

**NASPO VALUE POINT
PARTICIPATING ADDENDUM
(BANKCARD)**

This NASPO Value Point Application and Participating Addendum (this "**Participating Addendum**" or this "**Addendum**") sets forth the terms and conditions upon which the undersigned Participating State (together with all of its agencies and related subdivisions, collectively, the "**Participating State**") may participate in the commercial card services program (the "**Program**") established pursuant to the Amended and Restated Cooperative Purchasing Master Agreement No. 00719/0089 dated as of November 12, 2020 (as amended, supplemented or otherwise modified, the "**Master Agreement**"), between Enterprise Services acting by and through the State of Washington ("**Enterprise Services**") and U.S. Bank National Association ("**U.S. Bank**" or "**Contract Vendor**"). This Addendum shall become effective April 1, 2021 (the "**Effective Date**").

AGREEMENT

1. Product Selection.

Please Select One or More Products		
<input checked="" type="checkbox"/> Corporate Travel & Expense Accounts	<input checked="" type="checkbox"/> Purchasing Accounts	<input checked="" type="checkbox"/> One Card™ Accounts
<input type="checkbox"/> Corporate Liability <input checked="" type="checkbox"/> Joint and Several Liability <input checked="" type="checkbox"/> Contingent Liability	Only Corporate Liability	Only Corporate Liability
Estimated Annual Charge Volume	Estimated Annual Charge Volume	Estimated Annual Charge Volume
\$ _____	\$ _____	\$ _____
Benefits*	Benefits*	Benefits*
Card Network benefits plus U.S. Bank supplemental common carrier travel accident benefits <ul style="list-style-type: none"> • \$500,000 Standard Account • \$1,000,000 Executive Account 	Card Network benefits plus U.S. Bank supplemental common carrier travel accident benefits <ul style="list-style-type: none"> • \$250,000 Standard Account • \$1,000,000 Executive Account 	Card Network benefits plus U.S. Bank supplemental common carrier travel accident benefits <ul style="list-style-type: none"> • \$250,000 Standard Account • \$1,000,000 Executive Account
Optional Enhancements	Optional Enhancements	Optional Enhancements
Event Planner account** Managed Spend account** Central Billing account**	Event Planner account Managed Spend account Central Billing account	Event Planner account Managed Spend account Central Billing account

* Benefits and protections offered by the Card Networks are established by the Card Networks outside of the control of U.S. Bank and may be changed from time to time. U.S. Bank's additional benefits may be changed from time to time. The details of such programs are outlined in brochures separately provided to Account holders.

** Available only as Corporate Liability

2. Definitions. Unless otherwise stated in this Addendum, all capitalized terms shall have the same meaning as set forth in the Master Agreement.

3. **Term.** The term of this Addendum (the “**Term**”) shall commence on the Effective Date of this Addendum and shall be in effect until December 31, 2025. The Participating State and U.S. Bank shall have the option to extend this agreement for two (2) additional years upon mutual agreement. Notwithstanding anything to the contrary, this Agreement shall end on the termination date of the Master Agreement unless this Addendum is terminated earlier in accordance with the Master Agreement.
4. **Rebate/Incentive Share Payments.** For each Purchasing Entity, U.S. Bank will pay the Rebate/Incentive Share Payments #1-3 as set forth on Exhibit B of the Master Agreement, if any, in the form of a Statement credit that will appear on the applicable Purchasing Entity’s Statement within 60 days after the end of a Quarter.
5. **National Volume Incentive.** The Incentive Share Payment #4, as set forth on Exhibit B of the Master Agreement, shall be distributed as follows:
- a. For all volume, excluding volume charged on Virtual Card/Single Use Cards by the Participating State and its respective State Agencies:
 - i. 11 basis points to the State of Minnesota, paid quarterly via electronic payment as directed by the State.
 - ii. 23.75 basis points to the Purchasing Entities (State Agencies), paid quarterly via a credit to managing accounts.
 - b. For all volume charged on Virtual Card/Single Use Cards by the Participating State and its respective State Agencies:
 - i. 34.75 basis points to the State of Minnesota, paid quarterly via electronic payment as directed by the State.
 - c. For all volume charged by the Cooperative Purchasing Venture Members:
 - i. 11 basis points to the State of Minnesota, paid quarterly via electronic payment as directed by the State.
 - ii. 23.75 basis points to the Purchasing Entities (Cooperative Purchasing Venture Members), paid quarterly via a credit to managing accounts, or ACH upon request
 - d. For the avoidance of doubt, U.S. Bank will not pay a National Annual Volume Incentive to the applicable Purchasing Entity if this Addendum is terminated for any reason prior to the completion of a Quarter.
6. **Purchasing Entities.** Entities seeking to join the Program as “Purchasing Entities” under this Addendum must be credit approved by U.S. Bank and otherwise accepted and approved for participation under this Addendum by U.S. Bank by completing a Card User Agreement in form and substance acceptable to U.S. Bank and any other documentation deemed necessary by U.S. Bank.
7. **State Agencies.** State Agencies may participate under this Addendum provided that such State Agencies are authorized for participation by the Participating State. By authorizing participation of a State Agency, the Participating State agrees to be liable for each State Agency’s performance of the terms and conditions of this Addendum, including for all Obligations incurred under the Program by any Account holder designated by Participating State or such State Agencies. State Agencies may, at the Participating State’s election, be eligible to earn a rebate for its performance in accordance with the terms and conditions of this Addendum.

8. **CPV Members.** The Cooperative Purchasing Venture (CPV) program was established by Minn. Stat. § 16C.03, subd. 10, which authorizes the commissioner of the Minnesota Department of Administration (Commissioner of Administration) through its Office of State Procurement (OSP) to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities" with one or more governmental units and other entities as described in Minn. Stat. § 471.59, subd. 1 and Minn. Stat. § 16C.03, subd. 10. Based on this authority, the Commissioner of Administration enters into a joint powers agreement that designates OSP as the authorized purchasing agent for the governmental unit or other entity. Governmental units and other entities joining the program are given an access code which identifies them as CPV members and permits them to access the OSP website to get information about commodities and/or services available on the State of Minnesota (State) contracts. Governmental units and other entities who are not members of the CPV program are not authorized to use the contract prices. The Contract Vendor agrees to provide the contract to CPV members in Minnesota at the same prices, terms, conditions, and specifications. For additional information, visit the OSP website at www.mmd.admin.state.mn.us.
9. **Notices.** The parties will make all notifications, consents, or approvals required under this Participating Addendum in writing, unless otherwise expressly stated to the contrary. The parties will deem any required notices given either (i) two days after the date of mailing if sent by registered or certified mail, return receipt requested; or (ii) one day after the date of mailing if sent by a national overnight courier service to either of the addresses indicated below.

To Participating State:
State of Minnesota
Department of Administration,
Office of State Procurement
50 Sherburne Ave., Suite 112
St. Paul, MN 55155
Attn: Doug Heeschen

To U.S. Bank:
U.S. Bank National Association
Corporate Payment Systems
Mail Code EP-MN-A17S
901 Marquette Ave.
Minneapolis, MN 55402, U.S.A.
Attn: CPS Contract Manager

10. **Governing Law and Venue.** The laws of the state of Minnesota and applicable federal laws and regulations of the United States apply to any dispute arising out of this Participating Addendum, its subject matter, or its formation. The parties shall bring any dispute or claim, arising out of or related to this Participating Addendum, before a state or federal court in Ramsey County, Minnesota.
11. **Incorporation.** The following are incorporated herein by reference as if set forth at length:

**Appendix A – State Specific Terms and Conditions
The Master Agreement**

In the event of a conflict between the terms and conditions set forth in this Addendum and/or applicable law, the conflict shall be resolved by giving precedence to the following documents in the following order:

1. This Addendum, without reference to Appendix A or the Master Agreement
2. Appendix A – State Specific Terms and Conditions
3. Master Agreement

12. **Authorization and Execution.** This Participating Addendum may be executed and delivered by the parties electronically, and fully executed electronic versions of this Participating Addendum, or reproductions thereof, will be deemed to be original counterparts.

1. U.S. BANK NATIONAL ASSOCIATION

*The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.*⁵

Print name: Scott Edstrom

Signature:  E-SIGNED by Scott Edstrom
on 2021-03-16 20:15:27 GMT

Title: Senior Vice President Date: March 16, 2021

2. State Agency

With delegated authority

Print name: _____

Signature: _____

Title: _____ Date: _____

3. Commissioner of Administration

As delegated to The Office of State Procurement

Print name: _____

Signature: _____

Title: _____ Date: _____

Appendix A

COMMERCIAL ACCOUNT AGREEMENT TERMS AND CONDITIONS

1. **EFFECTIVE DATE and CONTRACT PERIOD.** The Contract shall be effective upon the date of final execution by the State of Minnesota. The Contract term will begin on January 1, 2021, or on the date of Participating Addendum execution, whichever is later, to December 31, 2025, with the option to extend up to 24 months, upon agreement by all parties. The term of the Participating Addendum shall not exceed the term of the NASPO ValuePoint Master Agreement. In the event either party is in default, the Participating Addendum is subject to immediate cancellation to the extent allowable by applicable law. In the event of such cancellation, the Participating Entity remains liable to Contract Vendor for those fees and charges already incurred at the time of termination and Contract Vendor shall be entitled to such payment.
2. **STATE AUDITS** (Minn. Stat. § 16C.05, Subd. 5). The books, records, documents, and accounting procedures and practices of the Contract Vendor or other party, that are relevant to the Contract or transaction are subject to examination by the contracting agency and either the Legislative Auditor or the State Auditor as appropriate for a minimum of six years after the end of the Contract or transaction.

The State reserves the right to authorize delegate(s) to audit this Contract and transactions.

3. **ANTITRUST.** The Contract Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Participating Addendum resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State.
4. **INSURANCE.** If applicable, prior to execution of the Participating Addendum, the Contract Vendor will be required to provide a copy of a Certificate of Insurance, including workers' compensation insurance coverage requirements of Minn. Stat. § 176.181 subd. 2, and other coverages per the insurance requirements included as Minnesota Attachment B in this Participating Addendum.
5. **INDEMNIFICATION, HOLD HARMLESS, AND LIMITATION OF LIABILITY.** Except to the extent of the State's negligence or willful misconduct, the Contract Vendor shall indemnify, protect, save and hold harmless the State, its representatives and employees, from any and all third-party claims or causes of action, including all legal fees incurred by the State arising from the performance of the Contract by the Contract Vendor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the State's failure to fulfill its obligations pursuant to the Contract. State shall provide Contract Vendor with prompt notice of the claim, permitting Contract Vendor authority to control the defense or settlement of the claim to the extent permitted by law, and providing Contract Vendor with reasonable assistance in connection therewith.

For clarification and not as a limitation, the Contract Vendor hereby expressly extends, in addition to the other terms, conditions and specifications of the Contract, the foregoing defense and indemnification obligations to Cooperative Purchasing Venture (CPV) Members, including Board of Trustees of the Minnesota State Colleges and Universities, in addition to Agency as defined in Minn. Stat. 16.C.02, in addition to the legislative and judicial branches and constitutional offices of state government.

The State agrees that Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$10,000,000 or the Contract amount, whichever is greater. This limitation of liability does not apply

to damages for personal injury or death, or to Contractor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement claims under paragraphs titled and included in this Agreement. This indemnification does not include liabilities caused by the State's gross negligence or intentional wrongdoing of the State.

6. **LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State and federal laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State.
7. **GOVERNMENT DATA PRACTICES.** The Contract Vendor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contract Vendor and all data provided to the State by the Contract Vendor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with the Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the State. The State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The State shall handle the response to such requests. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contract Vendor or the State.

The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all third-party claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Contract, the Contract Vendor shall retain responsibility under the terms of this article for such work.

8. **RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation, and installation by the Contract Vendor and in the possession of the Contract Vendor or their authorized agent.
9. **HUMAN RIGHTS/AFFIRMATIVE ACTION.** The State requires affirmative action compliance by its Contract Vendors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.
 - a. Covered contracts and Contract Vendors. One-time acquisitions, or a contract for a predetermined amount of goods and/or services, where the amount of your response is in excess of \$100,000 requires completion of the Affirmative Action Certification page. If the solicitation is for a contract for an indeterminate amount of goods and/or services, and the State estimated total value of the contract exceeds \$100,000 whether it will be a multiple

- award contract or not, you must complete the Affirmative Action Certification page. If the contract dollar amount or the State estimated total contract amount exceeds \$100,000 and the Contract Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, the Contract Vendor must comply with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600. A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600 that had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months must have a certificate of compliance issued by the commissioner of the Department of Human Rights (certificate of compliance). A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 that did not have more than 40 full-time employees on a single working day during the previous 12 months within Minnesota but that did have more than 40 full-time employees in the state where it has its principal place of business and that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
- b. Minn. Stat. § 363A.36, subd. 1 requires the Contract Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the commissioner of the Department of Human Rights (commissioner) as indicated by a certificate of compliance. Minn. Stat. § 363A.36 addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
 - c. Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Contract Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and parts 5000.3552-5000.3559.
 - d. Disabled Workers. Minn. R. 5000.3550 provides the Contract Vendor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- (a) The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36 and

the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

- (d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - (e) The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- e. Consequences. The consequences of a Contract Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the commissioner, refusal by the commissioner to approve subsequent plans, and termination of all or part of the Contract by the commissioner or the State.
- f. Certification. The Contract Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

10. EQUAL PAY CERTIFICATION. If the Response to this solicitation could be in excess of \$500,000, the Responder must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A responder is exempt if it has not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where it has its primary place of business. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us.

11. PAYMENT. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." The Ordering Entity is not required to pay the Contract Vendor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate Ordering Entity. In addition, all goods and/or services provided must meet all terms, conditions and specifications of the Contract and the ordering document and be accepted as satisfactory by the Ordering Entity before payment will be issued.

Conditions of Payment. The Contract Vendor under the Contract must be in accordance with the Contract as determined by the sole discretion of the State's Authorized Representative and be in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Minnesota Secretary of State.

- 12. PURCHASE ORDERS (PO).** The State requires that there will be no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the Contract. The Contract number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract.
- 13. TAXES.** State Agencies are subject to paying Minnesota sales and use taxes. If orders are issued by CPV Members, the Contract Vendor should confirm all of the tax requirements with the Ordering Entity.
- 14. SHIPPING REQUIREMENTS.** All shipments shall be FOB Destination. Freight charges shall be prepaid and allowed unless otherwise stated in the NASPO ValuePoint Master Agreement.
- 15. DEFAULT.** All commodities and services furnished will be subject to inspection and acceptance by the Ordering Entity after delivery, provided that all services provided shall be deemed accepted. No substitutions or cancellations are permitted without approval of the Ordering Entity. Back orders, failure to meet delivery requirements, or failures to meet specifications in the purchase order and/or the Contract authorizes the Ordering Entity to cancel the purchase order, or any portion of it, purchase elsewhere. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contract Vendor may be removed from the vendor's list, suspended or debarred from receiving a Contract for failure to comply with the terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.
- 16. ASSIGNMENT.** The Contract Vendor shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's Authorized Representative. Such consent shall not be unreasonably withheld, conditioned or delayed. The Contract Vendor shall give written notice to the State's Authorized Representative of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of the Contract. Failure to do so may result in the Contract Vendor being held in default. This consent requirement does not include reassignment of the Contract due to a change in ownership, merger, or acquisition of the Contract Vendor or its subsidiary or affiliated corporations whereby Contract Vendor is the surviving entity. This section shall not be construed as prohibiting the Contract Vendor's right to assign the Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contract Vendor shall remain solely liable for all performance required and provided under the terms and conditions of the Contract.
- 17. Participation Addendum TRANSITION.** Contractor represents and warrants that, in the event this Participation Addendum or a similar contract, is transitioned to another contractor (e.g., Participation Addendum expiration or termination), Contractor shall use commercially reasonable efforts to assist the Participating State and CPV Members for a period of nine (9) months to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the Participating State and CPV Members; provided, however, that Participating State and CPV Members remain liable for all Obligations incurred during such transition period.
- 18. INTELLECTUAL PROPERTY INDEMNIFICATION.** The Contract Vendor warrants that any materials or products provided or produced by the Contract Vendor or utilized by the Contract Vendor in the performance of the Contract will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against the State, the State shall promptly notify the Contract Vendor. The Contract Vendor, at its own expense and except to the extent of the State's negligence or willful misconduct, shall indemnify, defend to the extent permitted by the Minnesota Attorney General's Office, and hold harmless the State against any loss, cost, expense, or liability (including legal fees) arising out of such a claim, whether or not such claim is successful against the State. Contract Vendor shall have authority to control the defense or

settlement of any such claim to the extent permitted by law, and the State shall provide reasonable assistance in defense of any such claim.

If such a claim has occurred, or in the Contract Vendor's opinion is likely to occur, the Contract Vendor shall either procure for the State the right to continue using the materials or products or replacement or modified materials or products. If an option satisfactory to the State is not reasonably available, the State shall return the materials or products to the Contract Vendor, upon written request of the Contract Vendor and at the Contract Vendor's expense. This remedy is in addition to any other remedy provided by law.

- 19. PARTICIPATING ADDENDUM AMENDMENTS.** Except as provided herein, the Participating Addendum shall be modified only by written amendment duly executed by an authorized representative of the State and the Contract Vendor. No alteration or variation of the terms and conditions of the Participating Addendum shall be valid unless made in writing and signed by the parties as required by law. Every amendment shall specify the date on which its provisions shall be effective. An approved Participating Addendum amendment means one approved by the authorized signatories of the Contract Vendor and the State as required by law.
- 20. TERMINATION OF THE PARTICIPATING ADDENDUM.** The Participating Addendum may be canceled by the State or the Commissioner of Administration at any time, with or without cause, upon 30 days written notice to the Contract Vendor. In the event the Contract Vendor is in default, the Participating Addendum is subject to cancellation to the extent allowable by applicable law; provided, however, that the State will notify the Contract Vendor of the default and give the Contract Vendor 30 days to cure such default. In the event of such a cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted. The Contract Vendor may request to cancel the Participating Addendum but must receive written approval from the State.
- 21. ADMINISTRATIVE PERSONNEL CHANGES.** After execution of this Participating Addendum the State must be notified of intended changes in the Contract Vendor's administrative personnel as soon as practicable.
- 22. PUBLICITY.** Any publicity given to the program, publications or services provided resulting from a State contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the State's Authorized Representative and the State's Assistant Director or designee of Office of State Procurement.
- The Contract Vendor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of the Contract without the prior written consent of the State's Assistant Director or designee of the Office of State Procurement. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.
- 23. AMERICANS WITH DISABILITIES ACT (ADA).** Products provided under the Contract must comply with the requirements of the Americans With Disabilities Act (ADA). The Contract Vendor's catalog and other marketing materials utilized to offer products under the Contract must state when a product is not in compliance. If any descriptive marketing materials are silent as to these requirements, the Contract Vendor agrees that the customer can assume the product meets or exceeds the ADA requirements.

24. NONVISUAL ACCESS STANDARDS. Pursuant to Minn. Stat. § 16C.145, the Contract Vendor shall comply with the following nonvisual technology access standards:

- a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards are not applicable for installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

25. SEVERABILITY. If any provision of the Contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions; if the remainder of the Contract is capable of performance it will not be affected by the declaration or finding and will be fully performed.

26. ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE. In accordance with Minn. Stat. § 16A.40 the Contract Vendor is required to provide their bank routing information to the Minnesota Department of Finance to enable payments to be made through EFT.

27. COPYRIGHT. The Contract Vendor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted composition, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

28. SURVIVABILITY. In addition to clause 17.13 Survival of the master agreement, the following rights and duties of the State and Contract Vendor will survive the expiration or cancellation of the resulting Contract(s). These rights and duties include, but are not limited to the paragraphs on Indemnification, Hold Harmless, and Limitation of Liability, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Intellectual Property Indemnification, Publicity and Minnesota Reporting Requirements and Administrative Fees. Software licenses, warranty, maintenance agreements and service agreements that were entered into under the terms and conditions of the Agreement shall survive the expiration or termination of this Agreement.

29. IT ACCESSIBILITY STANDARDS. Contract Vendor acknowledges and is fully aware of the accessibility requirements of Minnesota Statutes section 16E.03 and the State of Minnesota Accessibility Standards – available online at http://mn.gov/oet/images/Stnd_State_Accessibility.pdf or <http://mn.gov/oet/> – that incorporate both Section 508 of the Rehabilitation Act and Web Content Accessibility Guidelines 2.0 level 'AA'. The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. If website, training or any of the above available through this contract, Contract Vendor agrees to develop functionality which supports accessibility.

30. E-VERIFY CERTIFICATION. For services in excess of \$50,000, the Contract Vendor certifies that as of the date of services performed on behalf of the State, the Contract Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. This is required by Minnesota Statutes Section 16C.075. The Contract Vendor shall be

responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available on OSP website www.mmd.admin.state.mn.us.

All subcontractor certifications must be kept on file with the Contract Vendor and made available to the State upon request.

- 31. SUBCONTRACTOR PAYMENT (When Applicable).** In accordance with Minn. Stat. § 16A.1245, the Contract Vendor shall, within 10 days of receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contract Vendor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontractor that takes civil action against the Contract Vendor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action.

The Contract Vendor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under the Contract. In the event the Contract Vendor fails to make timely payments to a subcontractor or supplier, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contract Vendor and deduct said payment from any remaining amounts due the Contract Vendor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contract Vendor written notice that payment will be made directly to a subcontractor or supplier for undisputed services. If there are no remaining outstanding payments to the Contract Vendor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

- 32. SOFTWARE LICENSING & SOFTWARE CLICK AGREEMENTS.** The following language is added to all software license, software license click and maintenance agreements applicable to software utilized or sourced under this agreement, unless otherwise approved in writing through a duly executed amendment to the Contract by State: Notwithstanding the foregoing, this contract shall not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this contract or afforded to the State by Minnesota law.

- 33. TAXPAYER IDENTIFICATION:** The Contract Vendor shall be registered as a vendor to the State in the SWIFT Procurement System. Registration must be done online at <http://www.mmb.state.mn.us/vendorresources>.

- 34. STATE'S NON-INDEMNIFICATION.** Nothing herein, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Contract Vendor, Contract Vendor's subcontractors, or Contract Vendor's agents. This shall extend to all agreements related to the subject matter of this contract, and to all terms subsequently added, without regard to order of precedence.

- 35. CERTIFICATION OF NONDISCRIMINATION (In accordance with Minn. Stat. § 16C.053).** The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

- 36. SUBCONTRACTOR REPORTING.**

The State of Minnesota is committed to diversity and inclusion in public procurement. If the total value of your contract may exceed \$500,000, including all extension options, you must track and report, on a quarterly basis, the amount you spend with diverse small businesses. When this applies, you will be provided free access to a portal for this purpose, and the requirement will continue as long as the contract is in effect.

- 37. SECURITY AND DATA PROTECTION.** Contract Vendor is responsible for the security and protection of the State data related to this Contract/Agreement. The terms, conditions, and provisions of this Security and Data Protection section take precedence and will prevail over any other terms, conditions, and provisions of the Contract/Agreement, if in conflict. This Security and Data Protection section survives the completion, termination, expiration, or cancellation of the Contract/Agreement. For purposes of this Security and Data Protection section, "State" means the State of Minnesota, or a cooperative purchasing venture ("CPV") member when the CPV member is the purchasing entity (if CPV purchases are permitted under this Contract/Agreement).

a. Data Ownership. The State solely and exclusively owns and retains all right, title and interest, whether express or implied, in and to the State data. For purposes of this section, "data" has the meaning of "government data" in Minnesota Statutes section 13.02, subdivision 7. Contract Vendor has no and acquires no right, title or interest, whether express or implied, in and to the State data.

Contract Vendor shall only use State data for the purposes set forth in the Contract/Agreement. Contract Vendor shall only access State data as necessary for performance of this Contract/Agreement. Contract Vendor will not access State user accounts except to respond to service or technical problems or at the State's specific request.

All State data shall be remitted, in a mutually agreeable format and media, to the State by the Contract Vendor upon request or upon completion, termination or cancellation of the Contract/Agreement. The foregoing sentence does not apply if the State Chief Information Security Officer or delegate authorizes in writing the Contract Vendor to sanitize and/or destroy the data and the Contract Vendor certifies in writing the sanitization and/or destruction of the data. Ninety days following remittance of such data to the State, Contract Vendor shall, unless otherwise instructed by the State in writing, sanitize and/or destroy any remaining data and certify in writing that the sanitization and/or destruction of the data has occurred. Any such remittance, sanitization or destruction will be at the Contract Vendor's sole cost and expense.

In the event the Contract Vendor receives a request to release any State data, the Contract Vendor must immediately notify the State. The State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The Contract Vendor must comply with the State's instructions. The civil remedies of Minnesota Statutes section 13.08 apply to the release of the data by the Contract Vendor.

b. Security Incidents. If Contract Vendor becomes aware of a privacy or security incident regarding any State data, Contract Vendor will promptly report the event to the State. The decision to notify and the actual notifications to the State's data subjects affected by the security or privacy incident is the responsibility of the State. Notwithstanding anything to the contrary in this Contract/Agreement, the Contract Vendor shall indemnify, hold harmless and defend the State and its officers, and employees for and against any third-party claims, damages, costs and expenses related to any privacy or security incident. Contract Vendor shall reasonably mitigate any harmful effects resulting from any privacy or security incident.

For purposes of this sub-section, "security incident" means the successful unauthorized access, use, disclosure, modification or destruction of data or interference with system operations in an information system. For purposes of this sub-section, "privacy incident" means violation of the

Minnesota Government Data Practices Act (Minnesota Statutes chapter 13) and/or federal privacy requirements in federal laws, rules and regulations. This includes, but is not limited to, improper or unauthorized use or disclosure of not public data, improper or unauthorized access to or alteration of public data, and incidents in which the confidentiality of the data maintained by Contract Vendor has been breached. For purposes of this section, "not public data" has the meaning in Minnesota Statutes section 13.02, subdivision 8a.

c. Security Program. Contract Vendor must make all commercially reasonable efforts to protect and secure the State data related to this Contract/Agreement. Contract and maintain an Information Security Program ("Program") that includes an information security policy applicable to any and all cloud computing or hosting services ("Policy"). Contract Vendor's Program and Policy must align with appropriate industry security frameworks and standards such as National Institute of Standards and Technology ("NIST") 800-53 Special Publication Revision 4, Federal Information Processing Standards ("FIPS") 199, Federal Risk and Authorization Management Program ("FedRamp"), or Control Objectives for Information and Related Technology ("COBIT"). For purposes of this section, "cloud computing" has the meaning defined by the U.S. Department of Commerce, NIST Special Publication 800-145, currently available online at: <http://csrc.nist.gov/publications/nistpubs/800-145/SP800-145.pdf>.

Contract Vendor will provide its most recent independent auditor's report (e.g. SSAE 18, SOC 2, and etc.) or its equivalent to the State within fifteen (15) days of the State's written request for such report. Unless inconsistent with applicable laws, Contract Vendor and the State must treat the Policy and related information (including any such independent auditor's reports) on security practices and policies that are specific to the State as confidential information and as not public data pursuant to Minnesota Statutes section 13.37.

d. Data Management. Contract Vendor will not use State data, including production data, for testing or development purposes. Contract Vendor has implemented and will maintain procedures to physically and logically segregate State data, unless otherwise explicitly authorized by the State Chief Information Security Officer or delegate.

e. Data Encryption. Contract Vendor shall encrypt, in compliance with the greater of FIPS Publication 140-2 or applicable law, regulation or rule, all State data at rest and in transit, if such data is part of or associated with Contract Vendor's cloud computing or hosting services. All encryption keys shall be unique to State data. Encryption keys to State data shall only be accessed by Contract Vendor as necessary for performance of this Contract/Agreement.

f. Data Storage. Contract Vendor agrees that any and all State data will be stored, processed, and maintained solely on designated servers and that no such data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that storage medium is in use as part of the Contract Vendor's designated backup and recovery processes.

g. Data Center and Monitoring/Support Locations. During the term of the Contract/Agreement, Contract Vendor agrees to: (1) locate all production and disaster recovery data centers that store, process or transmit State data only in the continental United States, (2) store, process and transmit State data only in the continental United States, and (3) locate all monitoring and support of all the cloud computing or hosting services only in the continental United States. The State has the right to on-site visits and reasonable inspection of the data centers upon notice to Contract Vendor of seven calendar days prior to visit.

h. Security Audits & Remediation. Contract Vendor will audit the security of the systems and processes used to provide any and all cloud computing or hosting services, including those of the data centers used by Contract Vendor to provide any and all cloud computing or hosting services to the State. This security audit: (1) will be performed at least once every calendar year beginning with

2021; (2) will be performed according appropriate industry standards (3) will be performed by third party security professionals at Contract Vendor's election and expense; (4) will result in the generation of an audit report ("Contract Vendor Audit Report"), which will, to the extent permitted by applicable law, be deemed confidential information and as not public data under the Minnesota Government Data Practices Act; and (5) may be performed for other purposes in addition to satisfying this section. Notwithstanding subsection H(3) above, the security audit for the Payment Analytics solution may be conducted by independent internal security professionals at Contract Vendor's expense.

The Contract Vendor Audit Report will address the control procedures used by Contract Vendor to provide any and all cloud computing or hosting services, including specifically an assessment of whether (A) the control procedures were suitably designed to provide reasonable assurance that the state internal control objectives would be achieved if the procedures operated as designed and (B) the control procedures operated effectively at all times during the reporting period. The Contract Vendor Audit Report must also address relevant controls of any subservice providers of any and all cloud computing or hosting services.

Upon the State's reasonable, advance written request, Contract Vendor will provide to the State a copy of the Contract Vendor Audit Report.

Contract Vendor will make best efforts to remediate any control deficiencies identified in the Contract Vendor Audit Report in a commercially reasonable timeframe.

If the State becomes aware of any other Contract Vendor controls that do not substantially meet the State's requirements, the State may request remediation from Contract Vendor. Contract Vendor will make best efforts to remediate any control deficiencies identified by the State or known by Contract Vendor, in a commercially reasonable timeframe.

i. Subcontractors. Contract Vendor agrees that no State data shall be transmitted, exchanged or otherwise provided to other parties except as specifically agreed to in writing by the State Chief Information Security Officer or delegate. Contract Vendor must ensure that any contractors, subcontractors, agents and others to whom it provides State data, agree in writing to be bound by the same restrictions and conditions under this Contract/Agreement that apply to Contract Vendor with respect to such data.

j. Compliance with Payment Card Industry Data Security Standard.

All of Contract Vendor's systems and components that process, store, or transmit State data shall comply with the then most recent version of the Payment Card Industry Data Security Standard ("PCI DSS") promulgated by the PCI Security Standards Council. The Contract Vendor shall, upon request, provide the State with Contract Vendor's current Attestation of Compliance signed by a PCI QSA ("Qualified Security Assessor").