



## STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 3

CONTRACT #: AR1766

Starting Date: 1/1/2014

Expiration Date: 12/31/2020

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and U.S Bank National Association (Referred to as CONTRACTOR).

### BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Amend to exercise 2 year renewal option and to amend incentive share calculations as outlined in the attached amendment.

(Master Agreement Amendment already approved)

Effective Date of Amendment: 1/1/2019

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

**STATE OF UTAH**

  
Contractor's Signature

10/21/18  
Date

  
Director, State of Utah Division of Purchasing

10/25/2018  
Date

Brad W. Hoffelt

Contractor's Name (Print)

Senior Vice President

Title (Print)

### For Division of Purchasing Internal Use

Purchasing Agent	Phone #	E-mail Address	Contract #
Angela Carlisle	801-538-3524	acarlisle@utah.gov	AR1766



**AMENDMENT NO. 3  
TO  
STATE OF UTAH  
CONTRACT NO. AR 1766**

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This Amendment No. 3 ("**Amendment**") is entered into, by and between U.S. Bank National Association ("**U.S. Bank**") and the State of Utah ("**State**") (collectively, "**the Parties**"), to amend the Participation Addendum, to the WSCA-NASPO Contract led by the State of Washington between the State of Utah and U.S. Bank dated September 29, 2014 ("**Participation Addendum**") as amended or supplemented. This Amendment shall become effective on January 1, 2019 ("**Effective Date**").

R E C I T A L S

- A. The State of Utah is a member of the NASPO ValuePoint Cooperative Purchasing Program, a nonprofit public cooperative contracting association in which all of the cooperative contracts are led by one of the fifty states on behalf NASPO ValuePoint Cooperative Purchasing Program member states.
- B. In 2013, Enterprise Services, on behalf of the State of Washington, led a competitive procurement, structured as a WSCA-NASPO cooperative procurement, for incentive-based commercial card services to facilitate authorized purchaser payments.
- C. The State of Washington and U.S. Bank entered into Contract No. 00612 for Commercial Card Services, Category 1 – Purchasing, Travel, One and Declining Balance Cards dated effective as of January 1, 2014 ("Contract").
- D. The State entered into its Participation Addendum with U.S. Bank on September 29, 2014, dated effective as of September 29, 2014.
- E. In 2015, WSCA-NASPO changed its name to NASPO ValuePoint.
- F. This commercial card services Participation Addendum is structured to provide purchaser incentives based on the transactions. The parties desire to clarify the incentive structure to account for 1) large ticket programs 2) the Visa Partnership Program, and 3) any other interchange programs entered into by the Associates, Customer, Merchants, or others whereby the parties to those interchange programs have agreed to lower interchange rates for certain Transactions referred to as Discount Interchange Rate Program (DIRP).
- G. The parties desire to extend the term of the contract, update WSCA-NASPO to NASPO ValuePoint; and adjust the incentive rebates definitions and rates.
- H. The amendment set forth herein is within the scope of the Participation Addendum.
- I. The Parties now desire to amend the Participation Addendum as set forth herein.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Participation Addendum as follows:

1. TERM. Section 2 – (Effective Date and Term of Participating Addendum) of the Participation Addendum is hereby amended as follows:
  2. Effective Date and Term of Participating Addendum.

The term of the Participation Addendum is amended to exercise the two-year renewal option effective January 1, 2019. The term of the Participation Addendum shall be for seven years, January 1, 2014 through December 31, 2020.



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2. REFERENCES TO WSCA-NASPO. The parties understand and agree that any Contract or Participation Addendum reference to WSCA-NASPO shall be deemed to refer to NASPO ValuePoint, the successor cooperative purchasing organization to WSCA-NASPO.
3. INCENTIVE SHARE. Appendix 4 – (Applicable Card Fee and Rebate Information) of the Participation Addendum, is hereby amended by deleting the existing table entitled “Rebates Applicable to Corporate Liability Purchase, Corporate, and One Cards (individual liability Corporate Cards are not included in Incentive Share Components 1,2, and 3)” in its entirety and inserting the following in lieu thereof:

Rebates Applicable to Corporate Liability Purchase, Corporate, and One Cards (individual liability Corporate Cards are not included in Incentive Share Components 1,2, and 3)	REBATE BPS	PAID
<p><b>Incentive #1 - Standard Volume</b>            Each Participating Entity will receive a basis point (percentage) of their quarterly standard sales volume.            The formula to determine quarterly standard sales volume incentive share:  <i>(Quarterly standard volume sales per entity – Quarterly Qualifying DIRP volume sales) x basis points (percentage) = Entity Quarterly Standard Volume Incentive.</i></p>	150	Quarterly
<p><b>Incentive #2 - Discount Interchange Rate Program (DIRP) Volume Incentive</b>            Each Participating Entity will receive an incentive for qualifying DIRP transactions. Contractor will provide a quarterly report identifying all qualifying DIRP transactions to each Entity.            The formula for calculating DIRP Incentive is:  <i>Qualifying Quarterly DIRP volume sales per Entity x basis points (percentage) = Entity Quarterly DIRP Volume Incentive</i></p>	75	Quarterly



<b>Rebates Applicable to Corporate Liability Purchase, Corporate, and One Cards (individual liability Corporate Cards are not included in Incentive Share Components 1,2, and 3)</b>	<b>REBATE BPS</b>	<b>PAID</b>								
<p><b>Incentive #3 Speed of Pay/Prompt Payment Incentive</b>            The Speed of Pay/Prompt Payment Incentive calculation is designed to provide an incentive to each Participating Entity when Client Held Days is less than forty-five (45) days. The Prompt Payment Incentive is based solely on the Client Held Days Payment Performance for each Entity for the Agreement Quarter (3 calendar months). This incentive applies to both Standard and DIRP transactions.</p> <p>The formula to determine the Speed of Pay/Prompt Payment Incentive is:  <i>(45 – Client Held Days) / 45 x 0.0045 x Quarterly Sales Volume = Entity Quarterly Prompt Payment Incentive.</i></p>	<p>45 (max.)</p>	<p>Quarterly</p>								
<p><b>Incentive #4 NASPO ValuePoint Annual Sales Volume Incentive</b>            Each participating state will receive an additional NASPO ValuePoint Annual Sales Volume Incentive based on a tier established from all NASPO ValuePoint participating states annual volume and applied to each state’s annual sales volume.</p> <p>The formula for calculating NASPO ValuePoint Annual Sales Volume Incentive is:  <i>Participating State annual sales volume (all products) x applicable basis points (percentage) corresponding to the Tier established for the Annual Overall NASPO ValuePoint Sales Volume (all products) = NASPO ValuePoint Annual Sales Volume Incentive.</i></p> <table data-bbox="727 1465 1144 1591"> <tr> <td>\$500,000,000 - \$2,000,000,000</td> <td>45</td> </tr> <tr> <td>\$2,000,000,001 - \$3,000,000,000</td> <td>45</td> </tr> <tr> <td>\$3,000,000,001 - \$4,000,000,000</td> <td>45</td> </tr> <tr> <td>\$4,000,000,001 - \$5,000,000,000</td> <td>45</td> </tr> </table> <p>Note: Notwithstanding the foregoing, if a political subdivision in a non-participating state is allowed to join the contract, the Annual Aggregate State rebate component will be negotiated between the Bank, NASPO ValuePoint and that political subdivision as long as the net bps available for this component are not diminished.</p>	\$500,000,000 - \$2,000,000,000	45	\$2,000,000,001 - \$3,000,000,000	45	\$3,000,000,001 - \$4,000,000,000	45	\$4,000,000,001 - \$5,000,000,000	45	<p>45 45 45 45</p>	<p>Annually</p>
\$500,000,000 - \$2,000,000,000	45									
\$2,000,000,001 - \$3,000,000,000	45									
\$3,000,000,001 - \$4,000,000,000	45									
\$4,000,000,001 - \$5,000,000,000	45									



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- a. **Minimum Requirements:** If any Entity does not earn at least \$75.00 in Incentive Share for Category 1 Incentive Share Components 1 through 3 or Category 2 Incentive Share Components 1 through 2 will forfeit Incentive Share for the preceding quarter.

Any Incentive Share payment made pursuant to the Participation Addendum will be net of accumulated Charge-offs resulting from participating in U.S. Bank programs regardless of whether the underlying agreement between the parties is valid or has been terminated.

In the event that the Card Program or the Contract is terminated prior to the completion of the Base Period or prior to the completion of any Agreement Quarter after the completion of the Base Period by Entity without cause, or by the Contractor with cause, and/or the sole provider provision of this Contract is violated, in addition to any other remedies available to Contractor, this Incentive Share opportunity shall immediately terminate and no Incentive Share shall be paid to Entity.

Any Charge-offs in excess of the net Incentive Share from one (1) Agreement Quarter will be subtracted from one (1) or more of the following Agreement Quarters. Upon termination of the Contract, if the net Incentive Share is a negative dollar amount due to Charge-offs, Contractor may request, and Entity agrees to reimburse, Contractor up to the dollar amount previously paid by Contractor to Entity within thirty (30) days of the termination of the Contract.

4. INCENTIVE PAYMENT CALCULATION. The following language is hereby added to Appendix 4, Applicable Card Fee and Rebate Information, after "Rebates Applicable to Corporate Liability Purchase, Corporate, and One Cards (individual liability Corporate Cards are not included in Incentive Share Components 1, 2, and 3)".

**Calculation.**

- a. Incentive Share consists of volume, speed of pay, and Discount Interchange Rate Program. Incentive Share will be a single payment paid directly to Entity in each state unless the state's Participating Addendum chooses to disburse any of the Incentive Share Components in an alternate manner. Incentive Share payments will be either mailed or transmitted via ACH by the 60<sup>th</sup> day following the end of each quarter.
- i. Standard volume incentive: Charges set forth on the Statements furnished for all Accounts, less Fees, Cash Advances, Convenience Checks, Fraudulent Charges, chargebacks, Charges qualifying for Discount Interchange Rate Program rates and net of Charge-off Adjustments.
  - ii. Discount Interchange Rate Program Volume Incentive: Only those Charges that are processed using Discount Interchange Rate Program rates, less credits, and net of Charge-off Adjustments for each Agreement Quarter.
- b. **Incentive #1 - Standard Volume Incentive** – Each Participating Entity will receive a basis point (percentage) of their quarterly standard sales volume. The formula for calculating Standard Volume Incentive is:  
 $(\text{Quarterly standard volume sales per entity} - \text{Quarterly Qualifying DIRP volume sales}) \times \text{basis points (percentage)} = \text{Entity Quarterly Standard Volume Incentive}$
- c. **Incentive #2 - Discount Interchange Rate Program (DIRP) Volume Incentive** – Each Participating Entity will receive an incentive for qualifying DIRP transactions. Contractor will provide a quarterly report identifying all qualifying DIRP transactions to each Entity. The formula for calculating DIRP Incentive is:  
 $\text{Qualifying Quarterly DIRP volume sales per Entity} \times \text{basis points (percentage)} = \text{Entity Quarterly DIRP Volume Incentive}$



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- d. **Incentive #3 Speed of Pay/Prompt Payment Incentive** – Each Entity will receive an additional incentive share based on speed of pay. Speed of Pay incentive will be determined by averaging quarterly days to pay (file-turn) and applying the appropriate percentage. Average days to pay will be from the date the transaction is posted to the account to the date payment is posted to the account. The Speed of Pay Incentive applies to both Standard and DIRP transactions.

The formula for calculating Speed of Pay Incentive is:

$$\frac{(45 - \text{Average number of days to pay}) / 45 \times \text{basis points (percentage)} \times \text{invoice amount}}{\text{Quarterly Sales Volume}} = \text{Entity Quarterly Prompt Payment Incentive.}$$

- e. **Incentive #4 NASPO ValuePoint Annual Sales Volume Incentive** – Each participating state will receive an additional NASPO ValuePoint Annual Sales Volume Incentive based on a tier established from all NASPO ValuePoint participating state annual volume and applied to each state’s Annual Sales Volume Incentive.

The formula for calculating NASPO ValuePoint Annual Sales Volume Incentive is:

$$\frac{\text{Participating State annual sales volume (all products)} \times \text{applicable basis points (percentage)}}{\text{corresponding to the Tier established for the Annual Overall NASPO ValuePoint Sales Volume (all products)}} = \text{NASPO ValuePoint Annual Sales Volume Incentive.}$$

- 5. **REBATE PAYMENT REGISTRATION.** State shall register for ACH payments in the manner prescribed by U.S. Bank. U.S. Bank will not make any rebate payments until State has registered for ACH. If State fails to register for ACH by the completion of the first Agreement Year, State forfeits any payment for that Agreement Year and any subsequent Agreement Years in which State fails to register for ACH. State designates the following person to register State for ACH:

Rebate Payment Registration	
a) Authorized Person’s Name	Matt Jenkins
b) Authorized Person’s Email Address	mattjenkins@utah.gov

- 6. **NO CHANGE OTHER THAN AMENDMENT.** Except as amended herein, the Participation Addendum is unaffected and remains in full force and effect.
- 7. **INTEGRATED AGREEMENT; MODIFICATION.** This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict, regarding the subject matter, between this Amendment and the Participation Addendum or any earlier amendment, this Amendment shall control and govern. This Amendment does not supersede the terms and conditions that are not addressed in this amendment. This Amendment may not be modified except in writing signed by the Parties.
- 8. **AUTHORITY.** Each party to this Amendment, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 9. **ELECTRONIC SIGNATURES.** A signed copy of this Amendment or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment or such other ancillary agreement for all purposes.
- 10. **COUNTERPARTS.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Amendment at different



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times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Amendment.

11. INCORPORATION. The recitals provided above are incorporated in this Amendment by reference as if set forth at length.

In witness whereof, the parties hereto have, by their authorized representatives, executed this Amendment.

DATE: 10/25/2018

DATE: 10/24/18

By Customer:

By U.S. Bank:

State of Utah

U.S. Bank National Association

(Company Name)

(Company Name)

(Signature of Authorized Signer)

(Signature of Authorized Signer)

Christopher Hughes

Brad W. Hoffelt

(Printed Name of Authorized Signer)

(Printed Name of Authorized Signer)

Director of Purchasing

Senior Vice President

(Printed Title of Authorized Signer)

(Printed Title of Authorized Signer)

State of Washington Contracts & Procurement Division Department of Enterprise Services P.O. Box 41411 Olympia, WA 98504-1411	<b>CONTRACT AMENDMENT</b>	
	Contract No.:	00612
U.S. Bank National Association Corporate Payment Systems Mail Code: EP-MN-18 901 Marquette Avenue Minneapolis, MN 55402	Amendment No.:	1
	Effective Date:	January 1, 2019

**FIRST AMENDMENT  
TO  
CONTRACT NO. 00612  
COMMERCIAL CARD SERVICES  
CATEGORY 1 – PURCHASING, TRAVEL, ONE AND DECLINING BALANCE CARDS**

This First Amendment (“Amendment”) to Contract No. 00612 is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“State”) on behalf of the NASPO ValuePoint Cooperative Purchasing Program, and U.S. Bank National Association, a wholly owned subsidiary of U.S. Bancorp, a Delaware corporation (“Contractor”) and is dated as of January 1, 2019.

**RECITALS**

- A. Enterprise Services, on behalf of the State of Washington, is authorized to participate in cooperative purchasing agreements pertaining to certain competitively awarded master agreements. See RCW 39.26.060.
- B. Enterprise Services, on behalf of the State of Washington, is a member of the NASPO ValuePoint Cooperative Purchasing Program, a nonprofit public cooperative contracting association in which all of the cooperative contracts are led by one of the fifty states on behalf NASPO ValuePoint Cooperative Purchasing Program member states.
- C. In 2013, Enterprise Services, on behalf of the State of Washington, led a competitive procurement, structured as a WSCA-NASPO cooperative procurement, for incentive-based commercial card services to facilitate authorized purchaser payments.
- D. State and Contractor (collectively the “Parties”) entered into that certain Contract No. 00612 for Commercial Card Services, Category 1 – Purchasing, Travel, One and Declining Balance Cards dated effective as of January 1, 2014 (“Contract”).
- E. In 2015, WSCA-NASPO changed its name to NASPO ValuePoint.
- F. This commercial card services Contract is structured to provide purchaser incentives based on the transactions. The parties desire to clarify the incentive structure to account for 1) large ticket programs 2) the Visa Partnership Program, and 3) any other interchange programs entered into

by the Associates, Customer, Merchants, or others whereby the parties to those interchange programs have agreed to lower interchange rates for certain Transactions referred to as Discount Interchange Rate Program (DIRP).

- G. The parties desire to extend the term of the contract, update WSCA-NASPO to NASPO ValuePoint; and adjust the incentive rebates definitions and rates.
- H. The amendment set forth herein is within the scope of the Contract.
- I. The Parties now desire to amend the Contract as set forth herein.

#### A G R E E M E N T

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Contract as follows:

1. TERM. Section 1.5 – (Contract Term) of the Contract is hereby amended by deleting the existing section 1.5 in its entirety and inserting the following in lieu thereof:
  - 1.5 Contract Term  
The term of this contract is eighty-four (84) months, ending December 31, 2020.
2. REFERENCES TO WSCA-NASPO. The parties understand and agree that any Contract reference to WSCA-NASPO shall be deemed to refer to NASPO ValuePoint, the successor cooperative purchasing organization to WSCA-NASPO.
3. INCENTIVE SHARE. Section 3.1 – (Incentive Share Components) of the Contract, including the table captioned *Rebates Applicable to Purchase Card and One Card*, is hereby amended by deleting the existing section 3.1 in its entirety and inserting the following in lieu thereof:
  - a. Incentive Share consists of volume, speed of pay, and Discount Interchange Rate Program. Incentive Share will be a single payment paid directly to Entity in each state unless the state's Participating Addendum chooses to disburse any of the Incentive Share Components in an alternate manner. Incentive Share payments will be either mailed or transmitted via ACH by the 60<sup>th</sup> day following the end of each quarter.
    - i. Standard volume incentive: Charges set forth on the Statements furnished for all Accounts, less Fees, Cash Advances, Convenience Checks, Fraudulent Charges, chargebacks, Charges qualifying for Discount Interchange Rate Program rates and net of Charge-off Adjustments.
    - ii. Discount Interchange Rate Program Volume Incentive: Only those Charges that are processed using Discount Interchange Rate Program rates, less credits, and net of Charge-off Adjustments for each Agreement Quarter.
  - b. **Incentive #1 - Standard Volume Incentive** – Each Participating Entity will receive a basis point (percentage) of their quarterly standard sales volume. The formula for calculating Standard Volume Incentive is:  
*(Quarterly standard volume sales per entity- Quarterly Qualifying DIRP volume sales) x basis points (percentage) = Entity Quarterly Standard Volume Incentive.*

- c. **Incentive #2 - Discount Interchange Rate Program (DIRP) Volume Incentive** – Each Participating Entity will receive an incentive for qualifying DIRP transactions. Contractor will provide a quarterly report identifying all qualifying DIRP transactions to each Entity. The formula for calculating DIRP Incentive is:  
 $Qualifying\ Quarterly\ DIRP\ volume\ sales\ per\ Entity\ x\ basis\ points\ (percentage) = Entity\ Quarterly\ DIRP\ Volume\ Incentive$
- d. **Incentive #3 Speed of Pay/Prompt Payment Incentive** – Each Entity will receive an additional incentive share based on speed of pay. Speed of Pay incentive will be determined by averaging quarterly days to pay (file-turn) and applying the appropriate percentage. Average days to pay will be from the date the transaction is posted to the account to the date payment is posted to the account. The Speed of Pay Incentive applies to both Standard and DIRP transactions.  
 The formula for calculating Speed of Pay Incentive is:  
 $(45 - Average\ number\ of\ days\ to\ pay) / 45\ x\ basis\ points\ (percentage)\ x\ invoice\ amount\ (Quarterly\ Sales\ Volume) = Entity\ Quarterly\ Prompt\ Payment\ Incentive.$
- e. **Incentive #4 NASPO ValuePoint Annual Sales Volume Incentive** – Each participating state will receive an additional NASPO ValuePoint Annual Sales Volume Incentive based on a tier established from all NASPO ValuePoint participating state annual volume and applied to each state's Annual Sales Volume Incentive.  
 The formula for calculating NASPO ValuePoint Annual Sales Volume Incentive is:  
 $Participating\ State\ annual\ sales\ volume\ (all\ products)\ x\ applicable\ basis\ points\ (percentage)\ corresponding\ to\ the\ Tier\ established\ for\ the\ Annual\ Overall\ NASPO\ ValuePoint\ Sales\ Volume\ (all\ products) = NASPO\ ValuePoint\ Annual\ Sales\ Volume\ Incentive.$
- f. **Summary Table**

REBATES APPLICABLE TO PURCHASE CARD AND ONE CARD	REBATE BPS	PAID
<b>Incentive #1 - Standard Volume</b> Each Participating Entity will receive a basis point (percentage) of their quarterly standard sales volume. The formula to determine quarterly standard sales volume incentive share: <u><math>(Quarterly\ standard\ volume\ sales\ per\ entity - Quarterly\ Qualifying\ DIRP\ volume\ sales)\ x\ basis\ points\ (percentage) = Entity\ Quarterly\ Standard\ Volume\ Incentive.</math></u>	150	Quarterly

REBATES APPLICABLE TO PURCHASE CARD AND ONE CARD	REBATE BPS	PAID
<p><b>Incentive #2 - Discount Interchange Rate Program (DIRP) Volume Incentive</b>  Each Participating Entity will receive an incentive for qualifying DIRP transactions. Contractor will provide a quarterly report identifying all qualifying DIRP transactions to each Entity.</p> <p>The formula for calculating DIRP Incentive is:  <u><math>Qualifying\ Quarterly\ DIRP\ volume\ sales\ per\ Entity\ x\ basis\ points\ (percentage) = Entity\ Quarterly\ DIRP\ Volume\ Incentive</math></u></p>	75	Quarterly
<p><b>Incentive #3 Speed of Pay/Prompt Payment Incentive</b>  The Speed of Pay/Prompt Payment Incentive calculation is designed to provide an incentive to each Participating Entity when Client Held Days is less than forty-five (45) days. The Prompt Payment Incentive is based solely on the Client Held Days Payment Performance for each Entity for the Agreement Quarter (3 calendar months). This incentive applies to both Standard and DIRP transactions.</p> <p>The formula to determine the Speed of Pay/Prompt Payment Incentive is:  <u><math>(45 - Client\ Held\ Days) / 45 \times 0.0045 \times Quarterly\ Sales\ Volume = Entity\ Quarterly\ Prompt\ Payment\ Incentive.</math></u></p>	45 (max.)	Quarterly
<p><b>Incentive #4 NASPO ValuePoint Annual Sales Volume Incentive</b>  Each participating state will receive an additional NASPO ValuePoint Annual Sales Volume Incentive based on a tier established from all NASPO ValuePoint participating states annual volume and applied to each state's annual sales volume.</p> <p>The formula for calculating NASPO ValuePoint Annual Sales Volume Incentive is:  <u><math>Participating\ State\ annual\ sales\ volume\ (all\ products) \times applicable\ basis\ points\ (percentage)\ corresponding\ to\ the\ Tier\ established\ for\ the\ Annual\ Overall\ NASPO\ ValuePoint\ Sales\ Volume\ (all\ products) = NASPO\ ValuePoint\ Annual\ Sales\ Volume\ Incentive.</math></u></p>		

REBATES APPLICABLE TO PURCHASE CARD AND ONE CARD	REBATE BPS	PAID
\$500,000,000 - \$2,000,000,000	45	Annually
\$2,000,000,001 - \$3,000,000,000	45	
\$3,000,000,001 - \$4,000,000,000	45	
\$4,000,000,001 - \$5,000,000,000	45	
<p>Note: Notwithstanding the foregoing, if a political subdivision in a non-participating state is allowed to join the contract, the Annual Aggregate State rebate component will be negotiated between the Bank, NASPO ValuePoint and that political subdivision as long as the net bps available for this component are not diminished.</p>		

- a. **Minimum Requirements:** If any Entity does not earn at least \$75.00 in Incentive Share for Category 1 Incentive Share Components 1 through 3 or Category 2 Incentive Share Components 1 through 2 will forfeit Incentive Share for the preceding quarter.

Any Incentive Share payment made pursuant to the Contract will be net of accumulated Charge-offs resulting from participating in Contractor programs regardless of whether the underlying Contract between the parties is valid or has been terminated.

In the event that the Card Program or the Contract is terminated prior to the completion of the Base Period or prior to the completion of any Agreement Quarter after the completion of the Base Period by Entity without cause, or by the Contractor with cause, and/or the sole provider provision of this Contract is violated, in addition to any other remedies available to Contractor, this Incentive Share opportunity shall immediately terminate and no Incentive Share shall be paid to Entity.

Any Charge-offs in excess of the net Incentive Share from one (1) Agreement Quarter will be subtracted from one (1) or more of the following Agreement Quarters. Upon termination of the Contract, if the net Incentive Share is a negative dollar amount due to Charge -offs, Contractor may request, and Entity agrees to reimburse, Contractor up to the dollar amount previously paid by Contractor to Entity within thirty (30) days of the termination of the Contract.

4. **NO CHANGE OTHER THAN AMENDMENT.** Except as amended herein, the Contract is unaffected and remains in full force and effect.
5. **INTEGRATED AGREEMENT; MODIFICATION.** This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict between this Amendment and the Contract or any earlier amendment, this Amendment shall control and govern. This Amendment may not be modified except in writing signed by the Parties.
6. **AUTHORITY.** Each party to this Amendment, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Amendment and that its execution, delivery, and performance of this Amendment has been fully

authorized and approved, and that no further approvals or consents are required to bind such party.

7. ELECTRONIC SIGNATURES. A signed copy of this Amendment or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment or such other ancillary agreement for all purposes.
8. COUNTERPARTS. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Amendment at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Amendment.
9. INCORPORATION. The recitals provided above are incorporated in this Amendment by reference as if set forth at length.

EXECUTED AND EFFECTIVE as of the day and date first above written.

**U.S. BANK NATIONAL ASSOCIATION**

By:   
Name: Brad W. Hoffelt  
Title: Senior Vice President  
Date: 6/18/18

**STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES**

By:   
Name: Elena McGrew  
Title: Procurement Supervisor  
Date: 6/19/18



## STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 1

CONTRACT #: AR1766

Starting Date: 01/01/2014

Expiration Date: 12/31/2018

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing (referred to as STATE) and U.S. Bank National Association (as successor in interest to U.S. Bank National Association ND) (referred to as U.S. Bank).

**BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:**

the State of Utah's Participating Addendum Number AR1766, dated January 1, 2014 (the "Agreement") between the State and U.S. Bank is amended as provided herein this Amendment 1 on page 2.

Effective Date of Amendment: 12/9/2016

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect. IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**U.S. Bank National Association**

**STATE OF UTAH**

E-SIGNED by Michael Leppones December 08, 2016

Signature of Authorized Signer Date

Michael C. Leppones  
Name of Authorized Signer (Printed)

Vice President  
Title of Authorized Signer (Print)

*Kent Beers*  
for Kent Beers Director  
State of Utah Division of Purchasing  
Date 12/14/2016

*Jennifer Salts*  
Name of Authorized Signer (Printed)

*Assistant Director*  
Title of Authorized Signer (Print)

Purchasing Agent	Phone #	e-mail	Contract #
Solomon Kingston	801-538-3228	<a href="mailto:skingston@utah.gov">skingston@utah.gov</a>	AR1766

**AMENDMENT NO. 1  
TO THE  
STATE OF UTAH PARTICIPATION ADDENDUM – AR 1766  
TO THE  
WSCA-NASPO MASTER CONTRACT – 00612**

This Amendment No. 1 (“**Amendment**”) is entered into, by and between U.S. Bank National Association (“**U.S. Bank**”) (as successor in interest to U.S. Bank National Association ND) and the State of Utah “**State**”, to amend the State of Utah Participating Addendum Number AR1766, dated January 1, 2014 (the “**Agreement**”) between the State and U.S. Bank. This Amendment shall become effective upon signing by or on the behalf of U.S. Bank (“**Effective Date**”) and supersedes any previous and like amendment(s) with State.

The State and U.S. Bank agree to amend the Agreement as follows:

1. Capitalized terms used in this Amendment and not otherwise defined in this Amendment are used with the same respective meanings attributed thereto in the Agreement.
2. The table titled Fees Applicable to Purchase, Corporate, and One Card on Appendix 4, Fees Applicable to Purchase, Corporate, and One Card, of the Agreement is hereby struck in its entirety and replaced with the following:

	<b>Fees Applicable to Purchase, Corporate, and One Card</b>	<b>Charge</b>
1.	Annual Card Fee	\$0.00
2.	Non-Sufficient Funds Fee, all Products, per occurrence	\$15.00
3.	Logo Embossing Fee; a two-week delay may occur with Card issuance and implementation	\$0.00
4.	Delinquency Fee, Purchasing or One Cards and Enhancements <ul style="list-style-type: none"> <li>• Not Paid by 30 Days from Cycle Close on entire past due amount</li> <li>• Not Paid by 60 Days from Cycle Close on entire past due amount</li> <li>• Not Paid by 90 Days from Cycle Close and each subsequent Billing Cycle on the entire past due amount</li> <li>• Minimum Late Fee</li> </ul>	0.0% 1.0% 2.5% \$2.00
5.	Delinquency Fee, Corporate Cards and Enhancements <ul style="list-style-type: none"> <li>• Not Paid by 30 Days from Cycle Close on entire past due amount</li> <li>• Not Paid by 60 Days from Cycle Close on entire past due amount</li> <li>• Not Paid by 90 Days from Cycle Close and each subsequent Billing Cycle on the entire past due amount</li> <li>• Minimum Late Fee</li> </ul>	0.0% 1.0% 2.5% \$2.00
6.	Travel Accident Insurance Fee. Common Carrier Travel Accident Insurance for Corporate and/or One Cards is provided at no charge with a benefit amount of two hundred fifty thousand U.S. Dollars (\$250,000.00). Entity and/or Participant must notify U.S. Bank of the use of Central Billing Accounts for booking of travel to ensure appropriate Insurance coverage is in place.	\$0.00
7.	Foreign Transaction Fee, all Products. Fee applies to transactions taking place outside the United States not in U.S. Dollars. U.S. Bank reserves the right to raise fee with sixty (60) days prior written notice to Entity.	2.5%

3. Except to the extent that the Agreement is expressly or implicitly modified by this Amendment, all terms and conditions of the Agreement remain in full force and effect.
4. **AUTHORIZATION AND EXECUTION.** The State certifies to U.S. Bank that the person executing this Amendment (1) is authorized by the State in accordance with its organization rules and applicable law to bind the State to this Amendment, (2) has the authority to incur Debt in the name of the State, (3) is an officer of the State, and (4) is acting in his or her capacity as an agent of the State.

The signer represents and warrants that (1) he or she is duly authorized by an applicable Bylaw, Article or other corporate authority to enter into all transactions contemplated by this Amendment, and (2) the signatures appearing on all supporting documents of authority are authentic.

**Participating Addendum  
to Contract #00612 Issued on behalf of  
the Western States Contracting Alliance (WSCA-NASPO)  
Between  
U.S. Bank National Association  
And  
State of Utah**

**Commercial Card Solutions  
For Purchasing, Travel, One Cards, Declining Balance, and Fleet Cards**



For questions on execution of a Participating Addendum, please contact:

WSCA-NASPO  
Cooperative Development Coordinator  
Tim Hay  
Telephone: 503-428-5705  
Email: [thay@wsca-naspo.org](mailto:thay@wsca-naspo.org)

1. **Scope.** This Participating Addendum between the Participating Entity signing below and U.S. Bank National Association (“U.S. Bank”) governs the commercial card program offered pursuant to the WSCA-NASPO Contract between the State of Washington (“Washington”) and U.S. Bank.
2. **Term of WSCA-NASPO Contract.** The initial term of the WSCA-NASPO Contract term is five years, from January 1, 2014 through December 31, 2018, with the option to extend for up to two years at the mutual agreement of Washington and U.S. Bank. The entire term shall not exceed seven years.
3. **Effective Date and Term of Participating Addendum.** The Participating Addendum is effective upon signing by the latter of the parties. The term of the Participating Addendum shall run through the termination of the WSCA-NASPO Contract or until the Participating Addendum is terminated, whichever occurs earlier.

**4. Participation Sign-up**

**First Step:** Entities seeking to join the card program must be approved by the State Chief Procurement Official

**Second Step:** The Participating Entity shall complete this required Addendum for requested products in Category 1 or Category 2. The completed form shall be sent to the State’s primary contact for routing and processing.

**Third Step:** The Participating Entity must be credit approved by the Contractor.

U.S. Bank requires Political Subdivisions to complete a Political Subdivision Addendum form in order to participate (Appendix A, Document 1) in order to participate. The form must be filled out by an approved representative from the Political Subdivision. The form shall be submitted to the primary contact at U.S. Bank. Category 1 and Category 2 have separate primary contacts as laid out in section 3 of this Addendum.

**5. Incorporation of Documents.**

The following documents are incorporated and are attached to this Participating Addendum.

- Appendix 1:** State Specific Terms and Conditions
- Appendix 2:** U.S. Bank Commercial Card Master Agreement
- Appendix 3:** U.S. Bank Product Descriptions
- Appendix 4:** Applicable Card Fees and Rebate Information
- Appendix 5:** Standard Contract Definitions

**6. Order of Precedence**

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Participating Entity’s Participating Addendum (“PA”);
2. State Specific Terms and Conditions
3. WSCA-NASPO/ Contract Terms and Conditions
4. U.S. Bank Commercial Card Master Agreement, Applicable Card Fees and Rebate Information, and Standard Contract Definitions
5. Approved portions of Contractor’s response to this Solicitation dated January 24, 2013.

**7. Products.** The Participating Entity shall mark those products on the following list it is requesting to use.

- A.  Purchase Card with Corporate Liability (*Travel Accident Insurance not included with this product*)
  - Central Billing Accounts [Central Purchase Account/Event Planner/Central Relocation]
  - Managed Spend Declining Balance functionality)
  - Emergency Response Cards
- B.  One Card with Corporate Liability (*Travel Accident Insurance is included with this product*)
  - Central Billing Accounts (Central Travel Account/Event Planner/Central Relocation)
  - Managed Spend Declining Balance functionality)
  - Emergency Response Cards
- C.  Fleet Card with Corporate Liability
- D.  Corporate Card (*Travel Accident Insurance included*)
  - Contingent Liability
  - Joint and Several Liability

- 8. Incentive Share Schedule.** Incentive Shares will be paid quarterly within 60 days following the last day of each Calendar Quarter:  
 Quarter 1: January 1 - March 31<sup>st</sup>  
 Quarter 2: April 1 - June 30<sup>th</sup>  
 Quarter 3: July 1 - September 30<sup>th</sup>  
 Quarter 4: October 1 - December 31<sup>st</sup>
- 9. Incentive Share Calculation.** Contract Incentive Share payments will be sent directly to each Participating Entity by U.S. Bank. If Participating Entity that does not earn a minimum of \$75.00 for combined incentive share components 1-3 per quarter it will forfeit its incentive share for that quarter.
- 10. Commencement of the New Revenue Share Opportunity for each Participating Entity.** The first revenue share payment pursuant to this Participating Addendum, if any is earned, shall be made within sixty days after the end of the first Agreement Quarter. The first Agreement Quarter is defined as the first full Calendar Quarter which consists of the three month calendar period beginning in January, April, July or October following the Effective Date of the Participating Addendum.
- 11. Final Revenue Share Opportunity Pursuant to the First WSCA contract for Renewing Entities.** U.S. Bank shall pay to each entity signing a Participating Addendum that is also currently participating under the Master Services Agreement number 5-06-99-01 dated October 19, 2006 between the State of California and U.S. Bank (“the First WSCA Contract”) a final revenue share pursuant to the terms of the First WSCA Contract, if any is earned, calculated from the beginning of the final Agreement Quarter of that entity’s participation in the First WSCA Contract to the last day of that Agreement Quarter (the “Final Revenue Share Payment”). The Final Revenue Share Payment, if any, shall be made within sixty days after the end of the final Agreement Quarter under the First WSCA Contract.
- 12. Late Penalty Payments.** Late Penalty Payments should follow the guidelines established by each individual State and will be as specified in their prompt payment act and their Rebate associated annual penalty interest rate.
- 13. Primary Contacts**

**Contractor -- Category 1 –P-Card, One Cards, and Declining Balance/Managed Spend Card**

Name:	Paul Erickson
Contractor:	U.S. Bank
Address:	901 Marquette Ave. Minneapolis, MN 55402
Telephone:	612-436-6532
Email:	paulw.erickson@usbank.com

**Participating Entity Contract Administrator**

Name:	Mark Parry
State:	The State of Utah
Participating Entity:	The State of Utah, Division of Purchasing & General Services
Address:	State Office Bldg. 3150, Capitol Hill Salt Lake City, UT 84114
Telephone:	801-538-9243
Email:	mparry@utah.gov

**Participating Entity Program Administrator**

Name:	Matt Jenkins
State:	The State of Utah
Participating Entity:	The State of Utah, Division of Purchasing & General Services
Address:	State Office Bldg. 2110, Capitol Hill Salt Lake City, UT 84114
Telephone:	801-538-3615
Email:	mattjenkins@utah.gov

14. **Disputes.** All disputes regarding Charges or billings for the U.S. Bank Commercial Card Program shall be communicated in writing through Access Online or by mail within sixty (60) days of statement date to U.S. Bank at the address set forth below:

U.S. Bank P.O. Box 6344 Fargo, ND 58125-6344      U.S.A.
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15. **WSCA-NASPO Contract.** The WSCA-NASPO Contract can be found on the following website:  
<http://www.aboutwsca.org/contract.cfm/contract/13wn-2006>

16. **Entire Agreement.** This Addendum and the WSCA-NASPO Contract set forth the entire agreement, and all the conditions, understandings, promises, warranties and representations among the parties with respect to this Addendum and the Contract and supersedes any prior communications, representations, agreements whether oral, or written, with respect to the subject matter hereof.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the WSCA-NASPO Contract, that are included in any purchase order or otherwise shall be void. The terms and conditions of this Addendum and the WSCA-NASPO Contract shall govern in the case of any such inconsistent, contrary, or additional terms.

17. **Contract Signatures.** In witness whereof, the parties have executed this Participating Addendum.

Dated this 9 day of 29, 2014

Dated this 24<sup>th</sup> day of September 2014

By PARTICIPATING ENTITY:

By U.S. BANK:

State of Utah  
(Participating Entity Name)

U.S. Bank National Association  
(U.S. Company Name)

[Signature]  
(Signature of Authorized Signer)

[Signature]  
(Signature of Authorized Signer)

Paul E. Finch  
(Printed Name of Authorized Signer)

Kelly M. Caspers  
(Printed Name of Authorized Signer)

Asst. Dir. Director  
(Printed Title of Authorized Signer)

Vice President  
(Printed Title of Authorized Signer)

*Please email PDF copy of this fully executed document to PA@wsca-naspo.org to provide documentation of participation.*

**STATE OF UTAH TERMS AND CONDITIONS**

1. **AUTHORITY:** Provisions of this Addendum are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
2. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.
3. **RECORDS ADMINISTRATION:** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
4. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation to Bids or to the Multiple Stage Process.
  - 4.1 **Status Verification System**
    - A. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.
    - B. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
    - C. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
    - D. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.
  - 4.2 **Indemnity Clause for Status Verification System**
    - A. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
    - B. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or sub-consultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.
5. **INDEMNITY CLAUSE:** The Contractor will release, protect, indemnify and hold the State and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or third party claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers. The

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Appendix 1 – State of Utah Terms and Conditions

parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

6. **EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
7. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
8. **TERMINATION:** This contract may be terminated with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon thirty (30) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
9. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If the State becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render the Contractor's delivery or performance under this Contract impossible, or unnecessary, this Contract will be terminated, either in whole or in part. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
10. **TAXES:** Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at the following website: <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsinged.pdf>. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.
11. **INSURANCE:** Contractor must carry insurance with policy limits no less than one million per incident and three million in the aggregate. Contractor must provide proof of insurance to State and must add State as an additional insured with notice of cancellation.
12. **PARTICIPANTS:** This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) with the goods and/or services described in the bid/proposal.

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Appendix 1 – State of Utah Terms and Conditions

13. **POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.
14. **Reserved.**
15. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Annotated Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue. All payments to the Contractor will be remitted by electronic funds transfer.
16. **HAZARDOUS CHEMICAL INFORMATION:** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.
17. **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, as far as distribution of copies. Contractor gives the STATE express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.
18. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).
19. **ENERGY CONSERVATION AND RECYCLED PRODUCTS:** The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in the solicitation.
20. **INDIVIDUAL CUSTOMERS:** Each State agency and political subdivision that credit qualifies and that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by this Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the WSCA-NASPO Contract; and they will have the same rights and responsibilities for their purchases as the Lead State has in the WSCA-NASPO Contract. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the WSCA-NASPO Contract for their purchases. The Contractor will apply the charges to each participant individually.

## U.S. BANK COMMERCIAL CARD MASTER AGREEMENT

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This Commercial Card Master Agreement (the “**Agreement**”) governs the U.S. Bank Commercial Card Program provided by the WSCA-NASPO Cooperative Purchasing Program Commercial Card Solutions Contract #00612, Category 1 (the “**Commercial Card Program**”) and is an attachment to the Participating Addendum entered into by and between U.S. Bank National Association (“**U.S. Bank**”) and the Government Entity which is a signatory to that Participating Addendum (“**Government Entity**”).

### **Participation in Commercial Card Program:**

Certain entities designated by Government Entity may participate in the Commercial Card Program.

“**Government Entity Agencies**” means those Government Entity departments and agencies that rely upon the Government Entity for funding, or are appropriated funds by the Government Entity for the charges on the accounts issued to the employees of those departments and agencies. In order for Government Entity Agencies to participate in the Commercial Card Program, the Government Entity will furnish to U.S. Bank a Government Entity Agency Addendum listing those agencies allowed to participate. The Government Entity has the right to exclude any agencies from the Agreement by providing written notice to U.S. Bank at any time.

“**Political Subdivisions**” means any municipalities, counties, and institutions of higher education that do not rely upon the Government Entity for funding. Political Subdivisions may participate in this Agreement upon credit approval by U.S. Bank and upon the signing and submission of a properly completed Political Subdivision Addendum.

### **I. CREDIT PROVISIONS**

**A. Financial Information.** The establishment of a Commercial Card Program provides an extension of credit, and Government Entity shall provide sufficient information to enable U.S. Bank to perform periodic credit reviews.

- 1. Political Subdivisions.** Each Political Subdivision must individually credit qualify and submit a signed, properly completed Political Subdivision Addendum to U.S. Bank.
- 2. Financial Information for Government Entity and Political Subdivisions.** To become credit qualified, the Government Entity and each Political Subdivision will provide the last three (3) years of audited financial statements to U.S. Bank prior to the issuance of any cards and will provide annual financial statements on or before one hundred eighty (180) days after the end of the Government Entity or Political Subdivision’s fiscal year. Political Subdivision should provide this first set of financial statements with their signed, completed Political Subdivision Addendum. U.S. Bank will review the financial statements and provide notice to each Political Subdivision of the approval or decline of their credit qualification. If satisfactory financial information can be found on the website of Government Entity or Political Subdivision, U.S. Bank will not require the Government Entity or such Political Subdivision to provide financial information that U.S. Bank can obtain on its own.

**B. Aggregate Product Credit Limit and Account Credit Limits.** Subject to credit approval by U.S. Bank, an Account Credit Limit (an “**ACL**”) for each Account and an Aggregate Product Credit Limit (the “**PCL**”) for all Accounts shall be established by U.S. Bank pursuant to this Agreement.

- 1. Revising the PCL.** U.S. Bank, at its sole discretion, shall have the right to revise the PCL. U.S. Bank shall provide notice to Government Entity of any decrease in the PCL which results in a revised PCL that is lower than the aggregate current amount outstanding on all Accounts. Upon such event, Government Entity shall have thirty (30) days to make a payment to U.S. Bank that is sufficient to reduce the aggregate current amount outstanding to an amount that is equal to or less than the revised PCL.
- 2. Revising ACLs.** U.S. Bank, at its sole discretion, shall have the right to revise any ACL.
  - a. Government Entity Accounts.** U.S. Bank shall provide notice to Government Entity of any decrease in an ACL which results in a revised ACL that is lower than the aggregate current amount outstanding on the Account. Upon such event, Government Entity shall have thirty (30) days to make a payment to U.S. Bank on the Account that is sufficient to reduce the aggregate current amount outstanding for such Account to an amount that is equal to or less than the revised ACL.
  - b. Cardholder Accounts.** U.S. Bank, at its sole discretion, shall have the right to revise any ACL and/or limit spending activity on any Cardholder Account. Based on the credit worthiness of Government Entity

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and/or its Cardholder, U.S. Bank, at its sole discretion, shall establish an ACL of no less than five hundred U.S. Dollars (\$500.00).

- c. **Fraudulent Activity.** U.S. Bank may temporarily revise any ACL and/or limit spending activity on any Account for which fraudulent activity is suspected.
- C. **ATM Access / Cash Advances.** U.S. Bank provides access to Cash Advances through owned and participating bank Automated Teller Machines and Association member offices. If Government Entity elects to use Cash Advances, U.S. Bank will establish predetermined Cash Advance limits for Cardholders, either as a group or individually. U.S. Bank reserves the right to suspend or terminate Cash Advance access for Cardholders, either as a group or individually, in the event U.S. Bank determines that continued access presents a risk of loss or liability to U.S. Bank or Government Entity.
- D. **Convenience Checks.** If Government Entity requests, U.S. Bank can issue Convenience Checks to Cardholders designated by Government Entity. Replenishment of Convenience Checks will occur upon request by the Cardholder, subject to the Cardholder's Account status and cash availability. Convenience Check transactions are posted to the Cardholder Statement as a Cash Advance. U.S. Bank reserves the right to suspend or terminate Convenience Check access for Cardholders, either as a group or individually, in the event U.S. Bank determines that continued access presents a risk of loss or liability to U.S. Bank or Government Entity. There are a number of limitations associated with Convenience Checks:
  1. **Authorization.** There is no authorization process associated with the use of Convenience Checks. At the time of Purchase, U.S. Bank is unable to verify the authenticity of the signature on a Convenience Check, the identity of the person signing the Convenience Check, or restrict the use of Convenience Checks to specific Merchant types.
  2. **Disputes.** Use of Convenience Checks and disputes arising therefrom are not covered by Association regulations. Other than the fraudulent use of a Convenience Check by an individual other than the Cardholder, which is governed by the applicable law pertaining to negotiable instruments, there are no dispute rights once a Convenience Check is used to make a Purchase.
  3. **Returned Checks.** U.S. Bank reserves the right to return a Convenience Check unpaid to the payee if (i) the amount of the Convenience Check exceeds the Cardholder's Cash Advance limit or (ii) U.S. Bank determines that honoring the check presents a risk of loss or liability to U.S. Bank or Government Entity.
  4. **Limitation of Liability.** U.S. Bank is not liable for any damages resulting from U.S. Bank's refusal to honor a Convenience Check presented for payment.

## II. U.S. COMMERCIAL CARD PROGRAMS

- A. **Card Products.** U.S. Bank may provide the following Card Products to Government Entity and its Cardholders. Card Product availability and Card Products for which Government Entity has been approved are specified in the Participating Addendum.
  1. **U.S. Bank Corporate Card.** The U.S. Bank Corporate Card is a charge card designed for use by Cardholders to charge travel, entertainment and other goods and services that are related to the business activities of Government Entity. U.S. Bank also provides central travel accounts, which can be used for the same purpose, but without the issuance of a physical card.
  2. **U.S. Bank Managed Spend Card.** The U.S. Managed Spend Card is a specialized corporate liability card designed for use by Government Entities or Cardholders to charge business related goods and services. Government Entity may also elect to have Cards issued to family members relocating employees. Unless requested for a different duration, Managed Spend has a term of twelve (12) to thirty-six (36) months. U.S. Bank also provides Managed Spend Central Billing Accounts, which can also be used for business or relocation expenses. Based on the credit worthiness of the Government Entity and its Cardholder, U.S. Bank, at its sole discretion, shall establish a credit limit of no less than five hundred U.S. Dollars (\$500.00).
  3. **U.S. Bank One Card.** The U.S. Bank One Card is a charge card designed for use by Cardholders that combines Corporate and Purchase Card capabilities on a single Account. The One Card can be utilized for travel and entertainment related expenses as well as to charge goods and services related to the business activities of Government Entity.
  4. **U.S. Bank Purchase Card.** The U.S. Bank Purchase Card is a charge card designed for use by Cardholders to charge goods and services related to the business activities of Government Entity. U.S. Bank also provides

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central purchase accounts, which can be used for the same purpose, but without the issuance of a physical card.

- B. Card and Account Issuance.** Government Entity shall designate to U.S. Bank Cardholders that are authorized to incur expenses on behalf of Government Entity during the term of this Agreement and who are to receive Cards and/or be issued Account numbers by submitting to U.S. Bank completed, duly authorized applications, in a format specified by U.S. Bank, such as through Access Online, including any applicable consents and/or authorizations from such Cardholders as may be required by the applicable local law, rule or regulation.
- 1. Credit Checks.** With respect to any such application, U.S. Bank reserves the right, at its sole cost and expense and to the extent permitted by applicable law, to conduct a credit check on any Cardholder who may have sole and/or shared liability for any Debt incurred under this Agreement.
  - 2. Exclusion.** U.S. Bank shall have the right to reject any Cardholder application in which the Cardholder may have sole and/or shared liability for any Debt incurred under this Agreement.
  - 3. Card Delivery.** Unless Government Entity notifies U.S. Bank to the contrary, U.S. Bank shall issue Individual Cards and/or Individual Accounts directly to Cardholders.
  - 4. Creation of Cards by Government Entity.** Government Entity has the ability to create Cards on its own through the use of Access Online. Such Cards can be created with or without an individual's name embossed on the face of the Cards. Acceptance of Cards without a name embossed on the face of the Cards is at the discretion of Merchants.
- C. Billing and Payment.** U.S. Bank provides a variety of billing options. The availability of billing options may differ between Card Products. Billing option availability and the billing options for which Government Entity has been approved is specified herein in the Participating Addendum. Government Entity or Cardholder shall pay the amount due on the Statement by the Due Date.
- 1. Individual Bill.** Cardholders receive a Statement at the conclusion of each Billing Cycle and are responsible for ensuring the balance due is paid by the Due Date. Government Entity may elect to receive one or more Summary Statements or reports showing all Transactions billed to Cardholder Accounts.
  - 2. Central Bill.** Each Transaction is either posted to a Cardholder Account and rolled up to a Central Account for billing or billed directly to a Central Account. Government Entity will receive one or more central account Statements at the conclusion of each Billing Cycle for all Cardholder and/or Central Account Transactions. With respect to Transactions posted to a Cardholder Account and rolled up to a Central Account, the Cardholder receives a memo Statement showing his/her respective Transactions but with no amount due. Government Entity receives a consolidated Statement, which includes the total amount due for all Cardholder Accounts and Central Accounts and is responsible for ensuring the balance due on the Statement is paid by the Due Date.
  - 3. Billing Disputes.** Billing disputes must be communicated in writing to U.S. Bank at the address specified in Section V.L. herein or the address provided on the Statement. U.S. Bank must receive written communication of a dispute within sixty (60) days of the date on the Statement on which the disputed or allegedly incorrect Transaction first appeared. Association regulations govern the resolution of all billing disputes.
  - 4. Merchant Category Disclaimer.** Upon request by Government Entity, U.S. Bank may either prevent or restrict usage of its Card Products to selected Merchants based on Merchant Category Code. To the extent this is requested, the following disclaimers apply:
    - a. Limitation of Liability.** U.S. Bank can only enforce Merchant Category Code restrictions to the extent it receives accurate Merchant Category Code data with the Transaction authorization request. U.S. Bank has no liability for Transactions declined or approved contrary to the intent of Government Entity.
    - b. Incorrect Merchant Category Codes.** To the extent Government Entity believes a Merchant has not been assigned an accurate Merchant Category Code, U.S. Bank will advise the Association of the inaccuracy. Whether or not the Merchant Category Code is changed is dependent upon applicable Association regulations.
  - 5. Trailing Transactions.** Upon cancellation of an Account, the Government Entity and/or Cardholder must cancel the billing of all reoccurring Transactions to the Account.
- D. Liability.** U.S. Bank provides a variety of liability options. The availability of liability options may differ between Card Products. Liability option availability and the liability option(s) for which Government Entity has been approved is/are specified in the Participating Addendum.

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1. **Corporate Liability.** Government Entity is solely liable to U.S. Bank for all billed Transactions.
2. **Joint and Several Liability.** Government Entity and the Cardholder are jointly and severally liable to U.S. Bank for all billed Transactions.
3. **Contingent Liability.** Cardholder is liable to U.S. Bank for all billed Transactions. Government Entity has contingent liability, which means Government Entity is liable for any billed Transactions that are legitimate business charges and have not been previously reimbursed by Government Entity to the Cardholder.
4. **Liability Exceptions.** Government Entity may be liable for all billed Transactions, regardless of liability option specified in the Participating Addendum, in the following circumstances:
  - a. **Failure to Notify; Liability Exceptions.** Government Entity shall immediately notify U.S. Bank of any of the following:
    - (i) Termination of employment of any Cardholder;
    - (ii) Any lost or stolen Card for which the Government Entity has liability;
    - (iii) Any compromised Account for which the Government Entity has liability; or
    - (iv) Any compromised information regarding Cards, Accounts or other sensitive data including, but not limited to, Account numbers, personal identification numbers, passwords, or Cardholder information.

Government Entity shall provide sufficient Information as may be requested by U.S. Bank for U.S. Bank to act on such notifications. Failure of Government Entity to provide notification may result in Government Entity's or Cardholder's liability to pay for all Transactions on such Cards and/or Accounts notwithstanding any liability option specified in the Participating Addendum. Liability is limited to period of time from when notification should have been received to when notification is actually received and only for those Transactions that U.S. Bank cannot either charge back to the Merchant or collect directly from the Cardholder. In any event, regardless of the liability option chosen, Cardholder's liability will not exceed fifty U.S. Dollars (\$50.00).

- E. **Delinquency.** If the amount shown on the Statement as the current amount due has not been paid to U.S. Bank by Government Entity and/or Cardholder by the Due Date, U.S. Bank shall have the following rights:
  1. **Suspension.** U.S. Bank shall have the right to suspend any Account that is delinquent for a period exceeding two (2) Billing Cycles.
  2. **Cancellation.** U.S. Bank shall have the right to cancel any Account that is delinquent for a period exceeding three (3) Billing Cycles.
  3. **Late Fees.** U.S. Bank shall have the right to bill Late Fees on all delinquent Accounts, as specified in the Participating Addendum.
  4. **Collection Fees.** U.S. Bank shall have the right to recover any reasonable legal fees and/or other expenses incurred in collecting any delinquent amount on a cancelled Account.

### III. SECURITY AND CONFIDENTIALITY

- A. **Security.** U.S. Bank and the Government Entity shall safeguard information regarding Cards, Account numbers, passwords, personal identification numbers, and other sensitive information provided by U.S. Bank in a manner that is no less stringent than those applicable to each Party's own proprietary information. Each Party will utilize each Party's respective industry standards to maintain an appropriate information security program to prevent the unauthorized disclosure, misuse, alteration, or destruction of Confidential Information.
- B. **Confidentiality.** Subject to Appendix I, Section 15 of the Participating Addendum, the Parties agree to the following provisions regarding the use and disclosure of Confidential Information:
  1. **Confidential Information.** For purposes of this Agreement, "**Confidential Information**" means information supplied by one Party ("**Disclosing Party**") to the other Party ("**Recipient**") that is expressly or implicitly protected from unrestricted use by persons not associated with Disclosing Party.
    - a. **U.S. Bank Confidential Information.** U.S. Bank and Government Entity agree that the Commercial Card Program and/or Global Commercial Card Program is a unique service involving the exchange of proprietary and/or Confidential Information between the Parties. Government Entity agrees that Commercial Card Program and/or Global Commercial Card Program reports, manuals, documentation, and related materials shall be circulated by it only to the extent necessary for Government Entity to manage the Commercial Card Program or Global Commercial Card Program and/or use such information in connection with Government Entity's business.



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other persons or organizations shall have any rights and/or remedies arising under or in connection with this Agreement.

- C. Limitation of Liability.** NEITHER GOVERNMENT ENTITY, U.S. BANK, NOR ANY PARTY'S AFFILIATES, REPRESENTATIVES AND ASSIGNS SHALL IN ANY EVENT BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES OF ANY NATURE (INCLUDING LOST PROFITS) EVEN IF SUCH PARTY HAD BEEN NOTIFIED OF THEIR POSSIBLE EXISTENCE.
- D. Representations and Warranties.** Each Party represents and warrants with respect to such Party that:
1. This Agreement constitutes a valid, binding and enforceable agreement;
  2. The execution of this Agreement and the performance of the obligations hereunder are within such Party's powers; have been authorized by all necessary action; do not require action by or approval of any governmental or regulatory body, agency or official; and do not constitute a breach of any material agreement of such Party;
  3. The execution of this Agreement and the performance of the obligations hereunder shall not cause a material breach of any duty arising in law or equity; and
  4. As of the date of this Agreement, such Party possesses the financial capacity to perform all of its obligations under this Agreement.

The Parties agree that the failure of any of the above representations and warranties to be true during the term of this Agreement shall constitute a material breach of this Agreement and the non-breaching Party shall have the right to terminate this Agreement in accordance with Section IV.B.3.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, U.S. BANK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY, EITHER TO GOVERNMENT ENTITY OR TO ANY OTHER PERSON OR THIRD PARTY, WITH RESPECT TO THE COMMERCIAL CARD PROGRAM OR THE GLOBAL COMMERCIAL CARD PROGRAM PROVIDED BY U.S. BANK OR ITS REPRESENTATIVES OR WITH RESPECT TO SOFTWARE SERVICES PROVIDED OR MADE AVAILABLE TO GOVERNMENT ENTITY OR ANY OTHER PERSON FOR ITS USE BY U.S. BANK IN CONNECTION WITH THIS AGREEMENT AND ANY SERVICE THEREUNDER.

- E. Modification or Amendment.** This Agreement shall not be modified or amended except by writing and signed by both Government Entity and U.S. Bank.
- F. Severability.** Should any provision of this Agreement be declared invalid for any reason, such declaration shall not affect the validity of any other provision of this Agreement, which shall remain in full force and effect as if this Agreement had been executed with the invalid provision(s) eliminated. The Parties shall use their commercially reasonable efforts to agree upon a valid substitute provision in accordance with the purpose of this Agreement and the intent of the Parties.
- G. Non-Waiver.** The failure of U.S. Bank or Government Entity to exercise any right, power or option arising under this Agreement, or to insist upon strict compliance with the terms of this Agreement shall not constitute a waiver of this Agreement with respect to any other or subsequent breach hereof, nor a waiver by either of U.S. Bank or Government Entity of its rights at any time thereafter to require exact and strict compliance with all the terms hereof.
- H. Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- I. Interpretation of this Agreement.** The Parties expressly agree that this Agreement shall not be construed more strongly against either Party regardless of which Party is more responsible for its preparation. This Agreement constitutes the entire agreement between the Parties concerning the matters addressed in this Agreement, and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof. Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa, words importing any gender include all genders and references to agreements and other contractual instruments shall be deemed to include all present or future amendments, supplements, restatements or replacements thereof or thereto. Headings are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- J. Primary Provider.** The Parties acknowledge and agree that U.S. Bank shall be, for the limited purpose of this contract, the primary provider to Government Entity of the Card Products and Ancillary Services set forth in the Participating Addendum.

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- K. Commercial Card Program and Card Issuance.** U.S. Bank has approved Government Entity for the Commercial Card Program in the United States and shall provide the products and options indicated in the Participating Addendum. Government Entity shall designate to U.S. Bank proposed employees who are anticipated to incur expenses on behalf of Government Entity and who are to receive Accounts, with or without Cards, by submitting completed, duly authorized applications, in a format specified by U.S. Bank, and with any applicable consents or authorizations from such Cardholder applicant as may be required herein or in such applications. If an Account is used for Purchases or to obtain cash in a country other than the United States, the Statement shall reflect the conversion into U.S. Dollars of Transactions that occurred in a different currency and an applicable exchange rate for any such conversion. Due to fluctuations in foreign exchange rates, a credit transaction may not be in the same amount as the original debit transaction.
- L. Notice and Communication.** Except with respect to notices relating to the status of individual Cards and/or Accounts, all notices, requests and other communications provided for hereunder must be directed to the other Party at the respective addresses set forth below, unless otherwise specified herein, and must be in writing, postage prepaid or hand delivered. Either Party may change its address by written notice to the other Party.

U.S. Bank	Government Entity
U.S. Bank National Association Corporate Payment Systems Mail Code EP-MN-L26C; 901 Marquette Ave So Minneapolis, MN 55402 U.S.A. Attn: CPS Contract Services	State of Utah Division of Purchasing & General Services State Office Bldg 3150, Capitol Hill Salt Lake City, UT 84114 Attn: Mark Parry

- M. USA PATRIOT Act.** In order to comply with the requirements of the USA PATRIOT Act, U.S. Bank may require Government Entity and Cardholders to provide their legal entity name, street address, taxpayer identification number and other information that will allow U.S. Bank to identify each Government Entity and Cardholders prior to establishing an Account under or in connection with the Agreement. U.S. Bank reserves the right to require that Government Entity and Cardholders promptly provide to U.S. Bank sufficient identification documents upon request and in connection with USA PATRIOT Act compliance.
- N. Governing Law.** Except as provided to the contrary herein, the law of the state in which Government Entity resides and applicable federal laws and regulations of the United States shall apply to all Commercial Card Program services provided by U.S. Bank under this Agreement..
- O. Interchange Rate.** The Revenue Sharing Opportunity described in this Agreement is based on current interchange rates determined by the Association. These interchange rates are subject to change by authorities outside the control of U.S. Bank. In the event of a decrease or increase in the Association's published interchange rates by five percent (5%) or more, U.S. Bank will have the right to replace the current Revenue Sharing Opportunity with a new Revenue Sharing Opportunity proportionate to the change of the revised interchange rates.
- P. Other Agreements and Regulations.** In addition to this Agreement, the products and services provided to Government Entity are subject to the following additional agreements and/or regulations:
- 1. Clearing House Operating Regulations.** Any applicable automated clearinghouse operating rules, including, without limitation, the National Automated Clearing House Association Operating Rules and Guidelines (collectively referred to as the "NACHA Rules");
  - 2. Association Operating Regulations.** Association operating rules and regulations, including, without limitation, Visa USA, Visa International, MasterCard USA, and MasterCard International; and
  - 3. Cardholder Agreement.** Each Cardholder may receive a Cardholder Agreement that governs the use of the Account. Activation of the Card or Account by the Cardholder and/or use of the Card or Account by the Cardholder constitutes concurrence with the terms and conditions of the Cardholder Agreement.
- Q. Disputes.** All disputes regarding Charges or billings for the U.S. Bank Commercial Card Program shall be communicated in writing through Access Online or by mail within sixty (60) days of statement date to U.S. Bank at the address set forth below:

U.S. Bank P.O. Box 6344 Fargo, ND 58125-6344      U.S.A.
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**R. Customer Service.** Government Entity and Cardholders may call the following telephone numbers to report termination of employment of any Cardholder, lost or stolen Cards or compromised Accounts, or to ask questions about Commercial Card Program Services or U.S. Bank Accounts.

800-344-5696 (Program Services)	24 hours per day / 7 days per week
877-887-9260 (Cardholders, Software Customer Service)	24 hours per day / 7 days per week
877-452-8083(Program Administrator, Software Customer Service)	6:30 a.m.-8:00 p.m., CST Monday-Friday

**VI. DEFINITIONS**

**A. Definitions.** All capitalized terms used in this Agreement are defined herein and shall have the following meaning:

1. **“Account”** means any account established by U.S. Bank pursuant to this Agreement in the name of Government Entity, Government Entity Agencies or Political Subdivisions and/or Cardholders, to which Debt is charged, regardless of whether or not a Card is issued in conjunction with such account.
2. **“Affiliate”** means a Person that directly or indirectly controls, is controlled by, or is under common control with, the Person specified.
3. **“Ancillary Services”** means any additional services offered in conjunction with an Account, including but not limited to Cash Advances, Convenience Checks and U.S. Bank Expense Management.
4. **“Association”** means, collectively, the Persons who govern commercial card issuance, including, without limitation, Visa USA, Inc., Visa International Service Association, Inc., MasterCard USA, and MasterCard International.
5. **“Billing Cycle”** means the period of time from which a Statement is generated until the next Statement is generated.
6. **“Card”** means, in connection with an Account, any commercial charge card issued by U.S. Bank pursuant to this Agreement in the name of Government Entity and/or Cardholders.
7. **“Cardholder”** means an individual employee of Government Entity, named as the holder of the Account or using the Account in the name of Government Entity, regardless of whether a physical card is issued in conjunction with the Account.
8. **“Cardholder Agreement”** means the U.S. Bank Cardholder agreement in standard form between U.S. Bank and the Cardholder.
9. **“Card Products”** means the standard U.S. Bank commercial card product offerings, including but not limited to the Purchase Card, Corporate Card, Managed Spend Card, Executive Card, One Card, Global Card.
10. **“Cash Advance”** means an advance of cash in the form of cash or check that, if permitted according to the terms of this Agreement, is charged to an Account.
11. **“Cash Advance Fee”** means the fee charged by U.S. Bank for a Cash Advance according to the terms of the Participating Addendum.
12. **“Central Billing Account”** means any Account used for consolidating Transactions from one or more other Accounts for centralized corporate billing purposes. Central Billing Account includes, but is not limited to **“Central Billing Accounts”**, **“Central Travel Accounts” (CTA)** and **“Central Travel System Accounts” (CTS)**.
13. **“Charge”** means any transaction posted to an Account that has a debit value, including without limitation, Purchases, Cash Advances, and Fees.
14. **“Charge-off”** means any amount due and owing that remains unpaid for one hundred fifty (150) days after the date that it was first billed.
15. **“Commercial Card Program”** means the Card Products and Ancillary Services offered by U.S. Bank or a Participating Bank.
16. **“Control”** or **“Controlled”** means, with respect to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership, membership or other ownership interests, by contract or otherwise) of such Person.
17. **“Convenience Checks”** means the drafts drawn against an Account by the Cardholder for Purchases.
18. **“Data”** means the information regarding or in connection with Accounts and/or Transactions associated with the Commercial Card Program and/or any such information provided by a Lead and/or Participating Bank associated with the Global Commercial Card Program.

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19. **"Debt"** means all amounts charged to an Account including without limitation all amounts related to Charges that are owed to U.S. Bank by Government Entity, Government Entity Agencies and Political Subdivisions, and/or Cardholders.
20. **"Due Date"** means, with respect to a Statement, the date, as measured by the number of days after the Statement Date, for which the payment of Debt that is listed on the Statement is due.
21. **"Fees"** means all fees that are posted to an Account and due and payable to U.S. Bank by Government Entity, Government Entity Agencies and Political Subdivisions, and/or its Cardholders that are associated with any Commercial Card Program and/or Global Commercial Card Program, including but not limited to Cash Advance, Foreign Transaction and Late Fees.
22. **"Foreign Transaction Fee"** means the fee U.S. Bank charges on the amount of any Debt or other Transaction posted to an Account that is not in the same currency in which the Account is billed and which must be converted to the currency used for billing purposes.
23. **"Fraudulent Charges"** mean those Charges which are not initiated, authorized or otherwise requested by Government Entity and/or a Cardholder by any means (electronic, telephonic or written) and do not directly or indirectly benefit Government Entity and/or a Cardholder.
24. **"Intellectual Property"** or **"Intellectual Property Rights"** means any patent rights, copyrights, trade secrets, trade names, service marks, moral rights, know-how and any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force.
25. **"Late Fee"** means the fees associated with any Debt that remains unpaid to U.S. Bank by Government Entity and/or Cardholders after the Due Date on the Statement.
26. **"MasterCard"** means MasterCard<sup>®</sup> USA, Inc., MasterCard International, and any other MasterCard entity identified in the Participating Addendum.
27. **"Merchant"** means any entity that has entered into an agreement that governs the acceptance of Cards.
28. **"Merchant Category Code"** means the code established by the Associations that identifies and classifies goods or services offered by a Merchant. Each Merchant designates its Merchant Category Code to the applicable Association.
29. **"Parent"** means any Person that Controls a Party.
30. **"Party"** means any one of U.S. Bank or Government Entity, **"Parties"** means U.S. Bank & Government Entity.
31. **"Past Due Balance"** means, with respect to a Statement, the total amount of any Debt which remains unpaid to U.S. Bank by Government Entity and/or Cardholder after the Due Date specified on such Statement.
32. **"Person"** means any corporation, company, limited liability company, general partnership, limited partnership, limited liability partnership, unincorporated association, trust, joint venture, estate or other judicial entity or any governmental body.
33. **"Political Subdivision Addendum"** means the Commercial Card Program Political Subdivision Addendum used by Political Subdivisions to join Government Entity's Commercial Card Program.
34. **"Program Administrator"** means the employee designated by Government Entity to serve as the primary point of contact between Government Entity and U.S. Bank and shall be trained and have thorough knowledge of Commercial Card Programs offered by U.S. Bank to Government Entity.
35. **"Purchase"** means a purchase of goods and/or services that is charged to an Account.
36. **"Statement"** means, with respect to one or more accounts, a periodic billing Statement from U.S. Bank listing all Transactions posted to such Accounts.
37. **"Summary Statement"** means, with respect to one or more accounts, a billing Statement that provides only an aggregate amount of all Transactions posted to such Accounts.
38. **"Transaction"** means any activity posted to an Account, both debit and credits, including but not limited to Purchases, Cash Advances, Fees and payments.
39. **"U.S. Bank Expense Management"** means the automated expense management and reporting solution offered by U.S. Bank.
40. **"Visa"** means Visa<sup>®</sup> USA, Inc., Visa International Service Association, Inc. and any other Visa entity

### U.S. BANK PRODUCT DESCRIPTIONS

1. **U.S. Bank Purchase Card.** The U.S. Bank Purchase Card is a charge card designed for use by Cardholders to charge goods and services related to the business activities of Customer. U.S. Bank also provides central purchase accounts, which can be used for the same purpose, but without the issuance of a physical card.
2. **U.S. Bank One Card.** The U.S. Bank One Card is a charge card designed for use by Cardholders that combines Corporate and Purchase Card capabilities on a single Account. The One Card can be utilized for travel and entertainment related expenses as well as to charge goods and services related to the business activities of Customer.
3. **U.S. Bank Fleet Card.** Reserved.
4. **U.S. Bank Managed Spend Card.** The U.S. Managed Spend Card is a specialized corporate liability card with declining balance functionality designed for use by Customers or Cardholders to charge business related goods and services. Customer may also elect to have Cards issued to family members relocating employees. Unless requested for a different duration, Managed Spend has a term of twelve (12) to thirty-six (36) months. U.S. Bank also provides Managed Spend Central Billing Accounts, which can also be used for business or relocation expenses. Based on the credit worthiness of Customer and/or its Cardholder, U.S. Bank, at its sole discretion, shall establish a credit limit of no less than five hundred U.S. Dollars (\$500.00).
5. **U.S. Bank Emergency Response Card.** The U.S. Bank Emergency Response Card is a corporate liability charge card designed for use by Cardholders under unusual or special circumstances such as disaster relief/recovery efforts. Customer provides the Emergency Response Card to Cardholders to charge goods and services against a Corporate billed account.
6. **U.S. Bank Corporate Card.** Reserved.

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Appendix 4 – Applicable Card Fees and Rebate Information

	<b>Fees Applicable to Purchase, Corporate and One Card</b>	<b>Charge</b>
1.	Annual Card Fee	\$0.00
2.	Non-Sufficient Funds Fee, all Products, per occurrence	\$15.00
3.	Logo Embossing Fee; a two-week delay may occur with Card issuance and implementation	\$0.00
4.	Delinquency Fee, Purchasing or One Cards and Enhancements <ul style="list-style-type: none"> <li>• Not Paid by Due Date on entire past due amount</li> <li>• Not Paid by each subsequent Billing Cycle on the entire past due amount</li> <li>• Minimum Late Fee</li> </ul>	1.0% 2.5% \$2.00
5.	Delinquency Fee, Corporate <ul style="list-style-type: none"> <li>• Not Paid by Due Date on entire past due amount</li> <li>• Not Paid by each subsequent Billing Cycle on the entire past due amount</li> <li>• Minimum Late Fee</li> </ul>	0.0% 2.5% \$2.00
6.	Travel Accident Insurance Fee. Common Carrier Travel Accident Insurance for Corporate and/or One Cards is provided at no charge with a benefit amount of two hundred fifty thousand U.S. Dollars (\$250,000.00). Entity and/or Participant must notify U.S. Bank of the use of Central Billing Accounts for booking of travel to ensure appropriate insurance coverage is in place.	\$0.00
7.	Foreign Transaction Fee, all Products. Fee applies to transactions taking place outside the United States not in U.S. Dollars. U.S. Bank reserves the right to raise fee with sixty (60) days prior written notice to Entity.	2.5%

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Appendix 4 – Applicable Card Fees and Rebate Information

Incentive Share	Rebates Applicable to Corporate Liability Purchase, Corporate, and One Cards (Individual liability Corporate Cards are not included in Incentive Share Components 1, 2, and 3)	Rebate BPS	Paid								
1	<p>Each Participating Entity will receive a basis point (percentage) of their quarterly sales volume.</p> <p>The Formula to determine quarterly volume incentive share:  <u><math>\frac{\text{Quarterly volume sales per entity} - \text{qualifying large ticket volume} \times \text{basis points}}{\text{percentage}} = \text{Participating Entity Quarterly Volume Incentive}</math></u></p>	130	Quarterly								
2	<p>A Prompt Payment Incentive will be offered to each Entity. The Prompt Payment Incentive calculation is designed to provide an incentive to each Entity, when Client Held Days is less than forty-five (45) days. Client held days cannot be less than zero (0) The Prompt Payment Incentive is based solely on the Client Held Days Payment Performance for each Entity for each Agreement Quarter (3 calendar months).</p> <p>The Formula to determine Prompt Payment Incentive:  <u><math>\frac{45 - \text{Client Held Days}}{45} \times 0.0045 \times \text{Quarterly Sales Volume}</math></u></p>		Quarterly								
3	<p>Large Ticket Incentive-Entity will receive an incentive for qualifying large ticket transactions. Qualifying large ticket transactions will be subject to the same speed of pay incentive. Contractor will provide a quarterly report identifying all qualifying large ticket transactions to each Entity.</p> <p>The formula for calculating Large Ticket Incentive is:  <u><math>\frac{\text{Qualifying Quarterly Large Ticket volume sales per Entity} \times \text{basis points}}{\text{percentage}} = \text{Entity Large Ticket Volume Incentive.}</math></u></p>	75	Quarterly								
4	<p>Annual Sales Volume Incentive- Each participating state will receive an additional WSCA-NASPO Annual Sales Volume Incentive based on a tier established from all WSCA-NASPO participating states annual volume and applied to each state's annual sales volume.</p> <p>The formula for calculating WSCA-NASPO Annual Sales Volume Incentive is:  <u><math>\frac{\text{Participating state annual sales volume (all products)} \times \text{applicable basis points}}{\text{percentage}} \text{ corresponding to the Tier established for the Annual Overall WSCA-NASPO Sales Volume (all product)} = \text{WSCA/NASPO Participating State Annual Sales Volume Incentive.}</math></u></p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td>\$500,000,000 - \$2,000,000,000</td> <td>45</td> </tr> <tr> <td>\$2,000,000,001 - \$3,000,000,000</td> <td>45</td> </tr> <tr> <td>\$3,000,000,001 - \$4,000,000,000</td> <td>45</td> </tr> <tr> <td>\$4,000,000,001 - \$5,000,000,000</td> <td>45</td> </tr> </table> <p><i>Note: Notwithstanding the foregoing, if a political subdivision in a non-participating state is allowed to join the contract, the Annual Aggregate State rebate component will be negotiated between the Bank, WSCA/NASPO and that political subdivision so long as the net bps available for this component are not diminished.</i></p>	\$500,000,000 - \$2,000,000,000	45	\$2,000,000,001 - \$3,000,000,000	45	\$3,000,000,001 - \$4,000,000,000	45	\$4,000,000,001 - \$5,000,000,000	45		Annually
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\$4,000,000,001 - \$5,000,000,000	45										

**MINIMUM REQUIREMENTS**

If Any Entity does not earn at least \$75.00 in Incentive Share for Category 1 Incentive Share Components 1 through 3 and Category 2 Incentive Share Components 1 through 2 will forfeit Incentive share for the preceding quarter.

Any Incentive Share payment made pursuant to the Contract will be net of accumulated Charge-offs resulting from participation in Contractor programs regardless of whether the underlying Contract between the parties is valid or has been terminated.

In the event that the Card Program or the Contract is terminated prior to the completion of the Base Period or prior to the completion of any Agreement Quarter after the completion of the Base Period by Entity without cause, or by Contractor with cause, and/or the primary provider provision of this Contract is violated, in addition to any other remedies available to Contractor, this Incentive Share opportunity shall immediately terminate and no Incentive Share shall be paid to Entity.

Any Charge-offs in excess of the net Incentive Share from one (1) Agreement Quarter will be subtracted from one (1) or more of the following Agreement Quarters. Upon termination of the Contract, if the net Incentive Share is a negative dollar amount due to Charge-offs, Contractor may request, and Entity agrees to reimburse, Contractor up to the dollar amount previously paid by Contractor to Entity within thirty (30) days of the termination of the Contract.

### STANDARD CONTRACT DEFINITIONS

1. **“Account”** means any account number to which charges and payments may be posted.
2. **“Addendum Quarter”** means a three (3) month period beginning with the first such period following the effective date of the Participating Addendum.
3. **“Addendum Year”** means a twelve (12) month period beginning with the first such period following the effective date of the Participating Addendum.
4. **“Charge-off”** means any amount due and owing to U.S. Bank or its Affiliates by Participating Entity that remains unpaid for one hundred fifty (150) days after the date that it was first billed.
5. **“Client Held Days”** means the sum of the daily balances for the quarter divided by the total Net Charge Volume for the quarter less fifteen (15) days and cannot be less than zero (0) days.
6. **“Client Held Days Payment Performance”** means the average speed of repayment of Charges made for each quarter.
7. **“Fraudulent Charges”** means those Charges which are not initiated, authorized or otherwise requested by Participating Entity, its Participants, and/or a Cardholder by any means (electronic, telephonic or written) and do not directly or indirectly benefit Participating Entity, its Participants, and/or a Cardholder.
8. **“Incentive Share”** means actual monies paid to each Participating Entity based on volume and speed of pay.
9. **“Large Ticket Transaction”** means a transaction which qualifies for an incentive interchange rate that is lower than the standard interchange provided on a card transaction. Transaction size to qualify will vary over time with interchange rate changes set by card networks. Large ticket interchange rates may require the merchant to provide additional enhanced data to qualify for the lower rate, however exceptions to this requirement can occur.
10. **“Net Annual Charge Volume”** means all charges set forth on the Statements furnished for all Accounts, less fees, cash advances, Fraudulent Charges, chargebacks, charges qualifying for large transaction interchange rates and amounts Charged-off by U.S. Bank with respect to such Accounts as uncollectible for each Addendum Year.
11. **“Quarterly Sales Volume”** means all Charges set forth on the Billing Statements furnished for all Accounts, less Fees, Cash Advances, Fraudulent Charges, Charge-backs, and amounts Charged-off by Contractor with respect to such accounts as uncollectible for each quarter (3 calendar months).
12. **“Quarterly Large Ticket Volume”** means those Charges for each Agreement Quarter which the Association governing Customer’s Card Program has determined qualify for large ticket interchange rates and which are processed by such Association using large ticket interchange rates, less credits, for each Agreement Year. All other Charges and all amounts related to Fees, Cash Advances, Convenience Checks, Fraudulent Charges, chargebacks and Charge-offs are excluded from Large Ticket Volume.

# CONTRACT

## The State of Washington on Behalf of WSCA-NASPO Cooperative Purchasing Program Commercial Card Solutions Contract #00612, Category 2 - Fleet Cards

Lead State:  
State of Washington  
Department of Enterprise Services (DES)



For Purchases of Materials, Supplies, Services, and Equipment  
Under the Authority of  
Chapter 43.19 RCW

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## OVERVIEW

### 1.1 CONTRACT SCOPE

The scope of this contract will be to establish a nationwide Commercial Card Services Contract led by the State of Washington Department of Enterprise Services (DES) on behalf of the WSCA-NASPO Cooperative Purchasing Program (WSCA-NASPO) for use by states, state agencies and political subdivisions for the as needed products/services related the Commercial Card Industry as described herein.

### 1.2 CONTRACT SCOPE AND MODIFICATIONS

DES reserves the right to modify this Contract by mutual written agreement between DES and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be evidenced by issuance of a written authorized amendment by the DES Contract Administrator.

### 1.3 RECITALS

The State of Washington, acting by and through DES on behalf of WSCA-NASPO, issued a Request for Proposal (RFP) dated 11/7/12 for the purpose of purchasing Commercial Cards including, but not limited to purchasing card, corporate (travel) cards, one cards, declining balance cards, and fleet cards in accordance with its authority under Chapter 43.19 RCW.

A Contract between a Contractor and a participating state other than the State of Washington may be subject to requirements in addition to or different from the Contract terms contained herein and from the statutes and rules contained in the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC).

*US Bank* submitted a timely Response to the State of Washington DES RFP.

The State of Washington DES and the WSCA-NASPO Sourcing Team evaluated all properly submitted Responses to the above-referenced RFP and identified *US Bank* as the apparently successful Contractor for the following category:

Category 2 - Fleet Cards

The State of Washington has determined that entering into a Contract with U.S. Bank will meet Entities needs and will be in Entities best interest.

NOW THEREFORE, DES awards this Contract to U.S. Bank (Contractor), the terms and conditions of which shall govern Contractor's furnishing to Entities the option of purchasing Commercial Cards as outlined within the awarded category. This Contract is not for personal use.

### 1.4 ESTIMATED USAGE

The State of Washington does not represent or guarantee any minimum purchase.

### 1.5 CONTRACT TERM

The initial term of this contract is five (5) years from date of award which occurs when both parties have signed the Contract. The contract may be extended for additional term(s) or portions thereof. Any term extension is not automatic and may be exercised solely at Washington's option. However, any such extension for each additional term(s) or portion thereof is subject to the mutual agreement of DES and Contractor in the form of a Contract Amendment. The total contract term, including the initial term and all subsequent extensions, shall not exceed seven (7) years unless an emergency exists and/or special circumstances require a partial term extension.

## 1.6 ENTITIES

### General Use

This Contract is for use by the State of Washington, WSCA-NASPO states, state agencies and political subdivisions. "Political subdivisions" means financially independent government entities such as cities and counties. Each Participating state which has executed a Participating Addendum and has been credit qualified by Contractor ("Participating State") may include any state specific requirements, terms and conditions which are mutually agreed to by Contractor. Additional non-state entities are also eligible to participate subject to approval from the State Chief Procurement Official and with the consent of the awarded Contractor through the execution of a Participating Addendum. The term "Participating Entity" shall include both Participating States and those entities which have signed a Participating Addendum. Each Participating state may choose to order any of the products and services listed in this Contract. All States may choose to not participate in every product/service.

**PARTICIPANTS:** WSCA-NASPO is the cooperative purchasing program of the National Association of State Procurement Officials. It is a cooperative group contracting consortium for state government departments, institutions, agencies and Political Subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the organized US territories. Obligations under this Contract are limited to those Participating Entities who have signed a Participating Addendum. Financial obligations of Participating Entities are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of Political Subdivisions.

**ENTITY PARTICIPATION:** Use of specific WSCA-NASPO cooperative Contracts by state agencies, Political Subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official and subject to Contractor's approval.

## 2 CONTRACT ADMINISTRATION

### 2.1 DES CONTRACT ADMINISTRATOR

The DES shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The DES Contract Administrator will be the principal contact for the Contractor concerning business activities under this Contract. The DES will notify the Contractor, in writing, when there is a new DES Contract Administrator assigned to this Contract.

### 2.2 ADMINISTRATION OF CONTRACT

DES will maintain Contract information and pricing and make it available on the DES website. Contractor may propose a revision to its offering to reflect changes in technology appropriate to the scope of the Contract. Products and services may be added to this Contract by mutual agreement. New products or services will be added to the Contract by written amendment.

### 2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's Representative, who will be the principal point of contact for the DES Contract Administrator concerning Contractor's performance under this Contract;
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract;
4. Be bound by all written communications given to or received from the Contractor's Representative; and
5. Notify the Contract Administrator in writing, as soon as reasonably practicable, of any change of the designated Contractor's Representative assigned to this Contract.

Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.

### 2.4 POST AWARD CONFERENCE

The Contractor may be required to attend a post award conference scheduled by the DES Contract Administrator to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

### 2.5 CONTRACT MANAGEMENT

Upon award of this Contract, the Contractor shall:

1. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
2. Promote and market the use of this Contract to all authorized contract Entities.
3. Ensure that those who endeavor to utilize this Contract are authorized Entities under this Contract.
4. Ensure that transition/implementation timelines are adhered to so Customers are not without coverage.

### 2.6 CHANGES

Alterations to any of the terms, conditions, or requirements of this Contract shall be effective upon written issuance of a mutually agreed Contract Amendment by the Contract Administrator. However, applicable changes due to regulatory, legal and other rules that govern the Contractor's business that may impact this Contract may be made with reasonable notice without the written approval of DES. Additionally, changes to point of contact information may be updated without the issuance of a mutually agreed Contract Amendment.

### 2.7 WASHINGTON ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall be registered in the Contractor registration system, Washington Electronic Business Solution (WEBS) at, [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs) maintained by DES. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

### 3 INCENTIVE SHARE

#### 3.1 INCENTIVE SHARE COMPONENTS

Incentive Share will be a combined total of volume and speed of pay basis points. Incentive Share will be a single payment paid directly to Entity in each state unless the state's Participating Addendum chooses to disburse any of the Incentive Share Components in an alternate manner. Incentive Share payments will be either mailed or transmitted via ACH by the 60<sup>th</sup> day following the end of each quarter.

##### Incentive Share Components

**Volume Incentive** - Each Entity will receive a basis point (percentage) of their total quarterly sales volume. The formula for calculating the quarterly volume incentive share is:

Quarterly volume sales per entity - qualifying large ticket volume X basis points (percentage) = Entity Quarterly Volume Incentive

**Speed of Pay Incentive** – Each Entity will receive an additional incentive share based on speed of pay. Speed of Pay incentive will be determined by averaging quarterly days to pay (file-turn) and applying the appropriate percentage. Average days to pay will be from the date the transaction is posted to the account to the date payment is posted to the account. The formula for calculating Speed of Pay Incentive is:

(45 – Average number of days to pay) / 45 X basis points (percentage) X invoice amount (Quarter Sales Volume) = Entity Prompt Payment Incentive

**WSCA/NASPO Annual Sales Volume Incentive** – Each participating state will receive an additional WSCA-NASPO Annual Sales Volume Incentive based on a tier established from all WSCA-NASPO participating states annual volume and applied to each state's annual sales volume. The formula for calculating WSCA-NASPO Annual Sales Volume Incentive is:

Participating state annual sales volume (all products) X applicable basis points (percentage) corresponding to the Tier established for the Annual Overall WSCA-NASPO Sales Volume (all product) = WSCA-NASPO Participating State Annual Sales Volume Incentive.

Rebates Applicable to Purchase Card and One Card	Rebate BPS	Paid								
<p>Each Participating Entity will receive a basis point (percentage) of their quarterly sales volume.</p> <p>The Formula to determine quarterly volume incentive share:  <u>Quarterly volume sales per entity - qualifying large ticket volume X basis points (percentage) = Entity Quarterly Volume Incentive</u></p>	130	Quarterly								
<p>The Prompt Payment Incentive calculation is designed to provide an incentive to each Entity, when Client Held Days is less than forty-five (45) days. The Prompt Payment Incentive is based solely on the Client Held Days Payment Performance for each Entity for each Agreement Quarter (3 calendar months). The Formula to determine Prompt Payment Incentive:  <u>(45 - Client Held Days) / 45 x 0.0045 x Quarterly Sales Volume</u></p>		Quarterly								
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\$3,000,000,001 - \$4,000,000,000	43									
\$4,000,000,001 - \$5,000,000,000	45									

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**Minimum Requirements:**

If Any Entity does not earn at least \$75.00 in Incentive Share for Category 1 Incentive Share Components 1 through 3 and Category 2 Incentive Share Components 1 through 2 will forfeit Incentive share for the preceding quarter.

Any Incentive Share payment made pursuant to the Contract will be net of accumulated Charge-offs resulting from participation in Contractor programs regardless of whether the underlying Contract between the parties is valid or has been terminated.

In the event that the Card Program or the Contract is terminated prior to the completion of the Base Period or prior to the completion of any Agreement Quarter after the completion of the Base Period by Entity without cause, or by Contractor with cause, and/or the sole provider provision of this Contract is violated, in addition to any other remedies available to Contractor, this Incentive Share opportunity shall immediately terminate and no Incentive Share shall be paid to Entity.

Any Charge-offs in excess of the net Incentive Share from one (1) Agreement Quarter will be subtracted from one (1) or more of the following Agreement Quarters. Upon termination of the Contract, if the net Incentive Share is a negative dollar amount due to Charge-offs, Contractor may request, and Entity agrees to reimburse, Contractor up to the dollar amount previously paid by Contractor to Entity within thirty (30) days of the termination of the Contract.

**3.2 INCENTIVE SHARE ADJUSTMENTS**

In the event in a decrease or increase in the interchange rates by five percent (5%) or more, US Bank will have the right ( but not obligation) to replace the current Revenue Sharing Opportunity with a new Revenue Sharing Opportunity proportionate to the change of the revised interchange rates.

If any Entity does not earn at least \$75.00 in Incentive Share for Category 1, Incentive Share Components 1 through 3 they will forfeit their Incentive Share for the preceding quarter.

**Contractors shall not make extensions contingent on price adjustments.**

**4 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS**

**4.1 ESTABLISHED BUSINESS**

Prior to commencing performance, or prior to that time if required by the DES, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the RFP. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The DES reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

**4.2 USE OF SUBCONTRACTORS**

Contractor shall take complete responsibility for all actions of Subcontractors.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

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The following credit card provider has been selected by U.S. Bank and is authorized to perform the services listed in the Product Offering section:

Category 1-Visa

Category 2-Voyager

#### **4.3 SUBCONTRACTS AND ASSIGNMENT**

Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA-NASPO Contract Administrator. Notwithstanding the previous sentence, approval for assignment to a bank affiliate will not be unreasonably withheld.

#### **4.4 RECORDS ADMINISTRATION AND AUDIT**

The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be maintained by the Contractor for a rolling period of seven (7) years from the date of the transaction, or until all audits initiated within the seven (7) years have been completed, whichever is later. The Contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access to all the records of this Contract and any order placed under this Contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

#### **4.5 INDEPENDENT CONTRACTOR**

The Contractor shall be an independent Contractor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

#### **4.6 INDIVIDUAL CUSTOMER**

Except to the extent modified by a Participating Addendum, each Entity shall follow the terms and conditions of the Contract and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Contract, including but not limited to, any indemnity or to recover any costs allowed in the Contract and applicable Participating Addendum for their purchases. Each Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Entity individually.

#### **4.7 INSURANCE**

Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Contract's termination or at a Entity's option, result in termination of its Participating Addendum.

Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

1. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

2. Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Contract and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Entity by the Contractor.

Prior to commencement of the work, Contractor shall provide to the Entity a written endorsement to the Contractor's general liability insurance policy that (i) names the Entity as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Entity has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Entity as secondary and noncontributory.

Contractor shall furnish to Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at State's sole option, result in this Contract's termination.

Coverage and limits shall not limit Contractor's liability and obligations under this Contract.

#### **4.8 LAWS AND REGULATIONS**

Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

#### **4.9 REPORTS**

The Contractor shall submit reports to the DES Contract Administrator or directly to WSCA-NASPO as requested.

### **5 INFORMATION AND COMMUNICATIONS**

#### **5.1 ADVERTISING**

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the DES Contract Administrator.

#### **5.2 RETENTION OF RECORDS**

Records for this contract will be maintained by the Contractor for a rolling period of seven (7) years from the date of a transaction. These records which shall be records related only to DES and its transactions, including materials generated under the Contract, at the sole cost and expense of DES, shall be subject at all reasonable times and with reasonable notice to inspection, review, or audit by the DES, personnel duly authorized by the DES, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the seven (7) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

**5.3 NON-ENDORSEMENT AND PUBLICITY**

Neither the DES nor the Entities are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the State of Washington, DES, any Participating Entity or WSCA-NASPO in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the DES and Participating Entity.

**5.4 PUBLIC INFORMATION**

This Contract and all related documents are subject to disclosure pursuant to the State of Washington's and individual Participating Entity's public information laws.

**5.5 CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF**

**5.5.1 CONFIDENTIALITY**

Contractor acknowledges that it and its employees or agents may, in the course of providing the product under this Contract, be exposed to or acquire information that is confidential to Entity or Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Contract, including, but not necessarily limited to (a) any Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Entity to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Entity or; (f) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**5.5.2 NON-DISCLOSURE**

Contractor shall hold Confidential Information in confidence, in accordance with its normal procedures for safeguarding customer information and its policies and using the same care to satisfy its obligations under the Contract as it uses with respect to its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties that do not have a "need to know" or use Confidential Information for any purposes whatsoever other than the performance of this Contract to Entity hereunder, and to advise each of its employees, affiliates and agents of their obligations to keep confidential information confidential. Notwithstanding anything to the contrary contained herein, the Contractor and its affiliates may disclose Confidential Information, without notice to DES, to any governmental agency, regulatory authority or self-regulatory authority (including, without limitation, bank and securities examiners) having or claiming to have authority to regulate or oversee any aspect of the Contractor's business or that of its affiliates in

connection with the exercise of such authority or claimed authority Contractor shall use commercially reasonable efforts to assist Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Entity as soon as reasonably practicable if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Contractor shall, at the request and expense of Entity, cooperate with Entity in seeking injunctive or other equitable relief in the name of Entity or Contractor against any such person. Except as directed by Entity, Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract and at Entity's written request, Contractor shall, subject to applicable law, rule and regulation and Contractor's document retention policies and procedures, turn over to Entity all documents, papers, and other matter in Contractor's possession that was delivered to Contractor by or on behalf of Entity that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one (1) copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Contract.

### **5.5.3 INJUNCTIVE RELIEF**

Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to Entity that is inadequately compensable in damages. Accordingly, Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Entity and are reasonable in scope and content.

## **6 GENERAL PROVISIONS**

### **6.1 GOVERNING LAW**

The Contract shall be governed by and construed in accordance with the laws of the state sponsoring and administering the Contract. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Entity's State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

### **6.2 SEVERABILITY**

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

### **6.3 SURVIVORSHIP**

All transactions executed for products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data;

Contractor's Commitments, Warranties and Representations; Protection of Entity's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

**6.4 DEBARMENT**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency.

**6.5 FORCE MAJEURE**

Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The lead State of Washington's DES may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

**6.6 INDEMNIFICATION**

The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable from and against all third party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Contract. This section is not subject to any limitations of liability in this Contract or in any other document executed in conjunction with this Contract

**6.7 INDEMNIFICATION – INTELLECTUAL PROPERTY**

The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable ("Indemnified Party") from and against all third-party claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of third party claim that the product or its use, infringes any Berne Convention country copyright or any United States of America or United Kingdom patent, trade secret or trademark of any third party ("Intellectual Property Claim"). The Contractor's obligations under this section shall not extend to any combination of the product with any other product, system or method, unless:

1. the Product, system or method is:
  - (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
  - (b) specified by the Contractor to work with the product; or
  - (c) reasonably required, in order to use the product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
2. it would be reasonably expected to use the product in combination with such product, system or method.

The Indemnified Party shall promptly notify the Contractor after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide prompt notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the

Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. This section is not subject to any limitations of liability in this Contract or in any other document executed in conjunction with this Contract.

#### **6.8 ASSIGNMENT OF ANTITRUST RIGHTS**

Contractor irrevocably assigns to a Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or an Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract or Participating Addendum; including, at an Entity's option, the right to control any such litigation on such claim for relief or cause of action.

Contractor shall require any subcontractors hired to perform any of Contractor's obligations, under this Contract or Participating Addendum, to irrevocably assign to an Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or an Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Contract or Participating Addendum, including, at an Entity's option, the right to control any such litigation on such claim for relief or cause of action.

#### **6.9 LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY**

Contractor grants to the Entity a nonexclusive, revocable, non-transferable license for the use of the Software, which means any third-party software provided by Contractor and necessary for use of the Product and services under the Contract, and any Materials, which means any third-party materials provide by Contractor and necessary for use of the Product and series under the Contract, related to the Software provided to Entity under this Contract. Each license is granted solely for use in object code form only in connection with the Service.

#### **6.10 NO WAIVER OF SOVEREIGN IMMUNITY**

In no event shall this Contract, any Participating Addendum or any contract or any purchase order issued thereunder, or any act of a Lead State or a Entity, be a waiver by the Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

#### **6.11 STANDARD OF PERFORMANCE AND ACCEPTANCE**

The Standard of Performance, which shall be defined as that standard of performance which is customary in the industry, applies to all product(s) purchased under this Contract, including any additional, replacement, or substitute product(s) and any product(s) which are modified by or with the written approval of Contractor after Acceptance by the Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in the RFP or the Participating Addendum, starting from the day after the product is installed and Contractor certifies that the product is ready for Acceptance Testing. If the product does not meet the Standard of Performance during the initial period of Acceptance Testing, Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the Standard of Performance issue(s). If after the cure period, the product still has not met the Standard of Performance Entity may, at its option: (1) declare Contractor to be in breach and terminate the Order; (2) demand replacement product from Contractor at no additional cost to Entity; or, (3) continue the cure period for an additional time period agreed upon by the Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of product returned pursuant to the section. No product shall be accepted and no charges shall be paid until the Standard of Performance is met. The warranty period will begin upon Acceptance.

#### **6.12 SYSTEM FAILURE OR DAMAGE**

In the event of system failure, damage, data loss, or breach caused by the Contractor or its product, the Contractor agrees to use its best efforts to (i) provide required notice to affected entities and individuals and to (ii) restore or to assist in restoring the system to operational capacity.

#### **6.13 TITLE OF PRODUCT**

Upon Acceptance by the Entity, Contractor shall convey to Entity title to the product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the product shall include an irrevocable and perpetual license to use the Embedded Software, which means software (if any) that functions within the Product, in the product. If Entity subsequently transfers title of the Product to another entity, Entity shall have the right to transfer the license to use the Embedded Software with the transfer of product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Entity or Entity's transferee.

#### **6.14 WARRANTY**

Except as specifically stated above and in any Infringement Indemnity, which means indemnification of the Entity by the Contractor against any claim or suit with respect to such Entity's use of any Software, and notwithstanding any other provision in this Contract or otherwise, we make no representation or warranty, express or implied, written or oral, and, to the full extent permitted by law, disclaim all other warranties including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose, regarding the Software, the materials, and all other property, services or rights covered by this Contract.

## 6.15 WSCA-NASPO eMARKET CENTER

Awarded responders are required to participate in the WSCA-NASPO eMarket Center and, working through WSCA-NASPO's Contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either a hosted (by SciQuest) or Punchout Level 2 catalog configurations, but actual requirements will be determined by the Lead State Contract Administrator, WSCA-NASPO, WSCA-NASPO's Contractor (SciQuest) and the awarded Contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological understanding.

## 7 DISPUTES AND REMEDIES

### 7.1 DEFAULTS & REMEDIES

The occurrence of any of the following events shall be an event of default under this Contract:

1. Nonperformance of contractual requirements; or
2. A material breach of any term or condition of this Contract; or
3. Any representation or warranty by Contractor in response to the RFP or in this Contract proves to be untrue or materially misleading; or
4. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
5. Any default specified in another section of this Contract.

Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Contract in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Contract.

If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Contract and Lead State shall have the right to exercise any or all of the following remedies:

1. Exercise any remedy provided by law; and
2. Terminate this Contract and any related Contracts or portions thereof; and
3. Impose liquidated damages as provided in this Contract; and
4. Suspend Contractor from receiving future bid RFPs; and
5. Suspend Contractor's performance; and
6. Withhold payment until the default is remedied.

In the event of a default under a Participating Addendum, a Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Contract, in addition to those set forth in its Participating Addendum.

## **7.2 ADMINISTRATIVE SUSPENSION**

When it is in the best interest of the state, the DES may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30<sup>th</sup> day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

## **7.3 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS**

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

## **7.4 NON-EXCLUSIVE REMEDIES**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

## **8 CONTRACT TERMINATION**

### **8.1 WAIVER OF BREACH**

Failure of Lead State or Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Contract or Participating Addendum. Any waiver by the Lead State or Entity must be in writing. Waiver by the Lead State or Entity of any default, right or remedy under this Contract or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Contract or Participating Addendum.

## **9 CONTRACT EXECUTION**

### **9.1 PARTIES**

This Contract ("Contract") is entered into by and between the State of Washington, acting by and through *State of Washington Department of Enterprise Services* an agency of Washington State government ("DES" or "State") located at *1500 Jefferson Street SW, Olympia, WA 98501* and *US Bank*, a *national banking association* licensed to conduct business in the State of Washington ("Contractor"), located at *200 South Sixth Street Minneapolis, Minnesota 55402* for the purpose of providing *commercial card solutions*.

### **9.2 ENTIRE AGREEMENT**

This Contract document and all subsequently issued amendments comprise the entire Contract between the DES and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract unless otherwise provided in the each Individual state's Participating Addendum.

**9.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY**

**Incorporated Documents:**

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

1. The RFP document with all attachments and exhibits, and all amendments thereto; and
2. Approved portions of the Contractor’s response to the RFP dated January 24, 2013;

In the event of a conflict between the documents which are incorporated into the Participating Addendum for each Entity, or any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the order listed in each Entities Participating Addendum.

**9.4 LEGAL NOTICES**

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid [certified mail, return receipt requested, via facsimile or by electronic mail], to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form.

To DES at:	To Contractor at:
State of Washington	U.S. Bank National Association
<i>Department of Enterprise Services</i>	Corporate Payment Systems
Attn: Cathy Moxley, Contracts Consultant	Mail Code EP-MN-L28C
1500 Jefferson Street SW	200 South Sixth Street
Olympia, WA 98501	Minneapolis, MN 55402
Phone: (360) 407-9434	Attn: CPS Contract Services
E-mail: <a href="mailto:cathy.moxley@des.wa.gov">cathy.moxley@des.wa.gov</a>	

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or DES, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and DES further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

**9.5 AUTHORITY TO BIND**

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

PAD

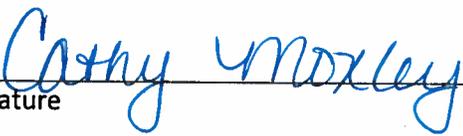
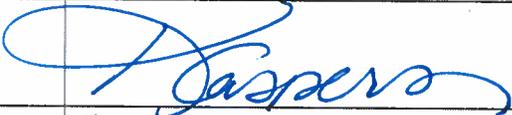
**9.6 COUNTERPARTS**

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

*In Witness Whereof*, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this 15<sup>th</sup> day of January, ~~2013~~ 2014 *cm*

**This is a Total award for Category 2**

Approved		Approved	
State of Washington Department of Enterprise Services		U.S. Bank National Association	
			
Signature		Signature	
Cathy Moxley	12/17/13	Kelly M. Caspers	12-13-13
Print or Type Name	Date	Print or Type Name	Date
Contracts Consultant		Vice President	
Title		Title	

Approved		Approved	
State of Washington Department of Enterprise Services		State of Washington Department of Enterprise Services	
			
Signature		Signature	
Christine Warnock,	12/17/13	Farrell Presnell	12/18/2013
Print or Type Name	Date	Print or Type Name	Date
State Purchasing Agent		Acting Deputy Director	
Title		Title	