

## BUYERWALL STATE AGREEMENT

This Buyerwall State Agreement, dated as of March 1, 2012 (this "Agreement") is by and among Phoenix Payment Systems, Inc. doing business as Electronic Payment Exchange, a Delaware Corporation, whose address is 1201 N. Market Street, Suite 701, Wilmington, DE 19801 ("EPX"), The Bancorp Bank ("Bank"), a Delaware Corporation, whose address is 405 Silverside Road, Suite 105, Wilmington, DE 19809 and Delaware State Treasury on behalf of the State of Delaware, 820 Silver Lake Boulevard, Suite 100, Dover, DE 19904 ("State"). The parties hereby agree as follows:

1. Definitions. For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires:
  - 1.1. "Address Verification" shall mean a service which allows State to verify Cardholder's billing address with Issuer.
  - 1.2. "Association(s)" shall mean VISA USA, Inc., MasterCard International, Inc. and Discover Network, a business unit of Discover Financial Services.
  - 1.3. "Authorization" shall mean an affirmative response by or on behalf of an Issuer, to a request to the EPX System to effect a Transaction, that a Transaction is within the Cardholder's available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions require Authorization.
  - 1.4. "BRIC" shall mean BuyerWall Recognized Identification Code. The BRIC provides future transaction functionality typically associated with the storage of Cardholder data.
  - 1.5. "Business Day" shall mean any day other than:
    - i. Saturday or Sunday;
    - ii. A day on which banking institutions in Delaware are authorized by law or executive order to be closed (and on which Bank and/or EPX is in fact closed); or
    - iii. A day on which the Federal Reserve Bank is closed.
  - 1.6. "BuyerWall" shall mean the EPX patent pending technology that utilizes the EPX hosted front-end applications in conjunction with a unique transaction identifier allowing State to eliminate contact with credit card numbers during the processing, transmission and storage of data.
  - 1.7. "Card(s)" shall mean either a Visa, MasterCard or Discover credit card or debit card.
  - 1.8. "Cardholder" shall mean a person authorized to use a Card.
  - 1.9. "Card-Not-Present" shall mean mail order, telephone order, e-commerce (Internet) order, or other transactions that are not Card-Present Transactions.
  - 1.10. "Card-Present Transaction" shall mean a Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the magnetic strip.
  - 1.11. "Chargeback" shall mean a Transaction that Bank returns to State pursuant to this Agreement.
  - 1.12. "CVV" shall mean a service which allows State to verify Cardholder's possession of Card through the identification of unique digits on Card.

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- 1.13. "EPX System(s)" shall mean the payment processing platform provided by EPX.
- 1.14. "Forced Sale" shall mean a sales Transaction processed without an approved electronic authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.
- 1.15. "Issuer" shall mean an Association member that issued a Card to a Cardholder.
- 1.16. "IVR" shall mean interactive voice response unit used for an Authorization.
- 1.17. "Manuals" shall mean the EPX System and Software associated API guides, manuals and instructions.
- 1.18. "Operating Account" shall mean a demand deposit account at Bank, or other approved financial institution through which fees, charges and credits due in accordance with this Agreement may be processed.
- 1.19. "Pre-Authorized Recurring Order Transactions" shall mean Transactions which have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by State without having to obtain approval from the Cardholder each time.
- 1.20. "Services" shall mean the transaction processing services provided by Bank or EPX under this Agreement.
- 1.21. "Software" shall mean any software programs provided by EPX.
- 1.22. "State Servicer" shall mean non-members other than the State and EPX that receive, pass, or store transaction data on their internal systems on behalf of the State. This includes third party servicers, Web hosting companies, shopping cart providers, and media back-up companies. State Servicers must be registered with Visa by Bank.
- 1.23. "State Statement" shall mean an itemized daily and monthly statement of all charges and credits to the Operating Account.
- 1.24. "Transaction" shall mean the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by State and receipt of payment from Bank, whether the transaction is approved, declined, or processed as a Forced Sale. "Transaction" also includes credits and voids.

## 2. State Obligations and Requirements.

- 2.1. State Card Processing. State, by and through its Agencies, collects revenues from State payors. To service State payors, State has requested and Bank and EPX has agreed to permit State's participation in the card processing programs and services under this Agreement. Without the prior written consent of Bank and EPX, State is not authorized to process Transactions for payment for any other type of goods or services under this Agreement. With prior notice to State, Bank and EPX reserve the right to establish certain limits on volume of daily, weekly, and monthly transactions and dollar limits per Transaction which State may process. State agrees to participate in the credit card processing services program established by Bank and EPX.

- 2.2. State Account Changes. State shall provide the information required by the State Profile Setup Form provided to State by EPX and shall notify EPX of any changes in this information.
- 2.3. State Operating Account. Prior to accepting any Cards, State shall establish an Operating Account. State authorizes Bank or EPX to debit all amounts State owes Bank or EPX herein from the Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank or EPX through the ACH Banking Network or by a manual debit of the account. State is responsible for maintaining an adequate balance in their Operating Account. Neither Bank nor EPX shall be responsible for any loss or damage arising out of any charges or debits to the Operating Account but State reserves all right to dispute, and all right to recover any direct loss or damage based upon, an incorrect, erroneous or improper charge or debit to the Operating Account against Bank or any other financial institution where the Operating Account is maintained.
- 2.4. Reserve Account. Upon execution of this Agreement, Bank or EPX have determined that no initial Reserve Account is required. Bank or EPX may request a Reserve Account for future State liabilities to Bank or EPX which arise under this Agreement including, but not limited to, Chargebacks, fines and fees and State shall use its reasonable efforts to fund such Reserve Account. The Bank or EPX may change the amount of the Reserve Account as reasonably necessary and State shall be immediately notified of such change. The Reserve Account may be funded by deduction from payments due State or State may wire such funds to Bank or EPX. The Reserve Account will be maintained for a minimum of six (6) months from the termination date of this Agreement or until such time as Bank or EPX determines that the release of the funds to State is prudent, commercially reasonable and Merchant's account with Bank and EPX is fully resolved. Upon expiration of this six (6) month period, any balance remaining in the Reserve Account will be paid to State. Bank or EPX will inform State in writing of any charges debited to the Reserve Account during this period.
- 2.5. Adjustments and Returns. State will make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate consistent with state law requirements and procedures as applicable. If goods are returned, or services are terminated or canceled, or any price is adjusted, State will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, EPX shall fund the excess via State's Reserve Account and/or Operating Account. State shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this paragraph. State shall follow Association reservation/no-show policy. State must notify Cardholders in writing of this policy on all advance reservations. The Cardholder must be notified at the time of the reservation of the exact number of days required for reservation deposit refunds.
- 2.6. Customer Complaints. State shall respond promptly to inquiries from Cardholders and shall resolve any disputes. State agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which State has received notice:
- i. The Cardholder's name;
  - ii. A unique confirmation number (transaction sequence number, or other identifier) that the State can use to reference the transaction in subsequent communications with the Bank or EPX;
  - iii. The date and time the Cardholder asserted the claim or defense;
  - iv. The nature of the claim or defense; and
  - v. The action which State took in an attempt to resolve the dispute.

Upon request by Bank or EPX, State shall furnish Bank with this information in writing within fifteen (15) business days.

- 2.7. Auditing and Credit Investigation. Bank or EPX may audit State's compliance with the terms of this Agreement. If permissible under law and not subject to any confidentiality or similar obligations, State

shall deliver requested financial information within thirty (30) days after Bank's or EPX's request. Such requested information shall be true and complete. State authorizes parties contacted by Bank or EPX to release credit information requested by Bank or EPX and State agrees to provide a separate authorization for release of credit information if requested.

- 2.8. Exclusivity. State shall submit all Card Transactions for the particular entity, dba or web property processed by Bank and EPX during the term hereof solely to Bank and EPX for processing.
- 2.9. Retention of Original Sales Information. State or EPX on State's behalf shall retain the information required by Paragraphs 9.1 (Documenting Transactions) and 9.2 (Authorization for Transactions) for three (3) years from the date of the Transaction. Upon request, State or EPX on State's behalf shall provide such information within fifteen (15) days of receipt of request. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall constitute a waiver by State of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.
- 2.10. EPX Systems. State or its Agent acknowledges that its use of the EPX Systems and Software is in accordance with the specification provided by EPX. Any Software supplied to State by EPX is owned by EPX. The State is hereby granted a non-exclusive royalty-free license to the software during the term of the Agreement. The Manuals are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. State is prohibited from copying the Software or Manuals related to the EPX System and Software; provided, however, State may retain such copies for archival purposes. State shall not sell, lease, encumber or otherwise dispose of the Software or Manuals. State acknowledges that the EPX Systems and Software requires suitable computer hardware to function properly.

### 3. EPX Obligations and Requirements.

- 3.1. EPX to Provide Services to State. During the term of this Agreement, subject to the terms and conditions of this Agreement, EPX agrees to provide EPX Systems, Software and Manuals in order to allow State to accept and process Transactions. EPX shall provide EPX Systems technical support 24 hours per day, 7 days per week, in accordance with EPX's then-current policies.
- 3.2. Data Connection. In the event State requires the installation of a dedicated data connection for electronic transmissions to EPX, State, at its discretion, may sign a separate agreement, EPX Third Party Connection Agreement, which provides policy and guidelines for the use of network and computing resources associated with the data connection. State shall make arrangements for such installation and the maintenance thereof with EPX. EPX shall coordinate the installation and maintenance of the dedicated data connection. State shall pay EPX for all costs related to the installation and maintenance of the dedicated data connection.

### 4. Bank Obligations and Requirements.

- 4.1. Bank to Provide Services to State. Bank agrees to sponsor State's acceptance of Cards for Transactions. Bank and EPX, as applicable, agree to provide State with the Services indicated on Schedule A, as amended from time to time by Bank or EPX upon mutual agreement by the Parties. Provided, however, if such Services set forth on Schedule A are no longer available due to circumstances beyond the control of Bank or EPX, upon written notification to State, such Schedule shall be amended during the term of this Agreement, subject to the terms and conditions set forth herein.
- 4.2. Daily Reconciliation of Transactions.
  - i. Electronically Transmitted Transactions. Transactions will be settled on a daily basis. Bank shall deliver payment to State by a credit to the Operating Account equal to the reconciled summary of

State's total summary Transactions since the previous credit. This credit will be net of following charges:

1. The sum of all Cardholder charges denied, refused or charged back;
  2. All refunds processed on account of Cardholders during said time period;
  3. All taxes, penalties, charges and other items incurred by Bank or EPX that are reimbursable pursuant to this Agreement; and
  4. All rates, fees and charges in Schedule B.
- ii. Provisional Credit. Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to chargeback by the Issuer, Cardholder or Associations.

4.3. State Statement. Bank or EPX shall make available a State Statement on a daily and month-end basis. All information appearing on the State Statement shall be deemed accurate and affirmed by State unless State objects by written notice specifying the particular item in dispute within sixty (60) days of the date of the State Statement. Delivery of the State Statement shall be in electronic form.

4.4. Chargebacks. Bank shall be authorized to charge back to State any Transactions as specified throughout this Agreement and/or under any of the following circumstances:

1. No specific prior authorization for the Transaction was obtained from the EPX System;
2. The Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been cancelled and State was so notified prior to the Transaction;
3. The Card giving rise to the Transaction was cancelled and prior to, or at the time of, the Transaction, State received notice of the cancellation through the electronic terminal, in writing or otherwise;
4. The Card expired prior to the date of the Transaction or the date of Transaction was prior to the validation date, if any, indicated on the Card;
5. The information required in Paragraphs 9.1 (Documenting Transactions) and 9.2.iii (Card-Not-Present Transactions) was not submitted to Bank;
6. Bank or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
7. The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction;
8. A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction;
9. The Transaction was made at or by a Merchant other than Merchant named in this Agreement;
10. The Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;
11. A Transaction is charged back by an Issuer; or
12. Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the State, and Bank shall recover the amount of the Transaction from either aforementioned account. State agrees that Bank, after written prior notice to State, may:

1. Charge the amount of the Transaction to the Operating Account or Reserve Account;
2. Recoup the amount of the Transaction by adjustment of the credits due to State; or
3. Set off the amount of the Transaction against any amounts Bank holds for or on behalf of

State.

## 5. Compliance.

- 5.1. Associations' and Issuers' Requirements. State shall comply with all bylaws, rules, regulations, policies and guidelines of the Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement. EPX agrees to keep State advised of Association rules and regulations as they are applied.
- 5.2. Use of Marks. State will make reasonable efforts to display prominently at its place of business Card emblems and other promotional material and literature provided by Bank directly or through EPX. Subject to the prior written consent of Bank and upon such conditions as authorized by Bank, State may use Card service marks or design marks in its own advertisement and promotional materials.
- 5.3. Payment Card Industry Security Requirements. State agrees to be compliant with applicable PCI requirements, in accordance with Payment Card Industry Data Security Standards (PCI) for protecting Cardholder data as amended by the Associations from time to time. State does not transmit, store or process any credit card data for transactions that are processed utilizing BuyerWall.
- i. Visa, MasterCard and Discover have implemented a program to ensure the protection of Cardholder data, whether processed, transmitted or stored, through a program of validation and compliance. Known as PCI, information about the program and specific requirements can be obtained at [www.visa.com/cisp](http://www.visa.com/cisp). The program is comprised of 12 major requirements:
    5. Install and maintain a firewall configuration to protect data
    6. Do not use vendor-supplied defaults for system passwords and other security parameters
    7. Protect stored data
    8. Encrypt transmission of Cardholder data and sensitive information across public networks
    9. Use and regularly update anti-virus software
    10. Develop and maintain secure systems and applications
    11. Restrict access to data by business need-to-know
    12. Assign a unique ID to each person with computer access
    13. Restrict physical access to Cardholder data
    14. Track and monitor all access to network resources and Cardholder data
    15. Regularly test security systems and processes
    16. Maintain a policy that addresses information security
  - ii. In the event of a security intrusion, State agrees to reasonably cooperate with a third party approved Payment Card Industry assessor and/or representative to conduct a thorough security review and validate compliance with the Payment Card Industry Data Security Standards (PCI) for protecting Cardholder data;
  - iii. State is responsible for security of Cardholder data in possession;
  - iv. Bank, EPX, State and each payment card brand have ownership of Cardholder data and may use such data ONLY for assisting these parties in the completion of Transactions, supporting a loyalty program, providing fraud control services, or for other uses specifically required by law;
  - v. In the event this Agreement is terminated by any of the parties, each party agrees to continue to treat Cardholder data as confidential;
  - vi. Immediately notify Visa USA Risk Management, through its acquirer, of the use of a State Servicer; and
  - vii. Ensure the State Servicer implements and maintains all of the security requirements, as specified in the PCI program.
  - viii. State must ensure PCI compliance of any residual data which may exist. Any residual data which is destroyed must be disposed of in a secure manner.
  - ix. If State does not exclusively utilize BuyerWall, full PCI compliance is required.
- 5.4. Use of EPX Systems. Use of software programs approved by EPX and related equipment installed or improved by EPX for use with the EPX System, will be subject to the following:

- i. State will use and operate the EPX Systems only in accordance with Manuals, as amended from time to time by EPX;
- ii. If State is using EPX-provided software, State will install, use and operate the Software only in accordance with the Manuals, as amended from time to time by EPX;
- iii. In processing Transactions, State shall use only software programs, file formats and processing methods that have been approved and certified by EPX's Integration staff; and
- iv. State shall be responsible for the custody and control of all passwords provided by EPX to State to access the EPX reporting system.

5.5. Compliance with Applicable Law. State represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to provide any services it intends to offer and that it is in compliance with the regulations of the Federal Trade Commission and the Federal Communications Commission and shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act, the Federal Equal Credit Opportunity Act, as amended, and the Telephone Disclosure and Dispute Resolution Act, as applicable.

5.6. Web Site Requirements for E-Commerce States. A web site operated by the State that accepts Card Transactions pursuant to this Agreement must contain all of the following information:

- i. Complete description of the services offered;
- ii. Return merchandise and refund policy; which includes the communication of the return policy during the order process and the requirement that the Cardholder must be allowed to select a "click to accept" option of other affirmative button to acknowledge the policy;
- iii. Terms and conditions must be displayed on the same screen view as the checkout screen used to present the total purchase amount; or
- iv. Within the sequence of web pages the Cardholder accesses during the checkout process.
- v. Customer service contact including e-mail address or telephone number;
- vi. Transaction currency;
- vii. Export or legal restrictions;
- viii. Delivery policy;
- ix. Consumer data privacy policy;
- x. The security method offered for transmission of payment data such as Secure Sockets Layer or 3-D Secure; and
- xi. Address of the State outlet's permanent establishment, including the State outlet country;
  - 1. On the same screen view as the checkout screen used to present the total purchase amount; or
  - 2. Within the sequence of web pages the Cardholder accesses during the checkout process.

## 6. Term.

6.1. Term. This Agreement shall become effective when signed by all parties, provided, however the term shall begin upon commencement of processing activity under this Agreement and shall remain in effect for a term of three (3) years unless sooner terminated in accordance with this Agreement. This Agreement shall be subject to two one (1) year extensions by mutual agreement of the parties. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect and State shall remain liable for all obligations to Cardholders, Bank, and EPX incurred while this Agreement was in effect.

6.2. Termination of Agreement by Bank or EPX. Bank or EPX may terminate this Agreement upon ninety (90) days prior written notice to State under any of the below listed circumstances. During this period, the State shall have the opportunity to cure the default.

- i. Chargebacks exceed the Association guidelines, or appear to be the result of fraudulent Transactions as defined by the Association. EPX will provide State with information defining the Association guidelines;
- ii. Breach of this Agreement by State; or
- iii. Any act of fraud or dishonesty under this Agreement is committed by State, its employees and/or agents, or Bank or EPX believes in good faith that State, its employees and/or agents;
- iv. Any representation or warranty made by State in this Agreement or the Application for Services herein that is not true and correct, in a material respect;

Bank or EPX may selectively terminate one or more of State's approved locations without terminating this entire Agreement. In the event of termination, all obligations of State incurred or existing under this Agreement prior to termination shall survive the termination. State's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of the card Transaction.

6.3. Immediate Termination of Agreement by State. State may immediately terminate this Agreement if:

- i. Bank or EPX amends Schedule B pursuant to Paragraph 10.13.ii (Amendment to Fees and Charges) to increase the rates, fees or charges State pays herein Price Changes. Unit price changes will be permitted starting July 1, 2013, and on July 1 of each year thereafter, if agreed upon by both parties sixty (60) days prior to that date. Any price increase shall not exceed the lesser of the Producer Price Index (PPI), as provided by the Federal Reserve and published in the Wall Street Journal, or four (4%) percent, except for increases in Association fees or rates. Vendor must supply the State the proper documentation which confirms the need for a price increase;
- ii. Non-appropriation of Funds in accordance with Paragraph 10.12; or
- iii. Any material amendment or modification to this Agreement made by Bank or EPX.

6.4. Termination of Agreement by State. State may terminate this Agreement upon ninety (90) days prior written notice sent by certified mail to the office designated for notice of Bank.

7. State Billing.

7.1. Fees. State shall pay all fees, including, but not limited to monthly service fees, Chargebacks and set-up fees as specified on and in accordance with Schedule B, as amended by Bank and EPX. Bank and EPX shall provide the State with reasonable notification of all pass-through fee or rate changes, including any Association fee or rate changes. State also agrees to pay Bank or EPX the amount of any fees, charges or penalties assessed against Bank or EPX by any Association or Issuer for State's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such parties. State shall be billed on the first workday of each month for the preceding month's fees due EPX and State shall make wire payment within ten (10) business days thereof.

7.2. Taxes. Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If excise, sale or use taxes are imposed on the Transactions, State shall be responsible for the collection and payment thereof. If Bank or EPX funds any taxes, interest, fine or penalties that are the responsibility of the State, Bank or EPX shall be immediately charged to the Operating Account or Reserve Account or recouped by adjustment of any credits due to State.

7.3. Billing. All amounts State owes Bank and EPX may be charged to the Operating Account or Reserve Account or recouped by adjustment of any credits due to State.

8. Liability and Indemnification.

8.1. Indemnification. EPX will indemnify and otherwise hold harmless the State, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees,



arising out of the EPX, its agents and employees' performance work or services in connection with this Agreement.

8.2. Proprietary Rights Indemnification. EPX agrees that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State, the State shall promptly notify the EPX in writing and EPX shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees).

8.3. Product Indemnification. EPX agrees that if any equipment, software, services (including methods), products or other intellectual property used or furnished by the EPX (collectively "Products") is or in EPX's reasonable judgment is likely to be, held to constitute an infringing Product, vendor shall at its expense and option either:

- i. Procure the right for the State to continue using the Product(s);
- ii. Replace the Product with a non-infringing equivalent that satisfies all the requirements of the Agreement; or
- iii. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the Product or cause the Product(s) or any part of the work to fail to conform to the requirements of the definitive contract, or only alters the Product(s) to a degree that the State agrees to and accepts in writing.

8.4. Liability.

i. Conversion. Bank will have no liability to State if any conversion is delayed or cannot be completed. EPX will not have liability to State if any conversion is delayed or cannot be completed unless due to the gross negligence of EPX;

ii. EPX System. EPX will have no liability to State if the EPX System or Software fails to operate because of:

17. State's inappropriate, inadequate or faulty computer hardware;
18. The failure of State, its employees or agents to operate the EPX System or Software properly in accordance with the instructions provided by EPX; or
19. The neglect or misuse of the EPX System or Software by State, its employees or agents.

iii. Limitation of Liability. Neither Bank nor EPX shall be liable to State or State's customers or any other person for any of the following:

- iv. Any loss or liability resulting from the denial of credit to any person or State's retention of any Card or any attempt to do so;
- v. Any loss caused by a Transaction downgrade resulting from defective or faulty software regardless if owned by Bank, EPX or State; or
- vi. Interruption or termination of any Services caused by any reason except for the gross negligence of EPX; and in such case, any liability shall be solely that of EPX and the liability of EPX shall be limited to a full or partial waiver of terminal or Software fees due under this Agreement.

8.5. Limitation on Damages.

EXCEPT FOR EPX'S AND BANK'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS THEREUNDER OR CLAIMS BASED UPON THE FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF EPX OR BANK, NEITHER BANK NOR EPX

SHALL BE LIABLE FOR ANY PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO STATE OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR EPX PURSUANT TO THIS AGREEMENT.

EXCEPT AS SET FORTH IN THIS AGREEMENT, STATE ACKNOWLEDGES THAT NEITHER BANK NOR EPX HAS PROVIDED ANY WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, WITH RESPECT TO ANY SOFTWARE INSTALLED OR PROVIDED BY EPX. BANK HAS NO LIABILITY WITH RESPECT TO ANY SOFTWARE. EXCEPT AS SET FOR IN THIS AGREEMENT, NEITHER BANK NOR EPX MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREIN. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S OR EPX'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S AND EPX'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE.

9. Collection and Use of Transaction Information.

- 9.1. Documenting Transactions. State or EPX on its behalf shall submit the following information to Bank in connection with Transaction processing:
- i. The DBA name of State, name of State and State's address;
  - ii. State customer service telephone number;
  - iii. State Internet address;
  - iv. State Number assigned by Bank;
  - v. The Card account number, validation date and/or expiration date of the Card, if one appears on the Card;
  - vi. Name, address and telephone number of Cardholder; and
  - vii. Such additional information as may be required by Bank, EPX and/or the Associations, from time to time.

State or EPX on its behalf shall not submit a Transaction to Bank (electronically or otherwise) until State has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. State must not initiate a Transaction to Bank that State knows or should have known to be fraudulent or not authorized by the Cardholder. State may transmit a Transaction which effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if State advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.

- 9.2. Authorization for Transactions. State or EPX on State's behalf shall obtain Authorization of Transactions as follows:
- i. Electronically Transmitted Transaction. State or EPX on its behalf shall submit each Transaction for Authorization to the EPX System. The EPX System shall respond with the Issuer's authorize or decline to a Transaction transmitted for Authorization and shall capture and process for State the information relating to the Transaction.
  - ii. Card-Present Transactions. The following additional requirement applies to Card-Present Transactions: If a terminal or software application is inoperable at the time of an Authorization request, the Transaction may be manually authorized. In that case, the Transaction shall be entered as a Forced Sale, provided the approval number is also entered, and State shall be subject to an additional IVR authorization fee as outlined in Schedule B.
  - iii. Card-Not-Present Transactions. The following additional requirements apply to Card-Not-Present Transactions:

20. All Card-Not-Present Transactions are at State's risk. As to each, Card-Not-Present Transactions State warrants to Bank that the person whose name is submitted to Bank as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to State. If Bank charges back the Transaction to State, State shall pay Bank the amount of the Transaction, any Chargeback fee in Schedule B, plus any Association fine or assessment. Bank may charge the Transaction to the Operating Account or Reserve Account without prior notice to State;
21. All Card-Not-Present Transactions must be electronically authorized and, in addition to the information required in Paragraph 9.1 (Documenting Transactions), also shall indicate: an authorization code, if required; customer address and address verification; and in lieu of Cardholder's signature, a notation of (a) mail order, (b) telephone order, (c) e-commerce order, or (d) pre-authorized order, on the signature line;
22. If State accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to State a written request for this pre-authorization. This written request shall be maintained by State and made available upon request to Bank. All annual billings must be reaffirmed at least once a year. State shall not deliver goods or perform services covered by a Pre-Authorized Recurring Order Transaction after receiving notification from the Cardholder that the pre-authorization is cancelled or from Bank that the Card covering the Pre-Authorized Recurring Order Transaction is not to be honored; and
23. State shall verify Cardholder's address from the Association network. For telephone or mail order sales, State shall transmit a ticket/invoice number and shall perform Address Verification and only accept as approved those Transactions receiving at least a partial match or system unavailable response.

9.3. Prohibited Transactions. State shall not do any of the following with respect to any Transaction:

- i. Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
- ii. Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
- iii. Establish a minimum or maximum dollar Transaction amount;
- iv. Obtain multiple authorizations for amounts less than the total credit sale amount;
- v. Obtain authorization for purposes of setting aside Cardholder's credit line for use in future sales;
- vi. Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
- vii. Initiate or accept for payment any Transaction which was not originated directly between State and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in State's application for card processing services initially submitted to and approved by Bank;
- viii. Honor or accept a Card as payment for any legal services or expenses arising out of or related to (1) the defense of any crime other than a traffic violation; (2) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (3) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- ix. Use State's own Card, or one to which State has access, to initiate a Transaction for the purpose of obtaining credit for State's own benefit;
- x. Redeposit a previously charged Transaction, regardless of whether Cardholder consents;
- xi. Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
- xii. Use the EPX System or Software and any data received thereon for any other purpose except for determining whether or not State should accept Cards in connection with a current sale or lease of goods or services;
- xiii. Use the EPX System or Software and data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;

- xiv. Draw or convey any inference concerning a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card is processed as non-accepted;
- xv. Disclose any information obtained through the EPX System or Software to any person except for necessary disclosures to affected Cardholders, Bank, EPX and/or the Issuer;
- xvi. Add any tax to Transactions unless applicable law expressly requires that State collect such a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
- xvii. Disburse funds in the form of traveler's checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from State;
- xviii. Disburse funds in the form of cash, except:
  - 1. In the case of a cashback Transaction and in such case the cashback portion of the Transaction is the only portion disbursed as cash; or
  - 2. State is dispensing funds in the form of traveler's checks, Visa TravelMoney Cards or foreign currency. In this case, the Transaction amount is limited to the value of said form of dispensation plus any fee or commission charged to the State.
- xix. Accept a Card to collect or refinance an existing debt;
- xx. Initiate a Transaction credit for return goods or services acquired in a cash transaction;
- xxi. Make any cash refund to a Cardholder who has made a purchase with a Card. All Transaction credits will be issued to the same Card account number as the sale;
- xxii. Require a Cardholder to complete a postcard or similar device that includes the Card's account number, Card expiration date, signature or any other Card account data in plain view when mailed; or
- xxiii. Accept Visa Card or Visa Electron Card for the purchase of scrip.

9.4. Disclosure and Storage of Transaction Information.

- i. Neither State nor EPX may disclose a Card account number, personal information, or other Transaction information to third parties other than to State Servicers, the Bank, or EPX for the sole purpose of:
  - 1. Assisting the State in completing the transaction; or
  - 2. As specifically required by law.
  - 3. State may only disclose Transaction information to approved third parties for the sole purpose of:
    - a. Supporting a loyalty program; or
    - b. Providing fraud control services.
- ii. State or EPX:
  - 1. Must store any material containing Card account numbers or imprints (such as transaction receipts, car rental agreements and carbons) in an area limited to selected personnel and:
  - 2. Render all data unreadable prior to discarding;
  - 3. Must not retain or store full contents of any track on the magnetic stripe subsequent to a Transaction;
  - 4. Must not retain or store CVV data subsequent to Authorization of a Transaction;
  - 5. Must not request the CVV data on any paper form.
- iii. The sale or disclosure of databases containing Cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited.

9.5. Use and Disclosure of BIN Information. A State that receives BIN information from Bank or EPX must not use such information for any reason other than to identify Visa debit category products at the point of sale, unless authorized by Visa.

## 10. General Provisions.

- 10.1. Confidentiality. State shall treat all information received in connection with this Agreement as confidential. State shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, to EPX and to Issuers, subject to applicable state law, including, but not limited to 29 Del. C. Ch 100, "Freedom of Information Act."
- 10.2. Independent Contractor. In the performance of its duties herein, each party shall be an independent contractor, not an employee or agent of another party.
- 10.3. Cooperation. In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the matters contemplated by this Agreement.
- 10.4. Entire Agreement. This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.
- 10.5. Assignment. This Agreement may not be assigned by State without the prior written consent of Bank and EPX. Bank and/or EPX may assign this Agreement without limitation. Assignment of this Agreement by Bank or EPX shall relieve such party of any further obligations under this Agreement.
- 10.6. Captions. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.
- 10.7. Financial Accommodations. Bank, EPX and State intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of State.
- 10.8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without regard to internal principles of conflict of laws, and federal law.
- 10.9. No Waiver. Any delay, waiver or omission by a party to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.
- 10.10. Force Majeure. The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.
- 10.11. Severability. If any provisions of this Agreement shall be held, or deemed to be, or shall, in fact, be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or paragraphs herein contained shall not affect the remaining portions of this Agreement or any part hereof.
- 10.12. Non-Appropriation of Funds. In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part (the "Funds"), the

Agreement shall be terminated (pursuant to the terms set forth therein) as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

10.13. Amendments to this Agreement. From time to time Bank and/or EPX may amend this Agreement as follows:

- i. Amendment to Cards and/or Services. Bank and/or EPX may amend or delete Cards or Services listed in Schedule A by notifying State in writing of any amendment with a minimum of sixty (60) days prior written notice if reasonably practicable. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank or EPX shall notify State of the fees to be charged for processing the additional Cards and Services. Acceptance by State of a new approved Card as payment for a Transaction or use of a new Service after Bank or EPX has sent State notice of an amendment shall constitute State's agreement to the amendment and the fees or charges related to these additions.
- ii. Amendment to Fees and Charges. Unit price changes (including all non-pass through rates, fees and charges set forth in Schedule B) will be permitted starting July 1, 2012, and on July 1 of each year thereafter, if agreed upon by both parties 60 days prior to that date. Any price increase shall not exceed the lesser of the Producer Price Index (PPI), as provided by the Federal Reserve and published in the Wall Street Journal, or four (4%) percent. Vendor must supply to the State of Delaware the proper documentation which confirms the need for a price increase.

10.14. Notices. Except for notices provided by Bank to State on the State Statement, all notices, requests, demands or other instruments which may or are required to be given by any party herein shall be in writing and each shall be deemed to have been properly given

- i. When served personally on an officer of the party to whom such notice is to be given;
- ii. Upon expiration of a period of three (3) Business Days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt; or
- iii. Upon delivery by a nationally recognized overnight delivery service, addressed as follows:

If to Bank:  
**The Bancorp Bank**  
409 Silverside Road  
Suite 105  
Wilmington, DE 19809

If to EPX:  
**Electronic Payment Exchange**  
1201 N. Market Street,  
Suite 701  
Wilmington, DE 19801

If to Merchant  
**Delaware State Treasury**  
820 Silver Lake Blvd,  
Suite 100  
Dover, DE 19904

Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforementioned.

By signing below, the parties agree to the terms of this Agreement. If State is a corporation, its proper corporate officers sign. This Agreement may be signed in one or more counterparts and all signed agreements shall be considered as one.

Agreed to and accepted on: March, 1, 2012.

**The Bancorp Bank**

**Electronic Payment Exchange**

**Delaware State Treasury**

*Original on File*

*Original on File*

*Original on File*

By: \_\_\_\_\_  
Authorized Representative

By: \_\_\_\_\_  
Authorized Representative

By: \_\_\_\_\_  
Authorized Representative

Title: VP

Title: CFO

Title: State Treasurer

Print Name: STEPHEN T. HOLLEN

Print Name: NANAY REIG

Print Name: Chipman Flowers, Jr.

*Original on File*

Initials

**SCHEDULE A**  
**CARDS, SERVICES AND EQUIPMENT/SOFTWARE**

1. Cards Available to State.

- 1.1. Bank and EPX currently provides Card services from the following card issuers: Visa, MasterCard and Discover transaction processing services. EPX also provides authorization services for American Express, Diners Club and JCB.

2. Services Available to State.

- 2.1. As of the date of this Agreement, State has requested use of the following services:
- i. Authorization services for Visa, MasterCard, American Express, Diners Club, JCB and Discover Card
  - ii. Transaction processing services for Visa, MasterCard and Discover
  - iii. Cardholder Address Verification
  - iv. PINless Debit
  - v. PINbased Debit
- 2.2. The services provided by the EPX System will be available to State 24 hours a day, 7 days a week. Every effort will be made to keep the system operational except for normal maintenance, which will normally occur during off peak hours. The telephone number of the IVR is 866-660-7065.

3. Access Methods.

- 3.1. EPX shall provide the following access method(s) to State:
- i. BuyerWall
  - ii. HTTPS Post
  - iii. SSL Streamed Socket
  - iv. Batch File via SFTP
  - v. Dial-up
  - vi. IVR

**SCHEDULE B**  
**RATES, FEES AND CHARGES**

**EPX Credit Card Processing**

	<b><u>Fee</u></b>
Authorization Fee	\$0.01
Settlement Fee	\$0.04
Voice Authorization	\$0.55
Association Interchange, Assessments, & Fees	Pass Through
Visa / MasterCard / Discover Chargeback/Retrieval	\$5.00
Monthly Account Maintenance Fee Per MID	\$5.00
EPX Hosting Fees	\$0.00
EPX Set Up Fees	\$0.00
ACH Transfer Fee	\$0.00
Wire Transfer Fee	\$4.50

*Original on File*



## BANK DISCLOSURE PAGE

### Member Bank Information

The Bancorp Bank  
409 Silverside Road  
Suite 105  
Wilmington, DE 19809  
302-385-5000

### Agent Information

Phoenix Payment Systems, dba EPX  
1201 N. Market Street  
Suite 701  
Wilmington, DE 19801  
302-288-0600

### Important Bank Responsibilities

1. The Bancorp Bank is the only entity approved to extend acceptance of VISA products directly to a State.
2. The Bancorp Bank must be a principal (signor) to the State Agreement.
3. The Bancorp Bank is responsible for educating States on pertinent VISA Operating Regulations with which States must comply.
4. The Bancorp Bank is responsible for and must provide settlement funds to the State.
5. The Bancorp Bank is responsible for all funds held in reserve that are derived from settlement.

### State Information

State Name: State of Delaware  
State Address: 820 Silver Lake Boulevard, Suite 100  
State Phone: 302-672-6700

### Important State Responsibilities

1. Ensure compliance with Cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below thresholds.
3. Review and understand the terms of the State Agreement.
4. Comply with VISA, MasterCard and Discover Operating Regulations.

The responsibilities listed above do not supersede terms of the State Agreement and are provided to ensure the State understands some important obligations of each party and that the VISA Member—The Bancorp Bank—is the ultimate authority should the State have any problems.

# Original on File

The Honorable Chipman Flowers, Jr.  
Delaware State Treasurer

March 1, 2012  
Date



March 20, 2012

James DiDonato  
Manager of Banking Services  
Delaware State Treasurer's Office  
820 Silver Lake Blvd. #100  
Dover, DE 19904

RE: Merchant Processing Agreement

Dear Mr. DiDonato:

Enclosed please find the original EPX Merchant Processing Agreement executed by all parties.

Please contact if you have any questions.

Sincerely,

*Original on File*

**Michelle Schlacter, Underwriting Assistant**  
Electronic Payment Exchange