall retain its rights of ownership in any copyrighted software provided to or developed for use by the State of New Mexico.

F. Upon expiration or termination of this Contract, each Agency shall destroy, or instruct all Cardholders to destroy, all cards. Termination will not affect any Agency’s liability for any charges or other obligations under this Contract.

G. Agency may consider Contractor’s written notice to Agency of a prospective change to the fees and charges set forth in Schedules A or B a written notice of termination of this Agreement. Alternatively, Agency may agree to the changed fees and charges if doing so is permissible under the Procurement Code and the request for proposals that resulted in this Agreement and the changed fees and charges are otherwise acceptable to Agency, in which case this Agreement shall be amended so as to incorporate the changed fees and charges.

31. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (3) days of receipt of the proposed amendment.

32. STATUS OF CONTRACTOR

The Contractor is solely responsible for fulfillment of the Contract with DFA.

The Contractor and its agents and employees are independent contractors performing services for DFA and are not employees of the State of New Mexico. The Contractor, and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor.
for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

33. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this contract or assign any claims for money due or to become due under this contract without the prior written approval of the Agency; provided, however, that Contractor, without Agency’s prior written approval, may assign its rights and delegate its duties under this Agreement in their entirety to an Affiliate.

34. SUBCONTRACTING

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

35. RECORDS AND AUDIT

Contractor shall retain detailed records for a rolling period of seven (7) years from the date of the transaction recorded. Agency shall afford Contractor prior notice of any audit to be performed by the Agency upon the records of Contractor and such audit shall only be performed with regard to the records directly related to the State of New Mexico and its transactions under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration, the State Auditor and any appropriate federal authorities. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

36. INDEMNIFICATION

Regardless of the coverages provided by any insurance, the Contractor (Bank of America) will indemnify and hold harmless DFA (Agency) for claims, demands, actions, attorney’s fees, costs and expenses based upon or arising out of gross negligence or intentional acts or omissions of the Contractor, its employees, sub-contractors, or other agents while performing services under this Contract. In no event shall Contractor be liable to Agency, State Agency, any participant or Employee for consequential, incidental, special or punitive damages, including such damages as they relate to lost data. In the event that any action suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than ten (10) days after it receives notice thereof, notify legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

37. NEW MEXICO EMPLOYEES HEALTH COVERAGE

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

1. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

2. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $500,000 dollars or;
(3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of $250,000, $500,000 or $1,000,000 depending on the dollar value threshold in effect at that time.

38. TRANSFER OR ASSIGNMENT

The rights granted herein are restricted for use solely by DFA and may not be assigned or transferred to a third-party without the prior written permission of the Contractor, which consent will not be unreasonably withheld.

39. EXCLUSIVE REMEDIES

Each party retains the right to impose penalties, to sue for breach of contract in a court of competent jurisdiction located in the State of New Mexico or to compel specific performance. Election of any one of these remedies does not exclude the election of any other remedy the parties deem appropriate. The parties' remedies are cumulative, not exclusive.

40. LIMITATION OF LIABILITY

The liability of the DFA to the Contractor or any third party beneficiary under this Contract, in any action or proceeding arising out of the performance or breach of this Contract, is limited to paying any amounts due under this Contract. The DFA will be liable in tort only to the extent permitted by the New Mexico Tort Claims Act Sections 41-4-1 thru 41-4-29 NMSA 1978 as amended.

41. INVALID TERM OR CONDITION

If any term or condition of this Contract is held to be invalid or non-enforceable by a court of competent jurisdiction, the remainder of this Contract will not be affected and will be valid and enforceable to the fullest extent of the law.

42. WAIVER

The waiver by either party of any default or breach of this Contract will not constitute a waiver of any other or subsequent default or breach. Waiver by the DFA shall be in writing and signed by the Contract Manager. Waiver by the Contractor may be inferred by its actions or may be in writing.
43. FORCE MAJEURE

In no event will the Contractor or DFA be liable or deemed liable to be in default for any delay or failure in performance under this Contract resulting directly or indirectly from acts of God, civil or military authority excluding the State of New Mexico or its entities, acts of public enemies, strikes, war, civil disturbance, epidemic, accidents, fire, explosions, earthquake, floods, labor disputes, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance will not be deemed a default or a ground for termination.

44. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

45. EQUAL OPPORTUNITY COMPLIANCE

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

46. This paragraph left blank intentionally.

47. PLACE OF EXECUTION

The place of execution and performance of this Contract is New Mexico.

48. WORKER'S COMPENSATION

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

49. RELEASE

Except as provided herein, the Contractor, upon acceptance of final payment of the amount due under this Contract, releases DFA, its officers and employees, and the State of New Mexico from any liabilities, claims, and obligations whatsoever arising from or under this Contract with the exception of any valid transaction posted within the term of this Agreement. The Contractor agrees not to purport to bind the DFA to any obligation not assumed herein by the DFA, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

50. AMENDMENT

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto with the exception of those matters set forth in paragraph 14.
51. MERGER

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

This Contract constitutes the entire agreement of the parties, except as otherwise specifically provided in this Contract. The request for proposals document # 08-000-00-00035 including amendments and the Contractor's proposal including the best and final offer are hereby incorporated by reference. In the event of a dispute under the Contract, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence:

1) Amendments to the Contract in reverse chronological order;
2) The Contract, including the Scope of Work;
3) The Contractor's best and final offer, the RFP's, including attachments and written responses to questions and written clarifications; and
4) The Contractor's response to the RFP.

52. CONFIDENTIALITY

Any confidential information provided to or developed by either party in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the receiving party without the prior written approval of the providing party except as required by law.

53. PRODUCT OF SERVICE --COPYRIGHT

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

54. GOVERNMENTAL CONDUCT ACT

A. In accordance with applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978, the Contractor represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor will not knowingly employ during the term of this Agreement any Agency employee while such employee is employed by the Agency and participating directly or indirectly in the Agency’s contracting process. To assist Contractor with complying with this paragraph, Agency shall, upon Contractor’s request, confirm an individual’s employment status with the Agency and whether the individual, if employed by Agency, participates directly or indirectly in the Agency’s contracting process;

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public
officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with Section 10-16-3(D) NMSA 1978, the Contractor has not offered or contributed, and during the term of this Agreement shall not offer or contribute, money, thing of value, or promise thereof to a public officer or employee of the Agency that is conditioned upon or given in exchange for promised performance of an official act.

B. Contractor's representations and warranties in Subparagraph A of this Paragraph 54 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. On or before July 30 of each year, Contractor shall certify to the Agency in writing that Contractor's representations and warranties in Subparagraph A of this Paragraph 54 were accurate on the Effective Date and were accurate throughout the period from the Effective Date through June 30 of the year in which the certification is made. In addition to such annual certifications, should Agency have reason to question the accuracy of Contractor's representations and warranties in Subparagraph A of this Paragraph 54 as of the Effective Date or during the term of this Agreement, Agency may request, and the Contractor shall provide within thirty (30) days of the request, a similar written certification, covering the period from the Effective Date through the date of Agency's request. If (i) it is later determined that Contractor's representations and warranties in Subparagraph A of this Paragraph 54 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances or (ii) Contractor fails to timely submit the certifications required by the previous two sentences, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

C. All terms defined in the Governmental Conduct Act have the same meaning in this Paragraph 54(A).
55. NOTIFICATION

Any notice required to be given to either party by this Agreement shall be in writing and shall be
delivered in person, by courier service or by U.S. mail, either first class or certified, return
receipt requested, postage prepaid, as follows:

To DFA:

Mr. Ricky A. Bejarano, FCD Director/State Controller
Department Finance and Administration
Financial Control Division
166 Bataan Memorial Building
Santa Fe, New Mexico 87501

To Contractor:

Bank of America
P.O. Box 28
Norfolk, VA 23510

With a copy to:

Mr. David Randolph, VP – Card Account Manager
Bank of America Merrill Lynch
201 E. Washington Street
Phoenix, Arizona 85004

Either party may change its representative or address above by written notice to the other. The
carrier for mail delivery and notices will be the agent of the sender.

56. SOFTWARE

a. The use of any third party software program and related documentation, if any, provided in
connection with this Agreement shall be governed by the terms of the end-user agreement
accompanying the software.

b. Subject to the terms of this Agreement, Contractor grants Company a non-exclusive, non-
transferable, enterprise license to use for internal business purposes the Works application
(“Application”) and documentation as amended from time to time by Contractor (“Documentation”)
which is provided by Contractor to Company. Title, ownership rights and intellectual property rights in
the Application and Documentation shall remain with Austin Acquisition, Inc. (formerly known as
Works Operating Company and referred to herein as “Works”), the entity that licenses the Application
to Contractor and the owner of the Application. Company acknowledges such ownership and
intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner
with Contractor's or Works' rights with respect to the Application or Documentation. Company agrees
to use the Application and Documentation as specified by Contractor.

57. REMEDIES UPON TERMINATION. In the event of a termination of this Agreement, (a) the
entire balance outstanding on all Accounts shall, at the option of the Contractor, become due and
payable in accordance with this Agreement; (b) any obligation of Contractor to permit further Transactions under this Agreement shall immediately cease and terminate. The foregoing remedies are in addition to any other rights of Contractor under this Agreement.

58. FINANCE CHARGE.

In the event Agency fails to pay the total amount shown as due on a Billing Statement by the Payment Due Date shown on the Billing Statement, the amount unpaid may be subject to a finance charge or late fee starting no sooner than the first day of the next billing cycle. To calculate the finance charges for a billing cycle, the daily periodic rate is multiplied by the average daily balance, and that product is multiplied by the number of days in the billing cycle. The daily periodic rate is the annual percentage rate divided by 365. The annual rate is the prime rate published in the Money Rates section of the Wall Street Journal in effect on the first day of each calendar month (the “Prime Rate”) plus the number of percentage points stated in Schedule A. The average daily balance is the sum of daily past due balances (including, for each day, finance charges from previous day) less payments credited to the past due balance, divided by the number of days in the billing cycle.

59. PAY EQUITY REPORTING REQUIREMENTS

If the CONTRACTOR has ten (10) or more employees OR eight (8) or more employees in the same job classification, CONTRACTOR must complete and submit the required reporting form (PE10-249 or PE250), depending on their size at the time) if they are awarded a contract.

For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, CONTRACTOR must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.

Should CONTRACTOR not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

CONTRACTOR must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. CONTRACTOR must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

60. DISCLOSURE REGARDING RESPONSIBILITY

Except to the extent that Contractor has previously notified Agency in writing of any exceptions to its warranties and representations, Contractor hereby warrants and represents that neither it nor any principal of it:

A. Are presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Have within a three-year period preceding this contract or during the period covered by a certification required under this Paragraph 60, been convicted of or had civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain,
or performing a public (federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes related to the submission of offers; or commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property.

C. Are presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with, commission of any of the offenses enumerated in paragraph B of this disclosure.

D. Have preceding this contract or during the period covered by a certification required under this Paragraph 60, been notified of any delinquent Federal or state taxes in an amount that exceeds $3,000.00 of which the liability remains unsatisfied.

1. Taxes are considered delinquent if both of the following criteria apply:
   a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
   b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

E. Have within a three year period preceding this contract or during the period covered by a certification required under this Paragraph 60, had one or more contracts terminated for default by any federal or state agency or local public body.

Principal, for the purpose of this disclosure, means (i) NB Holdings Corporation, of which Contractor is a wholly-owned subsidiary; (ii) directors and executive officers of Contractor; and (iii) employees of Contractor or an Affiliate who (a) have management level responsibility regarding the services to be provided under this Agreement comparable to the level of responsibility at the time this Agreement was executed of Larry Glandon, Senior Vice President, Government Banking, Dawn Haddock, Senior Vice President/Product Delivery – Treasury, Government Banking West Region, and David A. Randolph, Vice President, Card Account Manager - SW Government and (b) directly interface with Agency management regarding this Agreement.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of the Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and in continuing the Agreement. On or before July 30 of each year, Contractor shall certify to the Agency in writing that Contractor’s representations and warranties in Subparagraphs A through E of this Paragraph 60 were accurate on the Effective Date and were accurate throughout the period from the Effective Date through June 30 of the year in which the certification is made. In addition to such annual certifications, should Agency have reason to question the accuracy of Contractor’s representations and warranties in Subparagraphs A through E of this Paragraph 60 as of the Effective Date or during the term of this Agreement, Agency may request, and the Contractor shall provide within thirty (30) days of the request, a similar written certification, covering the period from the Effective Date through the date of Agency’s request. If (i) it is later determined that the Contractor knowingly rendered an erroneous disclosure or (ii) Contractor fails to timely submit the certifications required by the previous two sentences, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause.
Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

61. INSURANCE.
Contractor must maintain and furnish at its expense throughout the term of the agreement a banker’s blanket bond with per occurrence coverage in a minimum amount of ten million dollars ($10,000,000) containing terms and conditions acceptable to Agency.

62. RECEIPTS IMAGING SERVICE

Agency may elect to use Contractor’s receipts imaging service, whereby Agency sends Contractor copies of Agency’s Transaction receipts via facsimile transmission, which Contractor will electronically store for Agency (the “Receipts Imaging Service”). It is Agency’s obligation to send Contractor legible copies of Agency’s Transaction receipts. Agency acknowledges and agrees that Contractor will not review the Transaction receipts and that Agency is responsible for retaining the original receipts. Notwithstanding the Contractor’s liability as stated elsewhere in this Agreement, Contractor will not be liable for damages if the receipts images are illegible or blank or for failure to provide copies of receipts by a given time or for failure to provide copies of receipts Contractor is not reasonably able to provide. Receipts images will be made available to Agency by Website at such times as may be set forth in the applicable User Documentation or as otherwise established by Contractor. Contractor will retain copies of the receipts images for a period of three (3) years from the date Contractor initially stores the image.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date it is approved by the State Purchasing Agent or the State Purchasing Agent’s designee.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION

By: [Signature]  
Thomas E. Clifford, Ph.D., Secretary  
Date: 9/17/12

By: [Signature]  
Gregory S. Shaffer, Chief Legal Counsel –Certifying legal sufficiency  
Date: 9/17/2012

CONTRACTOR

By: [Signature]  
Dawn Haddock  
(Print Name)  
Date: 9/18/2012

Its: [Signature]  
SVP, Sr. Treasury  
(Print Title)

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

TAXATION AND REVENUE DEPARTMENT

ID NUMBER: 02-411455-00-3

By: [Signature]  
Date: 9/19/12

GENERAL SERVICES DEPARTMENT, STATE PURCHASING DIVISION

[Signature]  
Lawrence O. Maxwell  
State Purchasing Agent  
Date

Page 23 of 23
The New Mexico Public Sector Group is an association of Bank of America’s Purchase Card, and ePayables public sector clients. The purpose of the New Mexico Public Sector Group is to help state and local government agencies, public schools and municipalities to grow their card programs and earn additional rebate basis points on their individual annual Transaction Volume.

<table>
<thead>
<tr>
<th>Payment Method and applicable fee:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Electronic Payment</strong> No Fee</td>
<td></td>
</tr>
<tr>
<td><strong>Check Payment</strong> No Fee</td>
<td></td>
</tr>
<tr>
<td><strong>Fee Waived</strong></td>
<td></td>
</tr>
<tr>
<td><strong>2.0% of the total balance due</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Prime Rate + 2.00%</strong></td>
<td></td>
</tr>
<tr>
<td><strong>To be quoted if authorized</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Cash Advance Fee</strong> Cash Advances are not allowed</td>
<td></td>
</tr>
<tr>
<td><strong>Overlimit Fee</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Returned Payment Fee</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Copy Fee</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Logo Fee</strong> Logo Card Fee Waived</td>
<td></td>
</tr>
<tr>
<td><strong>Unique Card Design Fee</strong></td>
<td></td>
</tr>
<tr>
<td><strong>International Transaction Fee</strong> 1% of the U.S. Dollar amount</td>
<td></td>
</tr>
</tbody>
</table>

### SELECTION OF SETTLEMENT PERIOD

Indicate the Settlement Period or number of days after the statement closing date within which payment is due. 25 days

### WAIVER PROGRAM:

Depending on whether the Account is a Visa account or a MasterCard account, the Account will be subject to either the Visa Liability Waiver Program or the MasterCoverage® Liability Protection Program. This coverage is designed to protect financial institutions and companies from employee misuse of the Account resulting in unauthorized Transactions. Bank of America will waive Company’s liability for waivable charges up to the limit of coverage as provided in the liability waiver program (“Waiver Program”) upon notice by the Waiver Program underwriters that the Transaction at issue qualifies as a waivable charge. This waiver will be according to the terms and subject to the exclusions of the Waiver Program as established from time to time by the Waiver Program Underwriters, including without limitation, the condition that Company meets all of its obligations under the Waiver Program which may change from time to time. Current terms of the Waiver Program as set forth in the brochure, which Bank of America will provide to Company, are incorporated in this Agreement by reference. The Waiver Program may be terminated by Bank of America or the Waiver Program underwriters, effective immediately upon notice to Company.

### UP TO $500,000 TRAVEL ACCIDENT INSURANCE (NOT AVAILABLE FOR CORPORATE FLEET CARDS):

This coverage will offer up to $500,000 in automatic common carrier travel, accidental death and dismemberment insurance when employees charge the entire cost of the passenger fare for land, sea, or air public transportation on their Cards. A disclosure, which outlines the program details will be provided to Company and Cardholders.
**ELECTRONIC PRODUCT FEE SCHEDULE**

<table>
<thead>
<tr>
<th>Internet Application Options:</th>
<th>Fee Waived</th>
</tr>
</thead>
<tbody>
<tr>
<td>Works Solution</td>
<td></td>
</tr>
<tr>
<td>Visa Information Management (VIM) Reporting</td>
<td>Fee Waived</td>
</tr>
<tr>
<td>VIM with Workflow</td>
<td></td>
</tr>
<tr>
<td>Custom Interface:</td>
<td></td>
</tr>
<tr>
<td><em>Interface warranty period of 1 year</em></td>
<td></td>
</tr>
<tr>
<td>Development</td>
<td>$150 per month</td>
</tr>
<tr>
<td>Maintenance</td>
<td>$150 per hour</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Standard Electronic File Delivery Options:</th>
<th>Fee Waived</th>
</tr>
</thead>
<tbody>
<tr>
<td>EDI 811</td>
<td></td>
</tr>
<tr>
<td>Statement Billing File</td>
<td>Fee Waived</td>
</tr>
<tr>
<td>VISA IntelliLink Compliance Management (VICM)</td>
<td>Must meet the threshold of $45 million to implement,</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Works Receipts Imaging</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Pricing Schedule</th>
<th># of Open Accts</th>
<th>Receipt Imaging Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>1-50</td>
<td>$125</td>
</tr>
<tr>
<td>Tier 2</td>
<td>51-100</td>
<td>$350</td>
</tr>
<tr>
<td>Tier 3</td>
<td>101-300</td>
<td>$1,000</td>
</tr>
<tr>
<td>Tier 4</td>
<td>301-700</td>
<td>$2,250</td>
</tr>
<tr>
<td>Tier 5</td>
<td>701-1,000</td>
<td>$4,250</td>
</tr>
<tr>
<td>Tier 6</td>
<td>1,001-3,000</td>
<td>$8,000</td>
</tr>
<tr>
<td>Tier 7</td>
<td>3,001-5,000</td>
<td>$16,000</td>
</tr>
<tr>
<td>Tier 8</td>
<td>5,001 &amp; Up</td>
<td>$27,500</td>
</tr>
</tbody>
</table>
Bank of America will pay Local Public Body an annual rebate based on the Rebate Calculation below. The rebate will be paid to the Local Public Body based on the Transaction Volume for the entire calendar year for all New Mexico Local Public bodies utilizing the New Mexico public sector group pricing.

REBATE DEFINITIONS:

Capitalized terms, which are not defined in this Schedule, have the meanings ascribed in the applicable Card Agreement.

“Calculation Period” means, initially, the twelve (12) month period commencing January 1, 2012, and thereafter, each subsequent twelve (12) month period.

“Credit Losses” means any balances which remain unpaid by Company, Participant or a Cardholder six (6) billing periods after the closing date on the Billing Statement in which the Transactions, fees and charges appeared for the reporting period.

“Cycle Days” means the number of days from the start of the billing period to the Billing Statement date.

“Grace Days” means the number of days after the Billing Statement closing date within which payment is due.

“Large Ticket Interchange Transactions” means certain transactions which, based upon the type of merchant and/or transaction dollar amount, are subject to a Visa or MasterCard large ticket interchange program, as determined by and amended by Visa and MasterCard from time to time.

"Rebate Multiplier" means the multiplier corresponding to the Standard Transaction Volume and Cycle and Grace Days as set forth in the Standard Transactions Rebate Multiplier Table, and the multiplier corresponding to the Large Ticket Interchange Transaction Volume and Cycle and Grace Days set forth in the Large Ticket Interchange Transactions Rebate Multiplier Table below.

“Standard Transactions” means the Transaction Volume not meeting the criteria for Large Ticket Interchange Transactions.

“Total Credit Losses” means, for any Calculation Period, the sum of (i) Bank of America’s Credit Losses on the Card Accounts for the Calculation Period and (ii) Bank of America’s Credit Losses on the Card Accounts for any previous Calculation Period which have not been applied against any rebate payable under the Agreement.

“Transaction Volume” means, for any Calculation Period, the total dollar amount of purchase Transactions made with the Cards during the Calculation Period, less the total dollar amount of: returned purchases, credit adjustments, Transactions resulting from Unauthorized Use, and disputed charges. Cash advances and Convenience Checks are not included in Transaction Volume.

REBATE CONDITIONS:

During the Calculation Period, the program must meet all of the following conditions in order to qualify for a rebate:

i. Local Public Body pays Bank of America the total amount of the new balance shown as due on each Billing Statement on or before the Payment Due Date; and

ii. Local Public Body has not breached any obligation, covenant, representation or warranty contained in this Agreement; and

iii. Calculation Period Transaction Volume meets the minimum volume requirement as set out in the Standard Transactions Rebate Multiplier Table; and

REBATE CALCULATION AND PAYMENT:

In the event that all of the above Rebate Conditions are met with respect to the Calculation Period, Bank of America will pay a rebate to Local Public Body, and/or state agency which shall be calculated at the end of the Calculation
SCHEDULE B
TO
STATE OF NEW MEXICO SERVICES PRICE AGREEMENT FOR PROCUREMENT CARD SERVICES
Contract No. 20-000-00-00085

REBATE SCHEDULES
Page 2 of 4

Period. The rebate multiplier will be determined based on (1) The combined transaction volume from all participating Local Public Bodies and/or state agency, and (2) The transaction volume from the individual Local Public Body and/or state agency and (3) the cycle and grace period for the individual Local Public Body and/or state agency.

\[(\text{Transaction Volume for Standard Transactions} \times \text{Rebate Multiplier}) + (\text{Transaction Volume for Large Ticket Interchange Transactions} \times \text{Large Ticket Interchange Transaction Rebate Multiplier}) - \text{Total Credit Losses}\]

The Standard Transactions rebate multiplier will be determined based on the Calculation Period cumulative total of all Standard Transactions volume, including Standard Transactions volume from travel rewards participants, however, Standard Transactions volume that is applied to travel rewards points will not be included in the rebate payout calculation. *This paragraph is applicable for products with Travel Rewards only.*

Payment of any rebate will be made by ACH credit or other means determined by Bank of America, within ninety (90) days following the end of the Calculation Period.

Should one or more of the above Rebate Conditions not be met, Bank of America will be under no obligation to pay any rebate, although Bank of America may, in its sole discretion, determine to pay a rebate in an amount determined by Bank of America. Bank of America's payment of a rebate in such circumstance will in no way obligate Bank of America to pay a rebate with respect to any subsequent Calculation Period.

### STANDARD TRANSACTIONS REBATE MULTIPLIER TABLE

<table>
<thead>
<tr>
<th>New Mexico Public Sector Group</th>
<th>Political Subdivision Annual Volume (2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excludes Large Ticket Transactions</td>
<td>250,000 to 1MM to 2MM to 3MM to 5MM to 10MM to 20MM to +</td>
</tr>
<tr>
<td></td>
<td>Rebate Basis Points</td>
</tr>
<tr>
<td></td>
<td>1MM</td>
</tr>
<tr>
<td>100,000,000</td>
<td>75</td>
</tr>
<tr>
<td>500,000,000</td>
<td>71</td>
</tr>
<tr>
<td>1,000,000,000</td>
<td>71</td>
</tr>
<tr>
<td>5,000,000,000</td>
<td>72</td>
</tr>
<tr>
<td>10,000,000,000</td>
<td>78</td>
</tr>
<tr>
<td>20,000,000,000</td>
<td>78</td>
</tr>
<tr>
<td>30,000,000,000</td>
<td>79</td>
</tr>
<tr>
<td>40,000,000,000</td>
<td>80</td>
</tr>
<tr>
<td>50,000,000,000</td>
<td>81</td>
</tr>
<tr>
<td>60,000,000,000</td>
<td>82</td>
</tr>
<tr>
<td>70,000,000,000</td>
<td>83</td>
</tr>
<tr>
<td>80,000,000,000</td>
<td>85</td>
</tr>
<tr>
<td>90,000,000,000</td>
<td>84</td>
</tr>
<tr>
<td>115,000,000,000</td>
<td>85</td>
</tr>
<tr>
<td>150,000,000,000</td>
<td>86</td>
</tr>
<tr>
<td>200,000,000,000</td>
<td>87</td>
</tr>
</tbody>
</table>

Each Local Public Body must have a minimum annual card Transaction Volume total of $250,000.00 before that Local Public Body will be eligible to receive an individual rebate payment. The Calculation Period cumulative Transaction Volume from all Local Public Body members Transaction Volume will determine the rebate volume tier for each rebate-qualified consortium member.

* Rebates for Transaction Volume from individual liability cardholders will be five basis points (0.05%) less than the Standard Transactions Rebate Multiplier for the applicable volume tier during the Calculation Period.
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TO
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REBATE SCHEDULES
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CYCLE DAYS AND GRACE DAYS REBATE MULTIPLIER ADJUSTMENT

| Increase Standard Transaction Rebate Multiplier based on Cycle and Grace Days (3) | Cycle Days | 7 | 14 | 28 | 30 | 33 | 36 |
| | Grace Days | 3 | 3 | 3 | 3 | 10 | 20 | 25 |
| | Rebate Basis Point Increase | 23 | 21 | 18 | 15 | 12 | 9 | 4 | 0 |

LARGE TICKET INTERCHANGE TRANSACTION REBATE MULTIPLIER

| Large Ticket Interchange | Cycle Days | 7 | 14 | 28 | 30 | 33 | 36 |
| Qualified Transactions | Grace Days | 3 | 3 | 3 | 3 | 10 | 20 | 25 |

Note: The Rebate Multiplier is stated in basis points. One (1) basis point is equal to 0.01% or .0001 stated as a decimal. Ninety (90) basis points are therefore 0.90% or .0090.

Nothing in this Schedule of Fees and Charges is intended to state a term for the Agreement. For the avoidance of doubt, any period of time set forth in the Schedule of Fees and Charges applies solely to pricing terms, but only to the extent the Agreement has not been terminated as set forth in the Agreement.

Notwithstanding anything to the contrary in the Agreement or this Schedule of Fees and Charges, all fees and charges are subject to change upon 30 days prior written notice to you if an event external to Bank of America increases the cost or decreases the revenue to Bank of America (e.g., decreases to interchange revenue paid to Bank of America by a card association, increases to funding costs due to interest rate changes or deterioration in your financial condition) in connection with providing this card program to you.

END OF AMENDED SCHEDULE OF REBATES
TRANSACTION VOLUME GROWTH INCENTIVE

Transaction Volume Growth Incentive

Bank of America wishes to further incent the use of Card (Purchase Card and ePayables) by the Local Public Bodies.

Bank will pay each participating Local Public Body an incremental Card Transaction Volume Growth incentive, as follows

- $5mm incremental growth = 10 BPS
- $10mm incremental growth = 20 BPS
- $20mm incremental growth = 30 BPS

If the Local Public Body’s Card Standard Transaction Volume growth exceeds Five Million Dollars during an annual Calculation Period, then Bank will pay ten basis points (0.10%) on the Card Standard Transaction Volume that is growth over the previous highest annual Calculation Period Standard Transaction Card Volume.

If the Local Public Body’s Card Standard Transaction Volume growth exceeds Ten Million Dollars during an annual Calculation Period, then Bank will pay twenty basis points (0.20%) on the Card Standard Transaction Volume that is growth over the previous highest annual Calculation Period Standard Transaction Card Volume.

If the Local Public Body’s Card Standard Transaction Volume growth exceeds Twenty Million Dollars during an annual Calculation Period, then Bank will pay thirty basis points (0.30%) on the Card Standard Transaction Volume that is growth over the previous highest annual Calculation Period Standard Transaction Card Volume.

By way of example,

1) If the Local Public Body had year 1 ePayables volume of $5mm, then the year 1 Card growth incentive would be $5mm times 0.10%, which would be Five Thousand Dollars ($5,000.00).
2) If the Local Public Body had year 2 ePayables volume of $15mm, then the year 2 Card growth incentive would be $10mm times 0.20%, which would be Twenty Thousand Dollars ($20,000.00).
3) If the Local Public Body had year 3 ePayables volume of $50mm, then the year 3 Card growth incentive would be $35mm times 0.30%, which would be One-Hundred Five Thousand Dollars ($105,000.00).

Payment of any growth incentive will be made by ACH credit or other means determined by Bank of America, within ninety (90) days following the end of the applicable annual Calculation Period.

Nothing in this Schedule of Fees and Charges is intended to state a term for the Agreement. For the avoidance of doubt, any period of time set forth in the Schedule of Fees and Charges applies solely to pricing terms, but only to the extent the Agreement has not been terminated as set forth in the Agreement.

Notwithstanding anything to the contrary in the Agreement or this Schedule of Fees and Charges, all fees and charges are subject to change upon 30 days prior written notice to you if an event external to Bank of America increases the cost or decreases the revenue to Bank of America (e.g., decreases to interchange revenue paid to Bank of America by a card association, increases to funding costs due to interest rate changes or deterioration in your financial condition) in connection with providing this card program to you.

END OF TRANSACTION VOLUME GROWTH INCENTIVE REBATE