

EXHIBIT E1 – MASTER AGREEMENT ISSUES LIST

Instructions. Issues, concerns, exceptions, or objections to any of the terms or conditions contained in *Exhibit E – Master Agreement* must be documented by bidders in the Master Agreement Issues List provided below. The *Master Agreement Issues List* frames discussions between Enterprise Services and bidders regarding the terms and conditions contained in the Master Agreement. In completing the *Master Agreement Issues List*, bidders must describe, in business terms, a concern, exception, or objection and then propose a compromise that is reasonable in light of the commitment being sought by Enterprise Services. The *Master Agreement Issues List* must provide the reason or rationale supporting the issue.

- **Redlined Documents Will Not Be Reviewed.** Do not provide a redlined Master Agreement or Sample Participating Addendums, paragraph or clauses. Redlined text may result in Enterprise Services making potentially inaccurate assumptions about what bidders' specific issues or concerns might be. Washington State will not negotiate Participating Addendums prior to award of the Master Agreement. Once the Master Agreement is awarded, each State is responsible for negotiating and finalizing their individual Participating Addendum.
- **Standard Bidder Contract Will Not Be Reviewed.** Do not provide a copy of a bidder's or a third party's standard contract or proposed language in the bid.
- **No Substantial Changes.** Bidders are reminded that this is a competitive solicitation for a public contract and that Enterprise Services cannot accept a proposal or enter into a Master Agreement that substantially changes the material terms and specifications published in this Competitive Solicitation. Bids that are contingent upon Enterprise Services making substantial changes to material terms and specifications published in the Competitive Solicitation may be determined to be non-responsible. Enterprise Services will consider the number and nature of the items on the bidders' *Master Agreement Issues List* in determining the likelihood of completing a Master Agreement with a bidder.

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ITEM	SPECIFY THE MASTER AGREEMENT SECTION #	ISSUE	BIDDER'S PROPOSED SOLUTION/RATIONALE
1.	2.2	U.S. Bank would like to clarify that participation by a "Purchasing Entity" is subject to approval by U.S. Bank. In most cases, U.S. Bank approval will be based solely	PURCHASING ENTITIES. For the purpose of this Master Agreement, a Purchasing Entity is any eligible entity authorized by a Participating State <u>and approved by Contractor</u> to participate in the Master Agreement (i.e. to purchase from the Master Agreement) pursuant to a

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		on credit criteria. However, given the scope of potential Purchasing Entities (i.e., colleges, school districts, non-profit organizations, etc...), there may be cases where participation in the program may be declined for anti-money laundering, fraud, and other legitimate business concerns.	Participating Addendum. Purchasing Entities will be required to execute a Card User Agreement (CUA) as outlined in this Master Agreement and shall be financially committed to the card account.
	4.1	We have revised this representation to reflect our national bank status and authorization to do business in all 50 states.	QUALIFIED TO DO BUSINESS. Contractor represents and warrants that it is <u>a validly existing national bank in good standing and that is authorized and</u> qualified to do business in the State of Washington <u>and all other states of the United States (each, a "U.S. State")</u> , that it is registered with the Washington State Department of Revenue and the Washington Secretary of State , that it possesses <u>documentation that reflects this authorization from the Office of the Comptroller of the Currency, and shall keep current all required licenses and/or approvals</u> , and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington. Contractor further represents and warrants that it will do the equivalent for any <u>Participating U.S.</u> State for which it executes a Participating Addendum.
	4.9	Users of U.S. Bank's Access <i>Online</i> web-based application must "click" to accept U.S. Bank's standard terms and conditions of use. The use of this web-based application is	NO EFFECT OF ADDITIONAL TERMS AND CONDITIONS. Contractor represents and warrants that any Authorized Users agreement to "click through" or other terms and conditions shall not be binding and shall have no force or effect as to the Services of this Master Agreement or

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		completely voluntary, but, in the event of use, the user will be required to agree to the standard terms and conditions of use.	Participating Addendum, <u>except that each Participating Entity's access and use of U.S. Bank's Access Online web-based application shall be subject to the terms and conditions of the applicable "click through" agreement.</u>
	6.2	U.S. Bank proposes aligning this language with each Participating State's prompt payment act or similar legislation. In addition, given the ability to make automatic payments and potential evidentiary concerns, U.S. Bank requests deletion of the last sentence.	PAYMENT. Payment is the sole responsibility of, and will be made by, the Purchaser. Payment is due within <u>the earlier of</u> forty-five (45) days of statement <u>or the date required in the applicable Participating State's prompt pay act or similar legislation.</u> If Purchaser fails to make timely payment(s), Contractor may invoice in the amount of up to one percent (1%) per month on the amount overdue or a minimum of \$1, <u>or as otherwise agreed in the applicable Participating Addendum.</u> Payment will not be considered late if a check or warrant is mailed within the time specified.
	6.3	U.S. Bank would like to clarify that U.S. Bank's obligation to provide a payment (as opposed to a credit) is conditional upon the account remaining in good standing.	OVERPAYMENTS. Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur promptly upon discovery by Contractor or within thirty (30) days of written notice to Contractor; Provided, however, that <u>so long as Purchaser is not in monetary default at such time,</u> Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchaser may impose a one percent

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			(1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
	7.4	U.S. Bank proposes omitting e-mail as an acceptable means of delivery.	LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email , and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:
	9.1	We propose changing the reporting deadline to be consistent with the existing practice.	Summary Sales Data. Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://www.naspo.org/WNCPO/Calculator.aspx . Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zeros sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty-sixty (3060) days following the end of the calendar quarter (as specified in the reporting tool.
	11.3	U.S. Bank will agree to compensate a Participating State or Participating Entity for any incorrect charges, but will not agree to pay a penalty.	OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Participating or Purchasing Entity, Contractor shall (a) reimburse Participating or Purchasing Entity for any overpayments inconsistent with the terms of this Master Agreement, at a rate of 125% of such overpayments, found as a result of the examination of the Contractor's records; and (b)

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			reimburse Purchasing Entity for any underpayment of fees, at a rate of 125% of such fees found as a result of the examination of the Contractor's records (e.g., if Contractor underpays the rebate/incentive share by \$500, Contractor would be required to pay to Purchasing Entity $\\$500 \times 1.25 = \\625). <u>Reserved.</u>
4.	14.2	The proposed master agreement includes a much broader indemnification obligation than the existing agreement. In the unlikely event of a third-party claim, U.S. Bank believes that a comparative fault standard is appropriate to this type of contractual relationship.	THIRD-PARTY CLAIMS; INDEMNITY. Contractor shall defend, indemnify, and hold harmless Enterprise Services and any Purchaser and their employees and agents from and against all <u>third-party</u> claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any <u>negligent or wrongful</u> act or omission of Contractor or its successors, agents, and subcontractors under this Master Agreement, except <u>to the extent such claims are</u> caused solely by Enterprise Services or any Purchasers' negligent <u>or wrongful act or omission</u> . Contractor shall take all steps needed to keep Purchaser's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.
5.	16.3(b) and 16.4	The economics and nature of the proposed relationship do not support liability for consequential (as opposed to direct) damages. This is also	(b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasers replacement goods and/or services. In such

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		consistent with the participating addenda executed in connection with the existing agreement.	<p>event, Contractor shall be liable to Enterprise Services for damages as authorized by law <u>subject to Section 16.4 of this Master Agreement, including, but not limited to, any Rebate/Incentive Share difference between the Master Agreement Rebate/Incentive Share and the replacement Rebate/Incentive Share as well as any administrative and/or transaction costs directly related to such replacement procurement—e.g., the cost of the competitive procurement.</u></p> <p>LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Participating Entity be liable to the other for <u>consequential, special, indirect,</u> exemplary or punitive damages <u>(including lost profits, even if such party had been notified of the potential for such damages).</u></p>
	Exhibit C		Please see attached.

**Attachment to Master Agreement Issues List
Insurance Requirements**

1. **INSURANCE OBLIGATION.** During the Term of this Master Agreement, Contractor ~~obtain and shall~~ maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Master Agreement.
 - b. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** 'Symbol 1' Commercial Automobile Liability coverage (and, if necessary, commercial umbrella liability insurance) included coverage for all owned, hired, and non-owned vehicles. The combined limit per occurrence shall not be less than \$1,000,000.
 - c. **WORKERS' COMPENSATION INSURANCE & EMPLOYER'S LIABILITY (STOP GAP).** Contractor shall comply with applicable Workers' Compensation or Industrial Accident Insurance providing benefits as required by law, including Employer's or Stop-Gap Liability with a minimum limit of \$1,000,000 per accident.
 - d. **PROFESSIONAL LIABILITY (ERRORS & OMISSIONS) INSURANCE.** Professional Liability insurance in the amount of not less than ~~\$2,000,000 combined single limit per occurrence,~~ \$4,000,000 general annual aggregate for malpractice or errors and omissions coverage against liability for damages because of ~~personal injury, bodily injury, death, or damage to property, including the loss of use thereof, and damages because of~~ negligent acts, errors, and omissions ~~in any way~~ related to this Master Agreement.
 - e. **CRIME INSURANCE/EMPLOYEE DISHONESTY.** Employee Dishonesty and (when applicable) Inside/Outside Money and Securities coverage for State of Washington and/or purchaser owned property in the care, custody, and control of Contractor, including computer fraud. Coverage limits shall not be less than \$2,000,000.
 - f. **CYBER RISK LIABILITY INSURANCE.** Cyber Risk Insurance, ~~on an occurrence form. This coverage shall include Contractual Liability Insurance for the indemnity provided under this Master Agreement.~~ Limits are \$2,000,000 ~~per claim/~~annual aggregate.

The limits of all insurance required to be provided by Contractor shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits.

A cross-liability clause or separation of insured condition shall be included in all general liability, ~~professional liability, and errors and omissions~~ policies required by this Master Agreement.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** ~~Except for Works' Compensation, Professional Liability, and Commercial Automobile Liability, all required~~The Commercial General Liability insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as

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an Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

4. **CERTIFICATE OF INSURANCE.** Upon request by Enterprise Services, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Master Agreement, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. A renewal certificate shall be delivered to Enterprise Services no less than ten (10) days prior to coverage expiration. Failure to provide proof of insurance, as required, will result in contract cancellation. All ~~policies and~~ certificates of insurance shall include the Master Agreement number stated on the cover of this Master Agreement.
5. **PRIMARY COVERAGE.** Contractor's General Liability and Automobile Liability insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. ~~All The General Liability and Automobile Liability~~ insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the General Liability and Automobile Liability insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation of General Liability, Automobile Liability or Workers Compensation insurance coverage, ~~material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part,~~ without at least ~~thirtysixty~~ (630) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Master Agreement number stated on the cover of this Master Agreement.