

**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 of Utah (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**"). This Addendum shall become effective January 1, 2021 (the "**Effective Date**").

**AGREEMENT**

**1. Product Selection.**

Please Select One or More Products		
<input type="checkbox"/> <b>Corporate Travel &amp; Expense Accounts</b>	<input checked="" type="checkbox"/> <b>Purchasing Accounts</b>	<input checked="" type="checkbox"/> <b>One Card™ Accounts</b>
<input type="checkbox"/> Corporate Liability <input type="checkbox"/> Joint and Several Liability <input type="checkbox"/> Contingent Liability	Only Corporate Liability	Only Corporate Liability
<b>Estimated Annual Charge Volume</b>	<b>Estimated Annual Charge</b>	<b>Estimated Annual Charge Volume</b>
\$ _____	\$ 208,000,000	\$ 36,000,000
<b>Benefits*</b>	<b>Benefits*</b>	<b>Benefits*</b>
Card Network benefits plus U.S. Bank supplemental common carrier travel accident benefits <ul style="list-style-type: none"> <li>• \$500,000 Standard Account</li> <li>• \$1,000,000 Executive Account</li> </ul>	Card Network benefits	Card Network benefits plus U.S. Bank supplemental common carrier travel accident benefits <ul style="list-style-type: none"> <li>• \$250,000 Standard Account</li> <li>• \$1,000,000 Executive Account</li> </ul>
<b>Optional Enhancements</b>	<b>Optional Enhancements</b>	<b>Optional Enhancements</b>
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 the expiration or termination of the Master Agreement. A contract amendment to this Participating Addendum is not necessary in the event of the renewal or extension of the Master Agreement, so long as such renewal/extension was originally provided with the solicitation supporting the Master 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. **Pricing.** The pricing and rates from the Master Agreement shall flow down to this Participating Addendum. An amendment to this Participating Addendum is not required when pricing in the Master Agreement is adjusted/updated.
5. **National Volume Incentive.** Notwithstanding anything to the contrary, U.S. Bank will make National Volume Incentive payments, if any, to the Participating State on a quarterly basis. For the avoidance of doubt, U.S. Bank will not make any National Volume Incentive payments to the Participating State if this Participating Addendum has been terminated for any reason prior to completion of the applicable Quarter.
6. **Exclusivity.** Participating State agrees U.S. Bank will be the sole provider to Participating State and its participating Purchasing Entities of the products, and services selected in Section 1 of the Participating Addendum titled "Product Selection". Upon request by U.S. Bank, Participating State shall certify to U.S. Bank, within 30 days of such request, certifying Participating Entity is and will continue to be compliant with this Section.
7. **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.
8. **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.
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 Utah

**To U.S. Bank:**  
U.S. Bank National Association

4315 S 2700 W FL 3

Taylorsville, UT 84129-2128  
Attn:Blake Theo Porter

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 Utah 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 the city of Salt Lake City, Utah.

**11. Incorporation.** The following are incorporated herein by reference as if set forth at length:

**Appendix A – State Specific Terms and Conditions**

**Appendix B – Card User Agreement**

**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 Appendix B
2. Appendix A – State Specific Terms and Conditions
3. Master Agreement
4. Appendix B – Card User 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.

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**STATE**

DATE: 12/30/2020

State of Utah

Name of Participating State



(Signature of Authorized Individual)

Christopher Hughes

(Printed Name of Authorized Individual)

Director of Purchasing

(Printed Title of Authorized Individual)

**U.S. BANK**

DATE: December 30, 2020

U.S. Bank National Association

E-SIGNED by Scott Edstrom  
on 2020-12-30 16:02:43 GMT

Scott Edstrom

Vice President

**APPENDIX A: STANDARD TERMS AND CONDITIONS FOR SERVICES  
STATE OF UTAH COOPERATIVE CONTRACT**

This is a State of Utah Cooperative Contract ("State Cooperative Contract") for services (including professional services), meaning the furnishing of labor, time, or effort by a contractor. This State Cooperative Contract is the result of a cooperative procurement for the benefit of Eligible Users and may be used by Eligible Users without the Eligible Users signing a participating addendum.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
  - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible Users shall have the right to identify, during and after this Contract, additional types of categories of information that must be kept confidential under federal and state laws by Contractor.
  - b) **"Contract"** means either: (i) the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference, or (ii) the Solicitation and the Proposal when accepted and signed by the Division. The format of the Contract, as described in the prior sentence, will be at the sole option of the Division. Additionally, the term "Contract" may include any purchase orders issued by the Division that result from this Contract.
  - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the Division and Contractor sign.
  - d) **"Contractor"** means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
  - e) **"Custom Deliverable"** means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
  - f) **"Division"** means the State of Utah Division of Purchasing.
  - g) **"Eligible User(s)"** means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
  - h) **"End User Agreement"** means any agreement that Eligible Users are required to sign in order to participate in this Contract including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
  - i) **"Services"** means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services shall include, but are not limited to, all of the deliverable(s) and Custom Deliverable that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
  - j) **"Proposal"** means Contractor's response to the Division's Solicitation.
  - k) **"Solicitation"** means the documents used by the Division to obtain Contractor's Proposal.
  - l) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - m) **"Subcontractors"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
  - n) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Appendix A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records upon reasonable prior, written notice. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This "Status Verification System" requirement, 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.

1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or of the State of Utah, unless disclosure has been made to the Division.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the State Entity or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, Eligible Users, and the State of Utah from all third-party claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the Division, Eligible Users, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause 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.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 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; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given thirty (30) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for Services properly performed prior to date of termination.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination without cause, Contractor's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the State Entity be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.

13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division, if the Division reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the Divisions or the Eligible User's ability to pay Contractor. A change of available funds as used in this paragraph includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered, the Eligible User will reimburse Contractor for the Services properly performed until the effective date of said notice. The Division, the Eligible User, and the State of Utah will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the Eligible User's funds and may be used

in the exercise of the Eligible User's essential functions. Upon request, the Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

15. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
  - Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
  - Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
  - Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

16. **RESERVED.**

17. **END USER AGREEMENT:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion or termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
18. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
19. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Services based upon the same terms, conditions and prices of this Contract; provided, however, that Eligible Users' participation under this Contract is subject to execution of a Card User Agreement and approval by Contractor.
20. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Services from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
21. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
22. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related purchase orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing and expressly approved by the Division, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, and invoices.
23. **DELIVERY:** Time is of the essence for all deliveries made under this Contract. All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance, when responsibility will pass to the Eligible User, except as to latent defects or fraud. Contractor's failure to provide the Services by the required delivery date is deemed a material breach of this Contract. Contractor shall be responsible for the customary industry standard in packing and shipping any goods relating to these Services.
24. **REPORTS AND FEES:**
1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative

Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. **The Administrative Fee is zero percent (0%)** and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.

2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>.
3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

4. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
  5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
25. **ORDERING:** Orders will be placed by the Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
26. **ACCEPTANCE AND REJECTION:** The Eligible User shall have thirty (30) days after delivery of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the Eligible User.
- If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return any deliverable related to the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.
27. **INVOICING:** Contractor will submit invoices within thirty (30) days after the Eligible User's cycle close date. The contract number may be listed on all invoices upon request, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.
28. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail or electronic funds transfer.. If payment has not been made after sixty (60) days from the date a correct invoice is received by the Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The Eligible User's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the Division, Eligible User, or the State of Utah may have against Contractor. The State of Utah, the Division, and the Eligible User will not allow the Contractor to charge end users electronic payment fees of any kind.
29. **TIME IS OF THE ESSENCE:** Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the Eligible User and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely perform the Services required under this Contract.
30. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
31. **PERFORMANCE EVALUATION:** The Eligible User may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
32. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the Eligible User and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
33. **REVIEWS:** The Division and Eligible Users reserve the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible User, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right.

35. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor agree that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Services, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract, shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
36. **[Intentionally Deleted]**
37. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division. Notwithstanding the foregoing, the following instances shall not be considered an assignment or delegation and shall, in no way, require the Division's approval or notice: (a) Contractor's going from a publicly held corporation to a privately held corporation; (b) any public offering of Contractor's stock; or (c) any change in ownership of Contractor's stock. In the event Contractor breaches this section, the Division's sole remedy shall be termination of this Contract.
38. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The Division may issue a written notice of default providing a thirty (30) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; or (iv) debar/suspend Contractor from receiving future contracts from the Division or the State of Utah.
39. **FORCE MAJEURE:** Except for the obligation to make payments for conforming services already performed hereunder, neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The Division may terminate this Contract after determining such delay will prevent successful performance of this Contract.
40. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the Division and the relevant Eligible User of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Division, the Eligible User, and the State of Utah, including anyone for whom the Division, the Eligible User, or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
41. **PUBLICITY:** Contractor or Eligible User, as applicable, shall submit to the other party for written approval all advertising and publicity matters relating to this Contract. It is within the Eligible User's or, as applicable, Contractor's sole discretion whether to provide approval, which must be done in writing.
42. **CONTRACT INFORMATION:** During the duration of this Contract, the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
43. **PROCUREMENT ETHICS:** 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, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who 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.
44. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees, incurred in connection with such action.
46. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties will make best efforts to participate in the mediation of any dispute. The Division, after consultation with the Eligible User and Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute if all parties agree to mediation.
47. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) the NASPO ValuePoint Participating Addendum without reference to this Appendix A; (ii) this Appendix A; (iii) the NASPO ValuePoint Amended and Restated Cooperative Purchasing Master Agreement No. 00719/0089; and (iv) Appendix B Card User Agreement. Any provision attempting to limit the liability of Contractor or limit the rights of the Division, Eligible Users, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void. Contractor's terms and conditions on its Sales Orders, Invoices, website, etc., will not apply to this Contract.



48. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Division's or the Eligible User's right to enforce this Contract with respect to any default of this Contract or defect in the Services that has not been cured.
49. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
50. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revision Date: 23 April 2020)



## APPENDIX B: NASPO VALUE POINT CARD USER AGREEMENT PURCHASING ENTITY ADDENDUM

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This Purchasing Entity Addendum (“**Addendum**”) is entered into by Insert Political Subdivision Name, organized under the laws of the State of            (“**Participant**”) and U.S. Bank. This Addendum shall become effective upon signing by U.S. Bank.

### RECITALS

1. Insert name of Participating State (the “**State**”) and U.S. Bank entered into the Insert name of State Participating Addendum dated           , as amended, supplemented or otherwise modified (the “**Agreement**”) for the purpose of providing commercial card services (the “**Program**”);
2. Participant desires to participate as a “Purchasing Entity” under the Program and Agreement, with sole liability its own obligations it may incur under the Program and Agreement; and
3. U.S. Bank has agreed to allow Participant to be bound under the Agreement and participate in the Program as a “Purchasing Entity”.

Now, therefore, for and in consideration of the mutual promises contained in this Addendum and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Participant and U.S. Bank agree as follows:

1. **DEFINITIONS.** Unless otherwise stated in this Addendum, all capitalized terms shall have the same meaning as set forth in the Agreement.
2. **DESIGNATION.** Participant is hereby designated as a “Purchasing Entity” under the Agreement, and upon U.S. Bank’s execution of this Addendum (after completing its necessary due diligence) Participant shall be deemed a “Purchasing Entity” thereunder until Participant so elects to remove such designation or such designation is revoked as set forth in section 6 below. U.S. Bank will take direction from such Participant in the issuing of Accounts (or the suspension of Accounts issued at Participant’s direction). This Addendum shall be considered a “Card User Agreement” for purposes of the Agreement.
3. **PARTICIPANT REPRESENTATIONS, WARRANTIES AND COVENANTS.** Participant
  - 3.1. Represents and warrants that it has received a copy of the Agreement;
  - 3.2. Represents that it is a valid political subdivision of the State of           ;
  - 3.3 Represents and warrants that as of the date hereof that each of the representations and warranties made by the State in the Agreement to U.S. Bank can be made by Participant without breach on the date hereof;
  - 3.4. Represents and warrants that all financial and other information provided to U.S. Bank by or about Participant is true and correct;
  - 3.5 Agrees to comply with and be bound by the terms and conditions of the Agreement, including any future amendment regardless of whether Participant has received notice of such amendment;
  - 3.6. Agrees it is liable for its own performance of the terms and conditions of the Agreement (including as it may be amended from time to time) as if Participant signed the Agreement, including for all obligations incurred by it or by any party issued an Account at its direction, but shall not be liable for any obligations incurred by the State or any other participants; and
  - 3.7 Agrees that it may not assign or transfer its rights under this Addendum or the Agreement without the express consent of U.S. Bank.
4. **LIABILITY FOR PARTICIPANT’S PERFORMANCE AND OBLIGATIONS.** Participant agrees that it shall be solely liable for its performance of the terms and conditions of the Agreement and this

Addendum. The State shall have no liability for any obligations incurred under the Program by Participant and any Account holder designated by such Participant.

5. **NOTICES.** The notice address for Participant is:  
Participant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

6. **CHANGE OF CONTROL.** Participant shall immediately notify U.S. Bank in writing of the occurrence of any event concerning Participant that (i) would prevent Participant from making the representations and warranties contained in section 3 at such time or (ii) results in a change of the legal name of such Participant. Participant shall promptly provide such additional details as reasonably requested by U.S. Bank regarding such event. At the election of U.S. Bank, the rights of Participant to be designated a "Participant" under the Agreement may be revoked based upon the notification provided by pursuant to section 6(i) and this Addendum shall terminate.
7. **BINDING AGREEMENT.** The representations, warranties and covenants of Participant in this Addendum constitute valid, binding and enforceable agreements of Participant. The execution of this Addendum and the performance of the obligations hereunder are within the power of Participant, have been authorized by all necessary action and do not constitute a breach of any agreement to which Participant is a party or is bound. Participant represents and warrants that this transaction is within the scope of the normal course of business and does not require further authorization for Participant to be duly bound by this Addendum. Any breach of the terms of this Addendum by the Participant shall also be a default under the Agreement by the Participant giving rise on the part of U.S. Bank to exercise remedies based upon such default. A breach of the terms of the Addendum by Participant shall give rise to the right of U.S. Bank to terminate this Addendum and remove Participant from the Program.
8. **RATIFICATION, AMENDMENT AND TERMINATION OF AGREEMENT.** Participant acknowledges that U.S. Bank and the State may from time to time enter into amendments of the Agreement. No such amendments shall require the consent of, or notification to, Participant and Participant shall be bound by the terms contained in any such amendments. Any failure to inform Participant of any amendment shall not provide a defense to Participant against U.S. Bank's enforcement of the Agreement (as amended) or this Addendum against Participant. **In the event of a termination of the Agreement or the Master Agreement described therein, Participant acknowledges and agrees that U.S. Bank will not be required to pay Participant a rebate payment for the Quarter in which such termination occurs or any subsequent Quarter thereafter.**
9. **AUTHORIZATION AND EXECUTION.** This Addendum may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. This Addendum may be executed and delivered by the parties electronically, and fully executed electronic versions of this Addendum, or reproductions thereof, will be deemed to be original counterparts.

The signer(s) represents and warrants that (i) he or she is authorized by an applicable authority to enter into all transactions contemplated by this Addendum, and (ii) the signatures appearing on all supporting documents of authority are authentic.

**PARTICIPANT**

**U.S. BANK**

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Legal Name of Participant

\_\_\_\_\_  
U.S. Bank National Association

\_\_\_\_\_  
(Signature of Authorized Individual)

\_\_\_\_\_  
(Printed Name of Authorized Individual)

\_\_\_\_\_  
Vice President

\_\_\_\_\_  
(Printed Title of Authorized Individual)