

Region 4 Education Service Center (ESC)

Contract # R211101

for

Fuel Card Services and Related Products

with

**FleetCor Technologies, Inc. through its subsidiaries:
FleetCor Technologies Operating Company, LLC and
Comdata, Inc.**

Effective: January 1, 2022

The following documents comprise the executed contract between the Region 4 Education Service Center and FleetCor Technologies, Inc. through its subsidiaries: FleetCor Technologies Operating Company, LLC and Comdata, Inc. effective January 1, 2022:

- I. Vendor Contract and Signature Form
- II. Supplier's Response to the RFP, incorporated by reference

APPENDIX A

CONTRACT

This Contract ("Contract") is made as of _____, 202X by and between FleetCor _____ Technologies, Inc. through its subsidiaries: FleetCor Technologies Operating Company, LLC and Comdata, Inc ("Contractor") and Region 4 Education Service Center ("Region 4 ESC") for the purchase of Fuel Card Services and Related Products_ ("the products and services").

RECITALS

WHEREAS, Region 4 ESC issued Request for Proposals Number R211101 for Fuel Card Services and Related Products ("RFP"), to which Contractor provided a response ("Proposal"); and

WHEREAS, Region 4 ESC selected Contractor's Proposal and wishes to engage Contractor in providing the services/materials described in the RFP and Proposal;

WHEREAS, both parties agree and understand the following pages will constitute the Contract between the Contractor and Region 4 ESC, having its principal place of business at 7145 West Tidwell Road, Houston, TX 77092.

WHEREAS, Contractor included, in writing, any required exceptions or deviations from these terms, conditions, and specifications; and it is further understood that, if agreed to by Region 4 ESC, said exceptions or deviations are incorporated into the Contract.

WHEREAS, this Contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth below shall control.

WHEREAS, the Contract will provide that any state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies") may purchase products and services at prices indicated in the Contract upon the Public Agency's registration with OMNIA Partners.

- 1) Term of agreement. The term of the Contract is for a period of three (3) years unless terminated, canceled or extended as otherwise provided herein. Region 4 ESC shall have the right to renew the Contract for two (2) additional one-year periods or portions thereof. Region 4 ESC shall review the Contract prior to the renewal date and notify the Contractor of Region 4 ESC's intent renew the Contract. Contractor may elect not to renew by providing three hundred sixty-five days' (365) notice to Region 4 ESC. Notwithstanding the expiration of the initial term or any subsequent term or all renewal options, Region 4 ESC and Contractor may mutually agree to extend the term of this Agreement. Contractor acknowledges and understands Region 4 ESC is under no obligation whatsoever to extend the term of this Agreement.
- 2) Scope: Contractor shall perform all duties, responsibilities and obligations, set forth in this agreement, and described in the RFP, incorporated herein by reference as though fully set forth herein.

- 3) Form of Contract. The form of Contract shall be the RFP, the Offeror's proposal and Best and Final Offer(s).
- 4) Order of Precedence. In the event of a conflict in the provisions of the Contract as accepted by Region 4 ESC, the following order of precedence shall prevail:
 - i. This Contract
 - ii. Offeror's Best and Final Offer
 - iii. Offeror's proposal
 - iv. RFP and any addenda
- 5) Commencement of Work. The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives a purchase order for such work or is otherwise directed to do so in writing by Region 4 ESC.
- 6) Entire Agreement (Parol evidence). The Contract, as specified above, represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.
- 7) Assignment of Contract. No assignment of Contract may be made without the prior written approval of Region 4 ESC. Contractor is required to notify Region 4 ESC when any material change in operations is made (i.e. bankruptcy, change of ownership, merger, etc.).
- 8) Novation. If Contractor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. Region 4 ESC reserves the right to accept or reject any new party. A change of name agreement will not change the contractual obligations of Contractor.
- 9) Contract Alterations. No alterations to the terms of this Contract shall be valid or binding unless authorized and signed by Region 4 ESC.
- 10) Adding Authorized Distributors/Dealers. Contractor is prohibited from authorizing additional distributors or dealers, other than those identified at the time of submitting their proposal, to sell under the Contract without notification and prior written approval from Region 4 ESC. Contractor must notify Region 4 ESC each time it wishes to add an authorized distributor or dealer. Purchase orders and payment can only be made to the Contractor unless otherwise approved by Region 4 ESC. Pricing provided to members by added distributors or dealers must also be less than or equal to the Contractor's pricing.
- 11) TERMINATION OF CONTRACT
 - a) Cancellation for Non-Performance or Contractor Deficiency. Region 4 ESC may terminate the Contract if purchase volume is determined to be low volume in any 12-month period. Region 4 ESC reserves the right to cancel the whole or any part of this Contract due to failure by Contractor to carry out any obligation, term or condition of the contract. Region 4 ESC may issue a written deficiency notice to Contractor for acting or failing to act in any of the following:
 - i. Providing material that does not meet the specifications of the Contract;
 - ii. Providing work or material was not awarded under the Contract;
 - iii. Failing to adequately perform the services set forth in the scope of work and specifications;

- iv. Failing to complete required work or furnish required materials within a reasonable amount of time;
- v. Failing to make progress in performance of the Contract or giving Region 4 ESC reason to believe Contractor will not or cannot perform the requirements of the Contract; or
- vi. Performing work or providing services under the Contract prior to receiving an authorized purchase order.

Upon receipt of a written deficiency notice, Contractor shall have ten (10) days to provide a satisfactory response to Region 4 ESC. Failure to adequately address all issues of concern may result in Contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by Contractor under the Contract shall immediately become the property of Region 4 ESC.

- b) Termination for Cause. If, for any reason, Contractor fails to fulfill its obligation in a timely manner, or Contractor violates any of the covenants, agreements, or stipulations of this Contract Region 4 ESC reserves the right to terminate the Contract immediately and pursue all other applicable remedies afforded by law. Such termination shall be effective by delivery of notice, to the Contractor, specifying the effective date of termination. In such event, all documents, data, studies, surveys, drawings, maps, models and reports prepared by Contractor will become the property of the Region 4 ESC. If such event does occur, Contractor will be entitled to receive just and equitable compensation for the satisfactory work completed on such documents.
- c) Delivery/Service Failures. Failure to deliver goods or services within the time specified, or within a reasonable time period as interpreted by the purchasing agent or failure to make replacements or corrections of rejected articles/services when so requested shall constitute grounds for the Contract to be terminated. In the event Region 4 ESC must purchase in an open market, Contractor agrees to reimburse Region 4 ESC, within a reasonable time period, for all expenses incurred.
- d) Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

- e) Standard Cancellation. Region 4 ESC may cancel this Contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.

- 12) Licenses. Contractor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by Contractor. Contractor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the Contract. Region 4 ESC reserves the right to stop work and/or cancel the Contract if Contractor's license(s) expire, lapse, are suspended or terminated.
- 13) Survival Clause. All applicable software license agreements, warranties or service agreements that are entered into between Contractor and Region 4 ESC under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Contractor shall survive expiration or termination of the Contract.
- 14) Delivery. Conforming product shall be shipped within 7 days of receipt of Purchase Order. If delivery is not or cannot be made within this time period, the Contractor must receive authorization for the delayed delivery. The order may be canceled if the estimated shipping time is not acceptable. All deliveries shall be freight prepaid, F.O.B. Destination and shall be included in all pricing offered unless otherwise clearly stated in writing.
- 15) Inspection & Acceptance. If defective or incorrect material is delivered, Region 4 ESC may make the determination to return the material to the Contractor at no cost to Region 4 ESC. The Contractor agrees to pay all shipping costs for the return shipment. Contractor shall be responsible for arranging the return of the defective or incorrect material.
- 16) Payments. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.
- 17) Price Adjustments. Should it become necessary or proper during the term of this Contract to make any change in design or any alterations that will increase price, Region 4 ESC must be notified immediately. Price increases must be approved by Region 4 ESC and no payment for additional materials or services, beyond the amount stipulated in the Contract shall be paid without prior approval. All price increases must be supported by manufacturer documentation, or a formal cost justification letter. Contractor must honor previous prices for thirty (30) days after approval and written notification from Region 4 ESC. It is the Contractor's responsibility to keep all pricing up to date and on file with Region 4 ESC. All price changes must be provided to Region 4 ESC, using the same format as was provided and accepted in the Contractor's proposal.

Price reductions may be offered at any time during Contract. Special, time-limited reductions are permissible under the following conditions: 1) reduction is available to all users equally; 2) reduction is for a specific period, normally not less than thirty (30) days; and 3) original price is not exceeded after the time-limit. Contractor shall offer Region 4 ESC any published price reduction during the Contract term.

- 18) Audit Rights. Contractor shall, at its sole expense, maintain appropriate due diligence of all purchases made by Region 4 ESC and any entity that utilizes this Contract. Region 4 ESC reserves the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. Region 4 ESC shall have the authority to conduct random audits of Contractor's pricing at Region 4 ESC's sole cost and expense. Notwithstanding the foregoing, in the event that Region 4 ESC is made aware of any pricing

being offered that is materially inconsistent with the pricing under this agreement, Region 4 ESC shall have the ability to conduct an extensive audit of Contractor's pricing at Contractor's sole cost and expense. Region 4 ESC may conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 4 ESC.

- 19) Discontinued Products. If a product or model is discontinued by the manufacturer, Contractor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model.
- 20) New Products/Services. New products and/or services that meet the scope of work may be added to the Contract. Pricing shall be equivalent to the percentage discount for other products. Contractor may replace or add product lines if the line is replacing or supplementing products, is equal or superior to the original products, is discounted similarly or greater than the original discount, and if the products meet the requirements of the Contract. No products and/or services may be added to avoid competitive procurement requirements. Region 4 ESC may require additions to be submitted with documentation from Members demonstrating an interest in, or a potential requirement for, the new product or service. Region 4 ESC may reject any additions without cause.
- 21) Options. Optional equipment for products under Contract may be added to the Contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.
- 22) Warranty Conditions. All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing.
- 23) Site Cleanup. Contractor shall clean up and remove all debris and rubbish resulting from their work as required or directed. Upon completion of the work, the premises shall be left in good repair and an orderly, neat, clean, safe and unobstructed condition.
- 24) Site Preparation. Contractor shall not begin a project for which the site has not been prepared, unless Contractor does the preparation work at no cost, or until Region 4 ESC includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.
- 25) Registered Sex Offender Restrictions. For work to be performed at schools, Contractor agrees no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Contractor agrees a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at Region 4 ESC's discretion. Contractor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.
- 26) Safety measures. Contractor shall take all reasonable precautions for the safety of employees on the worksite and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Contractor shall post warning signs against all hazards created by

its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

- 27) Smoking. Persons working under the Contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.
- 28) Stored materials. Upon prior written agreement between the Contractor and Region 4 ESC, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to Region 4 ESC prior to payment. Such materials must be stored and protected in a secure location and be insured for their full value by the Contractor against loss and damage. Contractor agrees to provide proof of coverage and additionally insured upon request. Additionally, if stored offsite, the materials must also be clearly identified as property of Region 4 ESC and be separated from other materials. Region 4 ESC must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary. Until final acceptance by Region 4 ESC, it shall be the Contractor's responsibility to protect all materials and equipment. Contractor warrants and guarantees that title for all work, materials and equipment shall pass to Region 4 ESC upon final acceptance.
- 29) Funding Out Clause. A Contract for the acquisition, including lease, of real or personal property is a commitment of Region 4 ESC's current revenue only. Region 4 ESC retains the right to terminate the Contract at the expiration of each budget period during the term of the Contract and is conditioned on a best effort attempt by Region 4 ESC to obtain appropriate funds for payment of the contract.
- 30) Indemnity. Contractor shall protect, indemnify, and hold harmless both Region 4 ESC and its administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the Contractor, Contractor employees or subcontractors in the preparation of the solicitation and the later execution of the Contract. Any litigation involving either Region 4 ESC, its administrators and employees and agents will be in Harris County, Texas.
- 31) Marketing. Contractor agrees to allow Region 4 ESC to use their name and logo within website, marketing materials and advertisement. Any use of Region 4 ESC name and logo or any form of publicity, inclusive of press releases, regarding this Contract by Contractor must have prior approval from Region 4 ESC.
- 32) Certificates of Insurance. Certificates of insurance shall be delivered to the Region 4 ESC prior to commencement of work. The Contractor shall give Region 4 ESC a minimum of ten (10) days' notice prior to any modifications or cancellation of policies. The Contractor shall require all subcontractors performing any work to maintain coverage as specified.
- 33) Legal Obligations. It is Contractor's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services and shall comply with all laws while fulfilling the Contract. Applicable laws and regulation must be followed even if not specifically identified herein.

OFFER AND CONTRACT SIGNATURE FORM

The undersigned hereby offers and, if awarded, agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing.

Company Name **FleetCor Technologies, Inc. through its subsidiaries:
FleetCor Technologies Operating Company, LLC and Comdata, Inc.**

Address **3280 Peachtree Road, Suite 2400**

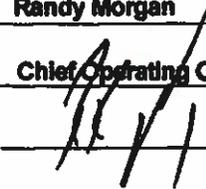
City/State/Zip **Atlanta, GA 30305**

Telephone No. **O: (615) 376-6902 M: (615) 289-904**

Email Address **rmorgan@comdata.com**

Printed Name **Randy Morgan**

Title **Chief Operating Officer**

Authorized signature 

Accepted by Region 4 ESC:

Contract No. R211101

Initial Contract Term 01/01/2022 to 12/31/2024



Region 4 ESC Authorized Board Member

10/26/2021
Date

Margaret S. Bass

Print Name



Region 4 ESC Authorized Board Member

10/26/2021
Date

Linda F. Tinnerman

Print Name

Appendix B

TERMS & CONDITIONS ACCEPTANCE FORM

Signature on the Offer and Contract Signature form certifies complete acceptance of the terms and conditions in this solicitation and draft Contract except as noted below with proposed substitute language (additional pages may be attached, if necessary). The provisions of the RFP cannot be modified without the express written approval of Region 4 ESC. If a proposal is returned with modifications to the draft Contract provisions that are not expressly approved in writing by Region 4 ESC, the Contract provisions contained in the RFP shall prevail.

Check one of the following responses:

- Offeror takes no exceptions to the terms and conditions of the RFP and draft Contract.

(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)

- Offeror takes the following exceptions to the RFP and draft Contract. All exceptions must be clearly explained, reference the corresponding term to which Offeror is taking exception and clearly state any proposed modified language, proposed additional terms to the RFP and draft Contract must be included:

(Note: Unacceptable exceptions may remove Offeror's proposal from consideration for award. Region 4 ESC shall be the sole judge on the acceptance of exceptions and modifications and the decision shall be final.)

If an offer is made with modifications to the contract provisions that are not expressly approved in writing, the contract provisions contained in the RFP shall prevail.)

Section/Page	Term, Condition, or Specification	Exception/Proposed Modification	Accepted (For Region 4 ESC's use)
OMNIA 1.2 (page 35)	Marketing, Sales and Administrative Support	<p>Suppliers are required to pay an Administrative Fee of 3% of the greater of the Contract Sales under the Master Agreement and Guaranteed Contract Sales under this Request for Proposal.</p> <p>FLEETCOR takes exception to this statement or requirement.</p> <p>The current Administrative Fee being paid to OMNIA Partners under current/prior similar contract is \$0.005 (1/2 cent) per gallon on fuel sales, plus a percentage of 0.50% (50 basis points) on non-fuel sales for Fuelman activity. FLEETCOR requests that for sake of sales on the proprietary Fuelman Fleet Card program, the administrative fee per gallon and percentage on non-fuel remain as is under prior similar contract (as</p>	9/16/21 negotiation

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		<p>written above). Furthermore, the Administrative Fee shall not be owed on gallons at customer onsite locations receiving “Memo Tracking Services” (a Value Add Solution), since Memo Tracking Fees aren’t actually “sales” of fuel, they are a small fee per gallon for the memo tracking service.</p> <p>For the Administrative Fee on Comdata MasterCard sales, since the economics are much different with MasterCard, FLEETCOR proposes and agrees it will pay 0.10% (10 basis points), on all spend (fuel or non-fuel) by participating Public Agencies under the Master Agreement.</p>	
<p>OMNIA</p> <p>2.1 (page 36)</p>	<p>Corporate Commitment</p>	<p>(2) the Master Agreement is Supplier's primary “go to market” strategy for Public Agencies</p> <p>FLEETCOR takes exception to this clause or requirement. FLEETCOR reserves the right to not have the Master Agreement be our “primary” “go to market” strategy for Public Agencies.</p> <p>(3) the Master Agreement will be promoted to all Public Agencies, including any existing customers, and Supplier will transition existing customers, upon their request, to the Master Agreement</p> <p>FLEETCOR takes exception to this clause or requirement. Though we can agree to offer and promote the Master Agreement to new sales prospects, we reserve the right to not promote the Master Agreement to existing customers. We will however, upon request from an existing customer, agree to transition the customer to the Master Agreement</p> <p>(4) that the Supplier has read and agrees</p>	<p>9/16/21 - FLEETCOR and OMNIA Partners acknowledge ability to have flexible conversation for strategy (Section 2.1 through c) ix. and x. (page 18)</p>

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		<p>to the terms and conditions of the Administration Agreement with OMNIA Partners and will execute such agreement concurrent with and as a condition of its execution of the Master Agreement with the Principal Procurement Agency.</p> <p>Agreement to this clause is subject to the parties being able to successfully agree legal redline changes to the Administration Agreement. We are submitting any required changes pointed out by our legal.</p>	
OMNIA	2.2 (page 36) Pricing Commitment	<p>Supplier commits the not-to-exceed pricing provided under the Master Agreement pricing is its lowest available (net to buyer) to Public Agencies nationwide and further commits that if a Participating Public Agency is eligible for lower pricing through a national, state, regional or local or cooperative contract, the Supplier will match such lower pricing to that Participating Public Agency under the Master Agreement.</p> <p>FLEETCOR takes exception to this clause or requirement. This requirement seems to insinuate that we must agree to Most Favored Nation (MFN) pricing to Region 4 ESC or OMNIA Partners customers or prospects under this solicitation. We may have Public Agency customers receiving pricing lower than offered in this proposal/response. We cannot agree to MFN pricing and FLEETCOR reserves the right to not match any lower pricing we might offer or have offered under some other solicitation to existing customers, to a Participating Public Agency under the Master Agreement</p>	
OMNIA	3.3 B, iv. (page 39) Marketing and Sales	iv. Commitment to attendance and participation with OMNIA Partners at national (i.e. NIGP Annual Forum, NPI	

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		<p>Conference, etc.), regional (i.e. Regional NIGP Chapter Meetings, Regional Cooperative Summits, etc.) and supplier-specific trade shows, conferences and meetings throughout the term of the Master Agreement</p> <p>FLEETCOR will need to better understand the budget requirements of attendance in these events, and FLEETCOR reserves the right to determine exactly which events make economic or logistical sense to participate.</p>	
OMNIA	3.3 B, v. (page 39)	<p>Marketing and Sales</p> <p>v. Commitment to attend, exhibit and participate at the NIGP Annual Forum in an area reserved by OMNIA Partners for partner suppliers. Booth space will be purchased and staffed by Supplier. In addition, Supplier commits to provide reasonable assistance to the overall promotion and marketing efforts for the NIGP Annual Forum, as directed by OMNIA Partners.</p> <p>FLEETCOR will need to better understand the budget requirements of attendance in these events, and FLEETCOR reserves the right to determine exactly which events make economic or logistical sense to participate.</p>	
OMNIA	3.3 B, vi. (page 39)	<p>Marketing and Sales</p> <p>vi. Design and publication of national and regional advertising in trade publications throughout the term of the Master Agreement</p> <p>FLEETCOR will need to better understand the budget requirements of any advertising, and FLEETCOR reserves the right to determine exactly which advertising makes economic sense for it to make advertising</p>	

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		<p>expenditures. The advertising expenditures shall be subject to senior management approval and budgeting.</p>	
OMNIA 3.3 B, viii. (page 39)	Marketing and Sales	<p>viii. Dedicated OMNIA Partners internet web-based homepage on Supplier's website with:</p> <ul style="list-style-type: none"> • OMNIA Partners standard logo; • Copy of original Request for Proposal; • Copy of Master Agreement and amendments between Principal Procurement Agency and Supplier; • Summary of Products and pricing; • Marketing Materials • Electronic link to OMNIA Partners' website including the online registration page; • A dedicated toll-free number and email address for OMNIA Partners <p>Though we do not materially disagree with this approach, our ability to comply totally with this requirement shall be subject to review by FLEETCOR web and IT department and marketing. Due to time constraints submitting RFP response, it was not possible to have this aspect completed. We may need to link to OMNIA for the archiving aspect of the solicitation materials. We reserve the right to not include a summary of products and pricing.</p>	
OMNIA 3.3 C (page 40)	Describe how Supplier will transition any existing Public Agency customers' accounts to the Master Agreement	<p>C. Describe how Supplier will transition any existing Public Agency customers' accounts to the Master Agreement available nationally through OMNIA Partners. Include a list of current cooperative contracts (regional and national) Supplier holds and describe how the Master Agreement will be positioned among the other cooperative agreements.</p> <p>Please refer to our response</p>	

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		<p>section 3.3.C FLEETCOR takes exception to this requirement. We have no intention to actively transition our other existing government (Public Agency) customers to the OMNIA Master Agreement. Many of these government accounts prefer to do their own bids or RFPs, and we have contract obligations under those contracts, which we do not want to affect or change.</p>	
<p>OMNIA 3.3 E (page 40)</p>	<p>Confirmation that Supplier will be Proactive in Direct Sales of Suppliers goods and services to Public Agencies Nationwide with timely follow up to leads established by OMNIA Partners, Sales Initiatives Should Communicate.</p>	<p>E. Confirm Supplier will be proactive in direct sales of Supplier's goods and services to Public Agencies nationwide and the timely follow up to leads established by OMNIA Partners. All sales materials are to use the OMNIA Partners logo. At a minimum, the Supplier's sales initiatives should communicate:</p> <ul style="list-style-type: none"> i. Master Agreement was competitively solicited and publicly awarded by a Principal Procurement Agency ii. Best government pricing iii. No cost to participate iv. Non-exclusive <p>Please refer to our response section 3.3.E With regards to item ii., we oppose using the phrase "Best government pricing". We do not offer MFN pricing. It may not be exactly appropriate to make this statement. See our exception to 2.2 Pricing Commitment, FLEETCOR does not agree to provide Most Favored Nation (MFN) pricing to Region 4 ESC or OMNIA Partners customers or prospects under this solicitation. We may have Public Agency customers receiving pricing lower than offered in this proposal/response. FLEETCOR reserves the right to not agree to match that pricing under this Master Agreement.</p>	

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OMNIA	3.3 J (page 41)	State the amount of Suppliers Public Agency sales for the previous fiscal year and provide a list of Supplier's top 10 Public Agency customers with purchase figures.	J. State the amount of Supplier's Public Agency sales for the previous fiscal year. Provide a list of Supplier's top 10 Public Agency customers, the total purchases for each for the previous fiscal year along with a key contact for each. Please refer to our response section 3.3.J We are unable to disclose in this response FLEETCOR's Public Agency sales for the previous fiscal year. We take exception to having to submit this level of information.	
OMNIA	3.3 L (page 41)	Provide the Contract Sales that Supplier will guarantee each year under the Master Agreement for the initial three years.	L. Provide the Contract Sales (as defined in Section 10 of the OMNIA Partners Administration Agreement) that Supplier will guarantee each year under the Master Agreement for the initial three years of the Master Agreement ("Guaranteed Contract Sales"). \$ _____ .00 in year one \$ _____ .00 in year two \$ _____ .00 in year three To the extent Supplier guarantees minimum Contract Sales, the Administrative Fee shall be calculated based on the greater of the actual Contract Sales and the Guaranteed Contract Sales. Please refer to our response section 3.3.L FLEETCOR takes exception to providing a guarantee of sales for each of the initial three years of the Master Agreement.	
OMNIA	3.3 M (page 41)	Where Public Agencies Issue their own Solicitations - Options Available when Responding to a	M. Even though it is anticipated many Public Agencies will be able to utilize the Master Agreement without further formal solicitation, there may be circumstances where Public Agencies will issue their	

Section/Page	Term, Condition, or Specification	Exception/Proposed Modification	Accepted (For Region 4 ESC's use)
	Solicitation for Products Covered Under the Master Agreement.	<p>own solicitations. The following options are available when responding to a solicitation for Products covered under the Master Agreement.</p> <ul style="list-style-type: none"> i. Respond with Master Agreement pricing (Contract Sales reported to OMNIA Partners). ii. If competitive conditions require pricing lower than the standard Master Agreement not-to-exceed pricing, Supplier may respond with lower pricing through the Master Agreement. If Supplier is awarded the contract, the sales are reported as Contract Sales to OMNIA Partners under the Master Agreement. iii. Respond with pricing higher than Master Agreement only in the unlikely event that the Public Agency refuses to utilize Master Agreement (Contract Sales are not reported to OMNIA Partners). iv. If alternative or multiple proposals are permitted, respond with pricing higher than Master Agreement, and include Master Agreement as the alternate or additional proposal. <p>Detail Supplier's strategies under these options when responding to a solicitation.</p> <p>Please refer to our response section 3.3.M FLEETCOR takes exception this specification. We do not agree that in future Public Agency solicitations for Products covered under the OMNIA Partners Master Agreement, that we must respond offering the OMNIA Partners contract. FLEETCOR reserves the right to respond to any Public Agency solicitation directly and without regard to the OMNIA Partners Master Agreement. If we bid and win in a direct competitive bid for a Public Agency, we will not enroll the client as an OMNIA Partners Master Agreement</p>	

OMNIA

Section/Page	Term, Condition, or Specification	Exception/Proposed Modification	Accepted (For Region 4 ESC's use)
		<p>participant and will not pay Admin Fees on that business.</p>	
<p>c) ix. and x. (page 18)</p>	<p>Qualification and Experience, response items regarding FLEETCOR or Comdata Terms and Conditions</p>	<p>ix. If Offeror anticipates Participating Public Agencies will sign a service agreement, Offeror must include their company's standard service agreement with their RFP response.</p> <p>x. Provide any additional information relevant to this section.</p> <p>Please refer to our response sections Article 4.9 Item c) ix. and Article 4.10 Item c) x. This may not necessarily be considered an "Exception", but we think it is important to point out that FLEETCOR General Terms and Conditions for Use of Cards, shall apply for the Fuelman Fleet Card. And, if a customer desires Consigned Fuel Services, or Memo Tracking services with the Fuelman Fleet Card program, which are Value Add services we offer, then certain Terms & Conditions for those services shall apply. We have inserted a TAB 7 – FLEETCOR TERMS AND CONDITIONS in our response, where we have submitted the proposed Terms and Conditions for either Card Use, or the Value Add Services. Should Region 4 ESC require specific modifications to these General Terms & Conditions, or the Value Adde FLEETCOR suggests we work through those changes in the final contracting process.</p> <p>Additionally, for the Comdata MasterCard, in response to c) ix., we have submitted a draft example of the service agreement we would requires for Public Agencies to receive the Comdata MasterCard. The sample agreement includes Comdata Terms and Conditions.</p>	

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		<p>FLEETCOR and Comdata additional Terms and Conditions submitted (herein "Vendor Terms & Conditions") shall govern the services provided by FLEETCOR OR Comdata hereunder. In the event of conflict between the Vendor Terms & Conditions and the terms and conditions of the solicitation, the Vendor Terms & Conditions shall control.</p>	
OMNIA	Paragraph 15 Exhibit B, Administrative Agreement, Example	<p>15. Supplier shall maintain an accounting of all purchases made by Participating Public Agencies under the Master Agreement. OMNIA Partners, or its designee, in OMNIA Partners' sole discretion, reserves the right to compare Participating Public Agency records with Contract Sales Reports submitted by Supplier for a period of four (4) years from the date OMNIA Partners receives such report. In addition, OMNIA Partners may engage a third party to conduct an independent audit of Supplier's monthly reports. In the event of such an audit, Supplier shall provide all materials reasonably requested relating to such audit by OMNIA Partners at the location designated by OMNIA Partners. In the event an underreporting of Contract Sales and a resulting underpayment of Administrative Fees is revealed, OMNIA Partners will notify the Supplier in writing. Supplier will have thirty (30) days from the date of such notice to resolve the discrepancy to OMNIA Partners' reasonable satisfaction, including payment of any Administrative Fees due and owing, together with interest thereon in accordance with Section 13, and reimbursement of OMNIA Partners' costs and expenses related to such audit.</p> <p>FLEETCOR respectfully requests that Paragraph 15 be amended to include the following modifications or limitations:</p>	9/17/21 in negotiating

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		<p>(1) Audit by OMNIA Partners shall be limited to once during any 12 month period and only during normal business hours after reasonable advance written notice; (2) All audits are at the auditing party's expense.</p>	
<p>Region 4</p> <p>Appendix A Draft Contract Paragraph 4 (page 20, page 2 of Draft Contract)</p>	<p>Order of Precedence</p>	<p>4) Order of Precedence. In the event of a conflict in the provisions of the Contract as accepted by Region 4 ESC, the following order of precedence shall prevail:</p> <ul style="list-style-type: none"> i. This Contract ii. Offeror's Best and Final Offer iii. Offeror's proposal iv. RFP and any addenda <p>We need to have FLEETCOR Terms and Conditions supersede.</p>	<p>10/08/21 see approved Order of Preference language with FleetCor Standard Agreement</p>
<p>Region 4</p> <p>Appendix A Draft Contract Paragraph 29 (page 24, page 6 of Draft Contract)</p>	<p>Funding Out Clause</p>	<p>29) <u>Funding Out Clause</u>. Contract for the acquisition, including lease, of real or personal property is a commitment of Region 4 ESC's current revenue only. Region 4 ESC retains the right to terminate the Contract at the expiration of each budget period during the term of the Contract and is conditioned on a best effort attempt by Region 4 ESC to obtain appropriate funds for payment of the contract.</p> <p>We request this section be deleted.</p>	<p>10/08/21 withdraw exception request and acquiesce to the language in the original RFP.</p>
<p>Region 4</p> <p>Appendix A Draft Contract Paragraph 30 (page 24, page 6 of Draft Contract)</p>	<p>Indemnity</p>	<p>30) <u>Indemnity</u>. Contractor shall protect, indemnify, and hold harmless both Region 4 ESC and its administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the Contractor, Contractor employees or subcontractors in the preparation of the solicitation and the later execution of the Contract. Any litigation involving either Region 4 ESC, its administrators and employees and agents will be in Harris County, Texas.</p>	<p>10/08/21 withdraw exception request and acquiesce to the language in the original RFP.</p>

Approved Order of Preference. Vendor requires any entity that will receive the Service (including any participating public agencies, members, and Region 4 ESC, if it will receive the service) to sign the FLEETCOR or Comdata Agreement or Application for Account, attached hereto (the "FLEETCOR or Comdata Agreement/Application"). Region 4 ESC acknowledges and agrees that each entity that wants to use the vendor's service (including participating agencies, Members, and Region 4 ESC) must execute an FLEETCOR or Comdata Agreement/Application in a form substantially similar to that attached hereto.

	Section/Page	Term, Condition, or Specification	Exception/Proposed Modification	Accepted (For Region 4 ESC's use)
Region 4			We request the sentence redlined above be deleted.	
Region 4	Appendix A Draft Contract Paragraph 32 (page 24, page 6 of Draft Contract)	Certificates of Insurance	32) <u>Certificates of Insurance</u> . Certificates of insurance shall be delivered to the Region 4 ESC prior to commencement of work. The Contractor shall give Region 4 ESC a minimum of ten (10) days' notice prior to any modifications or cancellation of policies. The Contractor shall require all subcontractors performing any work to maintain coverage as specified. We request the sentence redlined above be deleted.	10/08/21 Agreed to revised COI language: 32) Certificates of Insurance. Certificate of Insurance shall be delivered to the Region 4 ESC prior to commencement of work. The Contract shall endeavor to give Region 4 ESC a minimum of thirty (30) days' notice of cancellations of policies.
OMNIA	Exhibit B Administrative Agreement Section 7 (page 44)	Data Regulations and Personal Information	the Nevada encryption statute (N.R.S. § 603A), the California data security law (Cal. Civil Code § 1798.80 et. seq.) and California Consumer Privacy Act (Cal. Civil Code § 1798.100 et. seq.) We request the language shown above be deleted from section 7, first paragraph. We also request that the entire second paragraph in section 7 be deleted in its entirety.	9/16/21 in negotiation
OMNIA	Exhibit B Administrative Agreement Section 12 (page 45)	Administrative Fee	Section not copied here due to space limitations. The Administrative Fee section 12 will need to be modified or re-written to accommodate the Administrative Fee payment structure FLEETCOR has offered under our Exception taken to 1.2 (page 35).	9/16/21 in negotiation