



STATE OF MINNESOTA PARTICIPATING ADDENDUM

to the
Commercial Card Solution
Washington State Contract #00612
For Purchasing and Fleet Cards
Issued on behalf of the Western States Contracting Alliance (WSCA-NASPO)
Between
U.S. Bank National Association
and
The State of Minnesota

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1. SCOPE & SERVICES

1.1 Scope

This Participating Addendum ("Addendum") between the State of Minnesota ("Participating Entity") and U.S. Bank National Association ("U.S. Bank") relates to the WSCA-NASPO Contract led by the State of Washington.

1.2 Term & Termination of Contract and Participating Addendum

The initial term of the WSCA-NASPO Contract led by the State of Washington is for 5 years (also defined as the base period) from January 1, 2014 through December 31, 2018, with the option to extend for up to two (2) years at the mutual agreement of the Lead State and U.S. Bank. The entire term shall not exceed seven (7) years. The Participating Addendum may be canceled by the Participating Entity or its Commissioner of Administration at any time, with or without cause, upon ninety (90) days written notice to U.S. Bank. 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 a cancellation, the Participating Entity remains liable to U.S. Bank for those fees and charges already incurred at the time of termination and U.S. Bank shall be entitled to such payment.

The effective date of this Participating Addendum shall be April 1, 2014 ("Effective Date of the Participating Addendum").

The term of the Participating Addendum shall run from the Effective Date of the Participating Addendum through the end of the term of the Contract unless the Participating Addendum is terminated earlier. The term of the Participating Addendum shall not exceed the term of the Contract.

1.3 Commencement of the New Revenue Share Opportunity for each Participating Entity

The first revenue share payment pursuant to this Participating Addendum, if any is earned, shall be made within sixty (60) days after the end of the first Agreement Quarter. The first Agreement Quarter is defined as the first full Calendar Quarter which consists of the three (3) month calendar period beginning in January, April, July or October following the Effective Date of the Participating Addendum.

1.4 Final Revenue Share Opportunity Pursuant to the First WSCA contract for Renewing Entities

U.S. Bank shall pay to each entity signing a Participating Addendum that is also currently participating under the Master Services Agreement number 5-06-99-01 dated October 19, 2006 between the State of California and U.S. Bank ("the First WSCA Contract") a final revenue share pursuant to the terms of the First WSCA Contract, if any is earned, calculated from the beginning of the final Agreement Quarter of that entity's participation in the First WSCA Contract to the last day of that Agreement Quarter (the "Final Revenue Share Payment"). The Final Revenue Share Payment, if any, shall be made within sixty (60) days after the end of the final Agreement Quarter under the First WSCA Contract.

1.5 Services

This Addendum encompasses Category 1 and 2 of the WSCA-NASPO Contract 00612. Participating Entities may choose to use Category 1, Category 2, or both categories of the Contract.

Category 1 - Purchasing, Travel, One Cards, Declining Balance/Managed Spend Cards.

Category 2 - Fleet Cards.

The State shall indicate which products they are requesting to use on the Minnesota CPV Member Product Offering list set out herein at Section 4.

2. PARTICIPATION

2.1 Participation Sign-up

First Step: The State of Minnesota shall complete this required Participating Addendum for requested products in Category 1 and/or Category 2. The completed form shall be sent to the primary contact for the State of Washington for routing and processing. Second Step: The State of Minnesota must continue to be credit approved by the Contractor.

2.2 Cooperative Purchasing Venture Members ("CPVs"):

U.S. Bank requires Cooperative Purchasing Venture Members ("CPV Members" to complete a Minnesota CPV Member Addendum form in order to participate (**Appendix A, Document 1**). The form must be filled out by an approved representative from the Political Subdivision. The form shall be submitted to the primary contact at U.S. Bank. Category 1 and Category 2 have separate primary contacts as laid out in Section 3 of this Participating Addendum.

2.3 Late Penalty Payments

Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed Account Statement, invoice, merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." The State is not required to pay U.S. Bank for any goods and/or services provided without a written Account Statement, purchase order or other approved ordering document from the State. In addition, all goods and/or services provided must meet all terms, conditions and specifications of the Contract and the Account Statement or ordering document. Payments of an Account Statement or invoice within the thirty days of receipt does not waive the rights of the state to dispute any item on the Account Statement.

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.

3. PRIMARY CONTACTS

The primary contact for this contract will be the authorized signatory on the Addendum for each state.

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

Name:	Paul W. Erickson
Contractor:	U.S. Bank
Address:	901 Marquette Avenue, EP-MN-A17S, Minneapolis, MN 55402
Telephone:	612-436-6532
Email:	paulw.erickson@usbank.com
Web Address:	www.usbank.com

Contractor -- Category 2 –Fleet Card

Name:	Mark Hess
Contractor:	U.S. Bank
Address:	901 Marquette Avenue, EP-MN-A17S, Minneapolis, MN 55402
Telephone:	832-486-6544
Email:	mark.hess1@usbank.com
Web Address:	www.usbank.com

Participating Entity

State:	Minnesota
Participating Entity:	State of Minnesota
Name:	Sean Torin
Address:	50 Sherburne Ave, Room 112, St. Paul, Minnesota 55155
Telephone:	651-201-2405
Email:	Sean.Torin@state.mn.us

4. PRODUCT OFFERING

The State of Minnesota will designate upon implementation the card types to be utilized for each State Agency. The State of Minnesota prohibits use of cash advances, declining balance cards or convenience checks for State Agencies, however, the State reserves the right to add these products with the approval of the Contract Administrator. CPV Members are to indicate which products they will utilize in the U.S. Bank Minnesota CPV Member Addendum (**Appendix A, Document 1**)

Product Descriptions can be found in **Appendix A, Document 4**.

- A. ☒ Purchase Card with Corporate Liability (*Travel Accident Insurance is included with this product*)
 - ☒ Central Billing Accounts [Central Purchase Account/Event Planner/Central Relocation)
 - ☒ Managed Spend [Declining Balance functionality)
 - ☒ Emergency Response Cards
- B. ☒ One Card with Corporate Liability (*Travel Accident Insurance is included with this product*)
 - ☒ Central Billing Accounts (Central Travel Account/Event Planner/Central Relocation)
 - ☒ Managed Spend [Declining Balance functionality)
 - ☒ Emergency Response Cards
- C. ☒ Fleet Card with Corporate Liability
- D. ☒ Corporate Card (*Travel Accident Insurance included*)
 - ☒ Contingent Liability
 - ☒ Joint and Several Liability

5. CREDIT CARD PROVIDER NETWORK

The following credit card providers have been selected by U.S. Bank and are authorized to perform services under this contract:

- Category 1 - Visa
- Category 2 - Voyager

6. INCORPORATION OF DOCUMENTS

Each of the documents listed below is, by this reference, incorporated into this Addendum as though fully set forth herein and can be found in on the last page of this document.

1. **Appendix A, Document 1:** U.S. Bank Minnesota CPV Member Addendum
2. **Appendix A, Document 2:** U.S. Bank Commercial Card Master Agreement
3. **Appendix A, Document 3:** U.S. Bank Fleet Card Agreement
4. **Appendix A, Document 4:** U.S. Bank Product Descriptions
5. **Appendix A, Document 5:** Applicable Card Fee and Rebate Information
6. **Appendix B:** Minnesota General Terms, Conditions and Specifications

7. ORDER OF PRECEDENCE

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

1. Participating Entity's Participating Addendum ("PA");
2. Minnesota General Terms, Conditions and Specifications
3. WSCA-NASPO Contract 00612 Contract Terms and Conditions
4. U.S. Bank Commercial Card Master Agreement and/or Fleet Card Agreement
5. Software License Agreements/Click Agreements (Terms of Use)
6. Approved portions of Contractor's response dated January 24, 2013 to the Solicitation.

8. INCENTIVE SHARE

8.1 Incentive Share Schedule

Contract Incentive Shares will be paid quarterly within 60 days following the last day of each Calendar Quarter:

Quarter 1: January 1-March 31st

Quarter 2: April 1- June 30th

Quarter 3: July 1- September 30th

Quarter 4: October 1-December 31st

8.2 Incentive Share Calculation and Disbursement

Contract Incentive Share payments will be sent directly to the appointed account for each Participating Entity by U.S. Bank.

A Participating Entity that does not earn a minimum of \$75.00 for combined incentive share components 1-3 per quarter will forfeit its incentive share for that quarter.

The amount of the Incentive Share will be determined by combining Volume Sales for the State in question, Prompt Payment/Speed of Pay, Large Ticket Sales, and Annual Sales Volume Incentive.

Incentive Share (Rebate) Formulas can be found in **Appendix A, Document 5**, Applicable Card Fee and Rebate Information.

The Incentive Share schedule and disbursement terms may be changed by mutual agreement via a fully executed amendment to the contract.

9. CONTRACTOR'S MASTER AGREEMENT

The signatories to this Addendum agree they will adhere to the guidelines outlined by U.S. Bank in its Commercial Card Master Agreement.

10. TERMS AND CONDITIONS

Contractor and participants will adhere to the above-referenced WSCA-NASPO Contract 00612 Terms and Conditions unless otherwise specified in the Participating Entity's specific Participating Addendum. See Appendix B for Minnesota Specific Terms and Conditions which are hereby expressly incorporated by reference.

11. CONTRACT SIGNATURES

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

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

Contracts can be found on the WSCA-NASPO site at the following address:

<http://www.aboutwsca.org/contract.cfm/contract/13wn-2006>

IN VIEW OF THE ABOVE, the parties listed below agree to execute this Addendum by their signatures, on the dates below.

Dated this 24th day of March 2014

U.S. BANK NATIONAL ASSOCIATION

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

By: 

Kelly M. Caspers

Title: Vice President

Date: March 24, 2014

Dated this 25th day of March 2014

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, subd. 3.

By: 

Title: Acquisition Management Specialist

Date: 3/25/14

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: 

Date: 3/25/2014

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

State of Minnesota – U.S. Bank Commercial Card Solutions – Participating Addendum
Contract # 75413 Purchasing Card **Contract # 75427 Fleet Card**
Appendix A, Document 1 – Minnesota CPV Member Addendum

MINNESOTA CPV MEMBER ADDENDUM For use only by CPVs of the State of Minnesota

This Minnesota CPV Member Addendum constitutes an addendum to and modification of the Participating Addendum dated ("Participating Addendum") which was entered into by and between U.S. Bank National Association ("U.S. Bank") and the government entity of Minnesota ("Entity") and which constitutes an addendum to the WSCA-NASPO Contract dated January 1, 2014 between U.S. Bank and the State of Washington. This Minnesota CPV Member Addendum is entered into by and between U.S. Bank and the Minnesota CPV Member identified herein. This Minnesota CPV Member Addendum shall become effective upon signing by or on the behalf of both parties ("Effective Date") and supersedes any previous and like contracts or addenda with the Political Subdivision.

RECITALS

- A. Entity has entered into the Participating Addendum for the purpose of making available a Purchase Card, One Card, Fleet Card or Corporate Card Program as described in the Participating Addendum for use by CPV Members located in the State of Minnesota;
- B. Entity is willing to permit Minnesota CPV Member to participate in the Card Program provided that Minnesota CPV Member assumes all responsibility and liability for Minnesota CPV Member's performance of the terms and conditions of the Participating Addendum as if Minnesota CPV Member was the entity signing the Participating Addendum as the government Entity. Entity shall not bear liability or responsibility for Minnesota CPV Member under the Participating Addendum or this Minnesota CPV Member Addendum; and
- C. Minnesota CPV Member has received a copy of the Participating Addendum from the Entity, and after a thorough review of the Participating Addendum, desires to participate as a Minnesota CPV Member under the Participating Addendum. Minnesota CPV Member assumes all responsibility and liability for Minnesota CPV Member's performance of the terms and conditions of this Minnesota CPV Member Addendum, as well as the Participating Addendum, as if Minnesota CPV Member was the entity signing the Participating Addendum as the Entity, but Minnesota CPV Member shall not be liable for the acts and omissions of Entity under the Participating Addendum or this Minnesota CPV Member Addendum.

ADDENDUM

Now therefore, in consideration of the foregoing Recitals, which are incorporated herein by reference, the mutual premises and covenants set forth in the Addendum, which are incorporated herein by reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all parties agree as follows:

- 1. Definitions. Capitalized terms used in this Minnesota CPV Member Addendum and not otherwise defined in this Minnesota CPV Member Addendum are used with the same respective meanings attributed thereto in the Participating Addendum.
- 2. Minnesota CPV Member Responsibility. Minnesota CPV Member agrees to accept and perform all duties, responsibilities and obligations required of the Entity as set forth in the Participating Addendum. Cards shall be issued to designated employees of Minnesota CPV Member upon execution of this Minnesota CPV Member Addendum by Minnesota CPV Member and U.S. Bank.
- 3. Financial Information. In order to determine credit qualifications for Political Subdivision, Minnesota CPV Member shall provide U.S. Bank with the last three (3) years of audited financial statements with this signed Minnesota CPV Member Addendum. Minnesota CPV Member shall provide to U.S. Bank annual financial statements thereafter. U.S. Bank will review the financial statements and notify Minnesota CPV Member of the approval or decline of its credit qualification. If such financial statements can be independently obtained by U.S. Bank, Minnesota CPV Member will not be required to provide such financial statements.
- 4. Payment. Minnesota CPV Member shall make payment to U.S. Bank for all Debt incurred by Minnesota CPV Member, its Cardholders and Accountholders as provided in the Minnesota CPV Member Addendum. "Debt" means all amounts charged to a card and/or account including without limitation all amounts related to purchases, fees and other Charges that are owed to U.S. Bank by Minnesota CPV Member, its Cardholders and Accountholders.
- 5. Authority. The representations, warranties and recitals of Minnesota CPV Member set forth in this Minnesota CPV Member Addendum and the Participating Addendum constitute valid, binding and enforceable Addenda of Political Subdivision. All extensions of credit made to Minnesota CPV Member pursuant to this Minnesota CPV Member Addendum and the Participating Addendum will be valid and enforceable obligations of Minnesota CPV Member and Minnesota CPV Member shall pay to U.S. Bank all Debts incurred by Minnesota CPV Member in accordance with the terms of the Participating Addendum and this Minnesota CPV Member Addendum. The execution of this Minnesota CPV Member Addendum and the performance of the obligations hereunder and under the Participating Addendum are within the power of Minnesota CPV Member, have been authorized by all necessary action and do not constitute a breach of any contract to which Minnesota CPV Member is a party or is bound.
- 6. Purpose of Card Use. Minnesota CPV Member declares that cards shall be used for official Minnesota CPV Member purchases only, and shall not be used for individual, consumer purchases or to incur consumer debt. Minnesota CPV Member warrants that it possesses the financial capacity to perform all of its obligations under the Participating Addendum and this Minnesota CPV Member Addendum.
- 7. Governing Law. Except as provided to the contrary herein, the law of the state of MN and applicable federal laws and regulations shall apply to all services provided by U.S. Bank under this Participating Addendum.

State of Minnesota – U.S. Bank Commercial Card Solutions – Participating Addendum
Contract # 75413 Purchasing Card **Contract # 75427 Fleet Card**
Appendix A, Document 1 – Minnesota CPV Member Addendum

8. Card Products and Card Product Enhancements: U.S. Bank may provide the following Card Products to Minnesota CPV Member and its Cardholders. Minnesota CPV Member shall mark here the products requested.

- A. ☐ Purchase Card with Corporate Liability (*Travel Accident Insurance is included with this product*)
☐ Central Billing Accounts (Central Travel Account/Event Planner/Central Relocation)
☐ Managed Spend (Declining Balance functionality)
☐ Emergency Response Cards
- B. ☐ One Card with Corporate Liability (*Travel Accident Insurance is included with this product*)
☐ Central Billing Accounts (Central Travel Account/Event Planner/Central Relocation)
☐ Managed Spend (Declining Balance functionality)
☐ Emergency Response Cards
- C. ☐ Fleet Card with Corporate Liability
- D. ☐ Corporate Card (*Travel Accident Insurance included*)
☐ Contingent Liability
☐ Joint and Several Liability

9. The notice address for Minnesota CPV Member is:

 Attn: _____

10. Authorization. Minnesota CPV Member certifies to U.S. Bank that the person executing this Minnesota CPV Member Addendum is authorized by Minnesota CPV Member in accord with its organization rules and applicable law to bind Minnesota CPV Member to the Terms and Conditions of this Minnesota CPV Member Addendum, including the authority to incur Debt in the name of Minnesota CPV Member.

11. Execution. By signing below, the individual(s) signing this Minnesota CPV Member Addendum in his or her capacity as an authorized signing officer of Minnesota CPV Member and not in his or her personal capacity, certifies and warrants that (1) all action required by Minnesota CPV Member's organizational documents to authorize the signer(s) to act on behalf of Minnesota CPV Member in all actions taken under this Minnesota CPV Member Addendum, including but not limited to, the authority to incur Debt on behalf of Minnesota CPV Member, has been taken, (2) each signer is empowered in the name of and on behalf of Minnesota CPV Member to enter into all transactions contemplated in this Minnesota CPV Member Addendum and (3) the signatures appearing on all supporting documents of authority, if any, are authentic.

12. Reliance. Minnesota CPV Member has read, understands and agrees to all terms and conditions in this Minnesota CPV Member Addendum, and U.S. Bank is entitled to act in reliance upon the authorizations and certifications set forth in this Minnesota CPV Member Addendum.

IN WITNESS WHEREOF, the parties have, by their authorized representatives, executed this Minnesota CPV Member Addendum.

Dated this _____ day of _____, 20____ By Minnesota CPV Member: _____ (Minnesota CPV Member Name) _____ (Signature of Authorized Signer) _____ (Printed Name of Authorized Signer) _____ (Printed Title of Authorized Signer)	Dated this _____ day of _____, 20____ By U.S. Bank: U.S. Bank National Association _____ (Signature of Authorized Signer) Kelly M. Caspers _____ (Printed Name of Authorized Signer) Vice President _____ (Printed Title of Authorized Signer)
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Approved as to form:

 (Signature of Attorney for Minnesota CPV Member)

 (Printed Name of Attorney)

Before completing the Certificate of Authority, please read:

- If the document being signed was "approved as to form" by an attorney, it is not necessary to complete the attached Certificate of Authority (C of A).
- If the document was not "approved as to form" by an attorney, please complete the attached C of A (page 2).
- Be sure to date all documents upon signing. Undated documents cannot be accepted and will be returned for dating.

**SIGNING INSTRUCTIONS FOR
CERTIFICATE OF AUTHORITY**

Note that three (3) different individuals must sign and date the C of A. If the Entity does not have three individuals who are authorized to sign on behalf of the Government Entity, please refer to page 3.

SECTION 1 Organizational Information- Enter the *legal* Entity name and the tax ID number on the C of A. **Note:** The legal name of the Entity name is required. The legal name is usually the name on the Government Entity's financial statements.

SECTION 2 Authorized Persons - The individual who signed the Card Addendum/Amendment must complete and sign Section 2.

SECTION 3 Execution Requirement - Check only one box in Section 3 to indicate how many individuals (either 1 or 2) that the Entity requires to sign legal documents on behalf of the Government Entity.

SECTION 4 Execution - No action required.

SECTION 5 Certification - Two (2) individuals must sign **and date** Section 5 as well as insert their names and titles. **Note:** The individual(s) who signed Section 2 cannot sign in Section 5 or this document is invalid.

- An officer of the Entity ("Officer One") is required to sign the top area of Section 5 attesting to the signatures in Section 2.
- One other officer of the Entity ("Officer Two") must sign the bottom area of Section 5 *attesting to the signature of Officer One*.

Please see examples below:

5. Certification. I certify that I am the _____ and I am acting in my official capacity as an authorized officer who has been given the authority by the Entity to certify that the Authorized Person(s) has/have the full power and authority under applicable law and the governance rules relating to the Entity to execute and deliver to U.S. Bank, on behalf of the Government Entity, and to bind the Entity under, the Documents for the purpose of establishing and extending the Services. I also certify that the name(s) and title(s) of the Authorized Person(s) set forth above are correct and that the signature appearing beside each name is a true and genuine specimen of his/her signature.

↑ Printed Name of the _____ of the Entity↑ (Cannot be an Authorized Person listed in Section 2)

↑ Signature of the _____ of the Entity↑ Date

I certify that I am an officer of the Government Entity, and as such, I certify that the above-named _____ is acting in such capacity on behalf of the Government Entity, the signature below is my genuine signature and the signature above is the genuine signature of such _____.

↑ Printed Name & Title of Individual Signing Below ↑ (Cannot be an Authorized Person listed in Section 2)

↑ Signature ↑ Attested by One (1) Other Individual of the Government Entity Date

CERTIFICATE OF AUTHORITY

1. **Organizational Information.** This Certificate of Authority has been completed on behalf of the following Entity (the "Government Entity");

Entity Legal Name: _____

Federal Tax Identification Number: _____

12. **Authorized Persons.** In accordance with the governance rules relating to the Government Entity, the following individuals (the "Authorized Person(s)") are authorized, on behalf of the Government Entity, to execute and deliver to U.S. Bank National Association ND ("U.S. Bank") and/or its affiliates the applicable Addendum(s), any applicable addenda and/or amendments thereto and any other documents or writings required by U.S. Bank (collectively, the "Documents") for the purpose of establishing one (1) or more card programs, extending credit and providing related services to the Entity with U.S. Bank in the United States (collectively, the "Services"):

Name	Title	Signature

3. **Execution Requirements.** The governance rules relating to the Entity require the following number of Authorized Persons to sign the Documents for the Services (choose only one box):

- ☐ One (1) Authorized Person
☐ Two (2) Authorized Persons

4. **Execution.** By signing the Documents, each individual signing in his or her capacity as an authorized signing officer of the Entity and not in his or her personal capacity, certifies and warrants that (a) all action required by Government Entity's organizational documents to authorize the signer(s) to act on behalf of the Entity in all actions taken under the Documents, including but not limited to, the authority to incur debt on behalf of the Government Entity, has been taken, (b) each signer is empowered in the name of and on behalf of the Entity to enter into all transactions and Services contemplated in the Documents, and (c) the signatures appearing on all supporting documents of authority are authentic.

5. **Certification.** I certify that I am the _____ and I am acting in my official capacity as an authorized officer who has been given the authority by the Entity to certify that the Authorized Person(s) has/have the full power and authority under applicable law and the governance rules relating to the Entity to execute and deliver to U.S. Bank, on behalf of the Government Entity, and to bind the Entity under, the Documents for the purpose of establishing and extending the Services. I also certify that the name(s) and title(s) of the Authorized Person(s) set forth above are correct and that the signature appearing beside each name is a true and genuine specimen of his/her signature.

↑ Printed Name of the _____ of the Entity↑ (Cannot be an Authorized Person listed in Section 2)

↑ Signature of the _____ of the Entity↑ _____ Date

I certify that I am an officer of the Government Entity, and as such, I certify that the above-named _____ is acting in such capacity on behalf of the Government Entity, the signature below is my genuine signature and the signature above is the genuine signature of such _____.

↑ Printed Name & Title of Individual Signing Below ↑ (Cannot be an Authorized Person listed in Section 2)

↑ Signature ↑ Attested by One (1) Other Individual of the Entity _____ Date

EXAMPLES TO SIGNING INSTRUCTIONS
FOR
CERTIFICATE OF AUTHORITY (C OF A)

EXAMPLE 1:

1. One (1) person is required to sign legal documents, and
2. Entity has **more than two (2)** authorized signatories who can attest to signatures of other signatories.

Addendum: Person A signs.
C of A Section 2: Person A completes and signs.
C of A Section 3: First box is checked.
C of A Section 4 (part 1): Person B (preferably the Secretary) signs attesting to the signature of Person A.
C of A Section 4 (part 2): Person C signs attesting to Person B's authority and signature.

EXAMPLE 2:

1. Two (2) people are required to sign legal documents, and
2. Entity has **more than two (2)** authorized signatories who can attest to signatures of other signatories.

Addendum: Persons A and B sign.
C of A Section 2: Persons A and B complete and sign.
C of A Section 3: Second box is checked.
C of A Section 4 (part 1): Person C (preferably the Secretary) signs attesting to the signatures of Persons A and B.
C of A Section 4 (part 2): Person D signs attesting to Person C's authority and signature.

EXAMPLE 3:

1. One (1) person is required to sign legal documents, and
2. Entity has **only one (1) other** authorized signatory who can attest to signatures of other signatories.

Addendum: Person A signs.
C of A Section 2: Person A completes and signs.
C of A Section 3: First box is checked.
C of A Section 4 (part 1): Person B (preferably the Secretary) signs attesting to the signature of Person A.
NOTE: If the Secretary can sign the C of A, than they **cannot** be Person A; they **must** be Person B.
C of A Section 4 (part 2): Person A signs attesting to Person B's authority and signature.

EXAMPLE 4:

1. Two (2) people are required to sign legal documents, and
2. Entity has **only one (1) other** authorized signatory who can attest to signatures of other signatories.

Addendum: Persons A and B sign.
C of A Section 2: Persons A and B complete and sign.
C of A Section 3: Second box is checked.
C of A Section 4 (part 1): Either Person A or B (preferably the Secretary) signs attesting to the signature of Persons A and B.
NOTE: If the Secretary can sign the C of A, than they **must** sign in Section 4 (part 1) and the other person must sign in Section 4 (part 2).
C of A Section 4 (part 2): The Person who did not sign Section 4 (part 1) signs attesting to the signing authority and signature of the person who did sign in Section 4 (part 1), subject to the note above.

U.S. BANK COMMERCIAL CARD MASTER AGREEMENT

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

Participation in Commercial Card Program:

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

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

"Minnesota CPV Members" means any municipalities, counties, and institutions of higher education located in the state of Minnesota that do not rely upon the Government Entity for funding. Political Subdivisions may participate in this Agreement upon credit approval by U.S. Bank and upon the signing and submission of a properly completed Minnesota CPV Member Addendum.

I. CREDIT PROVISIONS

- A. **Financial Information.** The establishment of a Commercial Card Program provides an extension of credit, and Government Entity shall provide sufficient information to enable U.S. Bank to perform periodic credit reviews.
1. **Political Subdivisions.** Each Minnesota CPV Member must individually credit qualify and submit a signed, properly completed Minnesota CPV Member Addendum to U.S. Bank.
 2. **Financial Information for Government Entity and Political Subdivisions.** To become credit qualified, the Government Entity and each Minnesota CPV Member will provide the last three (3) years of audited financial statements to U.S. Bank prior to the issuance of any cards and will provide annual financial statements on or before one hundred eighty (180) days after the end of the Government Entity or Minnesota CPV Member's fiscal year. Minnesota CPV Member should provide this first set of financial statements with their signed, completed Minnesota CPV Member Addendum. U.S. Bank will review the financial statements and provide notice to each Minnesota CPV Member of the approval or decline of their credit qualification. If satisfactory financial information can be found on the website of Government Entity or Minnesota CPV Member, U.S. Bank will not require the Government Entity or such Minnesota CPV Member to provide financial information that U.S. Bank can obtain on its own.
- B. **Aggregate Product Credit Limit and Account Credit Limits.** Subject to credit approval by U.S. Bank, an Account Credit Limit (an "ACL") for each Account and an Aggregate Product Credit Limit (the "PCL") for all Accounts shall be established by U.S. Bank pursuant to this Agreement.
1. **Revising the PCL.** U.S. Bank, at its sole discretion, shall have the right to revise the PCL. U.S. Bank shall provide notice to Government Entity of any decrease in the PCL which results in a revised PCL that is lower than the aggregate current amount outstanding on all Accounts. Upon such event, Government Entity shall have ten (10) days to make a payment to U.S. Bank that is sufficient to reduce the aggregate current amount outstanding to an amount that is equal to or less than the revised PCL.
 2. **Revising ACLs.** U.S. Bank, at its sole discretion, shall have the right to revise any ACL.
 - a. **Government Entity Accounts.** U.S. Bank shall provide notice to Government Entity of any decrease in an ACL which results in a revised ACL that is lower than the aggregate current amount outstanding on the Account. Upon such event, Government Entity shall have ten (10) days to make a payment to U.S. Bank on the Account that is sufficient to reduce the aggregate current amount outstanding for such Account to an amount that is equal to or less than the revised ACL.
 - b. **Cardholder Accounts.** U.S. Bank, at its sole discretion, shall have the right to revise any ACL and/or limit spending activity on any Cardholder Account. Based on the credit worthiness of Government Entity and/or its Cardholder, U.S. Bank, at its sole discretion, shall establish an ACL of no less than five hundred U.S. Dollars (\$500.00).
 - c. **Fraudulent Activity.** U.S. Bank may temporarily revise any ACL and/or limit spending activity on any Account for which fraudulent activity is suspected.
- C. **ATM Access / Cash Advances.** U.S. Bank provides access to Cash Advances through owned and participating bank Automated Teller Machines and Association member offices. If Government Entity elects to use Cash Advances, U.S. Bank will establish predetermined Cash Advance limits for Cardholders, either as a group or individually. U.S. Bank reserves the right to suspend or terminate Cash Advance access for Cardholders, either as a group or individually, in the event U.S. Bank determines that continued access presents a risk of loss or liability to U.S. Bank or Government Entity.

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

II. U.S. COMMERCIAL CARD PROGRAMS

- A. **Card Products.** U.S. Bank may provide the following Card Products to Government Entity and its Cardholders. Card Product availability and Card Products for which Government Entity has been approved are specified in the Participating Addendum.
1. **U.S. Bank Corporate Card.** The U.S. Bank Corporate Card is a charge card designed for use by Cardholders to charge travel, entertainment and other goods and services that are related to the business activities of Government Entity. U.S. Bank also provides central travel accounts, which can be used for the same purpose, but without the issuance of a physical card.
 2. **U.S. Bank Managed Spend Card.** The U.S. Managed Spend Card is a specialized corporate liability card designed for use by Government Entities or Cardholders to charge business related goods and services. Government Entity may also elect to have Cards issued to family members relocating employees. Unless requested for a different duration, Managed Spend has a term of twelve (12) to thirty-six (36) months. U.S. Bank also provides Managed Spend Central Billing Accounts, which can also be used for business or relocation expenses. Based on the credit worthiness of the Government Entity and its Cardholder, U.S. Bank, at its sole discretion, shall establish a credit limit of no less than five hundred U.S. Dollars (\$500.00).
 3. **U.S. Bank One Card.** The U.S. Bank One Card is a charge card designed for use by Cardholders that combines Corporate and Purchase Card capabilities on a single Account. The One Card can be utilized for travel and entertainment related expenses as well as to charge goods and services related to the business activities of Government Entity.
 4. **U.S. Bank Purchase Card.** The U.S. Bank Purchase Card is a charge card designed for use by Cardholders to charge goods and services related to the business activities of Government Entity. U.S. Bank also provides central purchase accounts, which can be used for the same purpose, but without the issuance of a physical card.
- B. **Card and Account Issuance.** Government Entity shall designate to U.S. Bank Cardholders that are authorized to incur expenses on behalf of Government Entity during the term of this Agreement and who are to receive Cards and/or be issued Account numbers by submitting to U.S. Bank completed, duly authorized applications, in a format specified by U.S. Bank, such as through Access Online, including any applicable consents and/or authorizations from such Cardholders as may be required by the applicable local law, rule or regulation.
1. **Credit Checks.** With respect to any such application, U.S. Bank reserves the right, at its sole cost and expense and to the extent permitted by applicable law, to conduct a credit check on any Cardholder who may have sole and/or shared liability for any Debt incurred under this Agreement.
 2. **Exclusion.** U.S. Bank shall have the right to reject any Cardholder application in which the Cardholder may have sole and/or shared liability for any Debt incurred under this Agreement.
 3. **Card Delivery.** Unless Government Entity notifies U.S. Bank to the contrary, U.S. Bank shall issue Cards and/or Accounts directly to Cardholders.
 4. **Creation of Cards by Government Entity.** Government Entity has the ability to create Cards on its own through the use of Access Online. Such Cards can be created with or without an individual's name embossed on the face of the Cards. Acceptance of Cards without a name embossed on the face of the Cards is at the discretion of Merchants.
- C. **Billing and Payment.** U.S. Bank provides a variety of billing options. The availability of billing options may differ between Card Products. Billing option availability and the billing options for which Government Entity has been approved is specified herein in the Participating Addendum. Government Entity or Cardholder shall pay the amount due on the Statement by the Due Date.
1. **Individual Bill.** Cardholders receive a Statement at the conclusion of each Billing Cycle and are responsible for ensuring the balance due is paid by the Due Date. Government Entity may elect to receive one or more Summary Statements or reports showing all Transactions billed to Cardholder Accounts.

2. **Central Bill.** Each Transaction is either posted to a Cardholder Account and rolled up to a Central Account for billing or billed directly to a Central Account. Government Entity will receive one or more central account Statements at the conclusion of each Billing Cycle for all Cardholder and/or Central Account Transactions. With respect to Transactions posted to a Cardholder Account and rolled up to a Central Account, the Cardholder receives a memo Statement showing his/her respective Transactions but with no amount due. Government Entity receives a consolidated Statement, which includes the total amount due for all Cardholder Accounts and Central Accounts and is responsible for ensuring the balance due on the Statement is paid by the Due Date.
 3. **Billing Disputes.** Billing disputes must be communicated in writing to U.S. Bank at the address specified in Section V.L. herein or the address provided on the Statement. U.S. Bank must receive written communication of a dispute within sixty (60) days of the date on the Statement on which the disputed or allegedly incorrect Transaction first appeared. Association regulations govern the resolution of all billing disputes.
 4. **Merchant Category Disclaimer.** Upon request by Government Entity, U.S. Bank may either prevent or restrict usage of its Card Products to selected Merchants based on Merchant Category Code. To the extent this is requested, the following disclaimers apply:
 - a. **Limitation of Liability.** U.S. Bank can only enforce Merchant Category Code restrictions to the extent it receives accurate Merchant Category Code data with the Transaction authorization request. U.S. Bank has no liability for Transactions declined or approved contrary to the intent of Government Entity.
 - b. **Incorrect Merchant Category Codes.** To the extent Government Entity believes a Merchant has not been assigned an accurate Merchant Category Code, U.S. Bank will advise the Association of the inaccuracy. Whether or not the Merchant Category Code is changed is dependent upon applicable Association regulations.
 5. **Trailing Transactions.** Upon cancellation of an Account, the Government Entity and/or Cardholder must cancel the billing of all reoccurring Transactions to the Account.
- D. **Liability.** U.S. Bank provides a variety of liability options. The availability of liability options may differ between Card Products. Liability option availability and the liability option(s) for which Government Entity has been approved is/are specified in the Participating Addendum.
1. **Corporate Liability.** Government Entity is solely liable to U.S. Bank for all billed Transactions.
 2. **Joint and Several Liability.** Government Entity and the Cardholder are jointly and severally liable to U.S. Bank for all billed Transactions.
 3. **Contingent Liability.** Cardholder is liable to U.S. Bank for all billed Transactions. Government Entity has contingent liability, which means Government Entity is liable for any billed Transactions that are legitimate business charges and have not been previously reimbursed by Government Entity to the Cardholder.
 4. **Liability Exceptions.** Government Entity may be liable for all billed Transactions, regardless of liability option specified in the Participating Addendum, in the following circumstances:
 - a. **Failure to Notify; Liability Exceptions.** Government Entity shall immediately notify U.S. Bank of any of the following:
 - (i) Termination of employment of any Cardholder;
 - (ii) Any lost or stolen Card for which the Government Entity has liability;
 - (iii) Any compromised Account for which the Government Entity has liability; or
 - (iv) Any compromised information regarding Cards, Accounts or other sensitive data including, but not limited to, Account numbers, personal identification numbers, passwords, or Cardholder information.Government Entity shall provide sufficient information as may be requested by U.S. Bank for U.S. Bank to act on such notifications. Failure of Government Entity to provide notification may result in Government Entity's or Cardholder's liability to pay for all Transactions on such Cards and/or Accounts notwithstanding any liability option specified in the Participating Addendum. Liability is limited to period of time from when notification should have been received to when notification is actually received and only for those Transactions that U.S. Bank cannot either charge back to the Merchant or collect directly from the Cardholder. In any event, regardless of the liability option chosen, Cardholder's liability will not exceed fifty U.S. Dollars (\$50.00).
- E. **Delinquency.** If the amount shown on the Statement as the current amount due has not been paid to U.S. Bank by Government Entity and/or Cardholder by the Due Date, U.S. Bank shall have the following rights:
1. **Suspension.** U.S. Bank shall have the right to suspend any Account that is delinquent for a period exceeding two (2) Billing Cycles.
 2. **Cancellation.** U.S. Bank shall have the right to cancel any Account that is delinquent for a period exceeding three (3) Billing Cycles.
 3. **Late Fees.** U.S. Bank shall have the right to bill Late Fees on all delinquent Accounts, as specified in the Participating Addendum.
 4. **Collection Fees.** U.S. Bank shall have the right to recover any reasonable legal fees and/or other expenses incurred in collecting any delinquent amount on a cancelled Account.

III. SECURITY AND CONFIDENTIALITY

- A. **Security.** U.S. Bank and the Government Entity shall safeguard information regarding Cards, Account numbers, passwords, personal identification numbers, and other sensitive information provided by U.S. Bank in a manner that is no less stringent than those applicable to each Party's own proprietary information. Each Party will utilize each Party's

respective industry standards to maintain an appropriate information security program to prevent the unauthorized disclosure, misuse, alteration, or destruction of Confidential Information.

B. Confidentiality. The Parties agree to the following provisions regarding the use and disclosure of Confidential Information:

1. **Confidential Information.** For purposes of this Agreement, "Confidential Information" means information supplied by one Party ("Disclosing Party") to the other Party ("Recipient") that is expressly or implicitly protected from unrestricted use by persons not associated with Disclosing Party.
 - a. **U.S. Bank Confidential Information.** U.S. Bank and Government Entity agree that the Commercial Card Program and/or Global Commercial Card Program is a unique service involving the exchange of proprietary and/or Confidential Information between the Parties. Government Entity agrees that Commercial Card Program and/or Global Commercial Card Program reports, manuals, documentation, and related materials shall be circulated by it only to the extent necessary for Government Entity to manage the Commercial Card Program or Global Commercial Card Program and/or use such information in connection with Government Entity's business.
 - b. **Government Entity Confidential Information.** U.S. Bank and Government Entity agree that any non-public financial information of Government Entity and any non-public data regarding Government Entity Accounts, Transactions, charges, spending volume or repayment terms is Confidential Information of Government Entity and such information shall be circulated by U.S. Bank only to the extent necessary for U.S. Bank to offer the Commercial Card Program and/or Global Commercial Card Program.
2. **Restriction.** Government Entity and U.S. Bank agree to take all reasonable steps to safeguard the other Party's proprietary and Confidential Information and not to release such Information to any person or Party not essential to participation in the Commercial Card Program and/or Global Commercial Card Program.
3. **Care.** The Recipient shall provide the same care to avoid an unauthorized disclosure, misuse, alteration or destruction of Confidential Information of the Disclosing Party as it provides to protect its own similar proprietary information, but in no event, less than a reasonable standard of care.
4. **Relief.** Because damages may be difficult to ascertain, the Parties agree that in the event of any violation of Section III.B., without limiting any other rights and remedies of each other, an injunction may be sought against the Party who has breached or threatened to breach the aforementioned Section.
5. **Exceptions.** With respect to Confidential Information, U.S. Bank and Government Entity agree that the other may use and disclose such information for the following purposes:
 - a. **Normal Business Operations.** U.S. Bank and Government Entity may use and disclose such Confidential Information of the other as is required by normal business operations in connection with the Commercial Card Programs and as may be required by Association Operating Regulations.
 - b. **Legal and Regulatory Requirements.** U.S. Bank and Government Entity may use and disclose Confidential Information of the other to legal authorities, agents, auditors or regulators of U.S. Bank and Government Entity, respectively, or as otherwise may be required by law, rule or regulation.
 - c. **Summarized Data.** U.S. Bank and Government Entity may use and disclose Data to any third party to the extent that such Data is aggregated, summarized, or otherwise presented in a manner that does not directly or indirectly identify such Data as attributable to U.S. Bank, Government Entity, and/or Cardholders.
 - d. **Archived Data.** U.S. Bank and Government Entity are entitled to retain Confidential Information of the other for archival purposes as required in accordance with applicable law, rule or regulations.
 - e. **Third Parties.** Government Entity acknowledges that portions of its Account and Transaction data are captured by third parties, including, but not limited to the Associations, third-party service providers, Merchants, and Merchant processors, during the course of normal business operations and that the confidentiality provisions of this Agreement do not extend to such third parties.

IV. TERM AND TERMINATION

- A. **Term.** This Agreement shall remain in effect for an initial "Base Period" of five (5) years beginning on the date indicated under the column labeled "Commencement Date" and shall continue thereafter until terminated by either party by giving (90) days prior written notice to the other Party. During the initial Base Period, however, as defined in the Participating Addendum, neither party may terminate this Agreement, in whole or in part, except by mutual consent or as otherwise provided under this Section.
- B. **Termination for Cause by Either Party.** Either Party shall have the right to immediately terminate this Agreement with respect to any Card Product and/or Ancillary Service provided on the Participating Addendum, or immediately terminate this Agreement in its entirety, by providing written notice of such termination to the other Party, upon one or more of the following events:
 1. Dissolution or liquidation of the other Party, or Parent thereof, if applicable;
 2. Insolvency of, the filing of a bankruptcy or insolvency proceeding with respect to, or the appointment of a receiver or trustee for the benefit of creditors of, the other Party, or Parent thereof, if applicable or the other Party enters into any other similar proceeding or arrangement for the general benefit of its creditors;
 3. Any failure to perform a material obligation of this Agreement;
 4. If any material statement, representation or warranty of a Party, its affiliates or Parent at any time furnished to the other Party is untrue in any material respect when made;
 5. A material breach of any other agreement entered into by the Parties.

- C. **Termination for Cause by Government Entity.** Government Entity shall also have the right to terminate this Agreement with respect to any Card Product and/or Ancillary Service provided on the Participating Addendum, or terminate this Agreement in its entirety, by providing ten (10) days prior written notice of such termination to U.S. Bank upon one or more of the following events:
1. U.S. Bank's reduction of Government Entity's PCL and/or ACL, as defined in Section I. B., has materially and adversely affected Government Entity's utilization of any Card Product or the Commercial Card Program.
 2. U.S. Bank's failure to reasonably perform in accordance with a material term of any written proposal and/or presentation provided to Government Entity by U.S. Bank in contemplation of this Agreement, provided that:
 - a. Government Entity has worked with U.S. Bank to develop a sixty (60) day action plan to ensure U.S. Bank's performance materially complies with any aforementioned proposal and/or presentation; and
 - b. U.S. Bank has failed to successfully complete all deliverables agreed to in the action plan.
- D. **Termination for Cause by U.S. Bank.** U.S. Bank shall also have the right to terminate this Agreement with respect to any Card Product and/or Ancillary Service provided on the Participating Addendum, or terminate this Agreement in its entirety, by providing ten (10) days prior written notice of such termination to Government Entity upon one or more of the following events:
1. A material adverse change in the business prospects or financial condition of the Government Entity.
 2. The overall relationship is unprofitable for U.S. Bank, provided that:
 - a. U.S. Bank has worked with Government Entity to develop a sixty (60) day action plan to return the relationship to profitability; and
 - b. Government Entity has failed to successfully complete all deliverables agreed to in the action plan.
- E. **Effect of Termination.** Upon termination of this Agreement, all applicable Cards, Accounts, and/or related services shall be deemed canceled as referenced in such termination notification. Such cancellation shall be effective upon notification of termination to the other Party as referenced herein. Upon termination, Government Entity shall instruct all Cardholders to destroy their Cards and/or any records of Account numbers. U.S. Bank shall terminate all applicable services thereunder upon a stated termination date. Government Entity shall remain liable for all Debts arising from the use of a Card and/or Account prior to the termination date, in accordance with the liability options on the Participating Addendum.
- F. **Surviving Rights.** Rights, obligations and/or liabilities that arise prior to the termination of this Agreement with respect to any Card Product and/or Ancillary Service provided on the Participating Addendum, or termination of this Agreement in its entirety, shall survive any such termination.

V. OTHER TERMS AND CONDITIONS

- A. **Intellectual Property.** Government Entity and U.S. Bank each recognizes that it has no right, title or interest, proprietary or otherwise, in or to the name or any logo, or Intellectual Property owned or licensed by the other. Government Entity and U.S. Bank each agree that, without prior written consent of the other, it shall not use the name, any logo, or Intellectual Property owned or licensed by the other.
- B. **No Third Party Beneficiaries or Claims.** Any Commercial Card Program and/or Global Commercial Card Program provided to Government Entity by U.S. Bank is for the sole and exclusive benefit of Government Entity and no other persons or organizations shall have any rights and/or remedies arising under or in connection with this Agreement.
- C. **Limitation of Liability.** NEITHER GOVERNMENT ENTITY, U.S. BANK, NOR ANY PARTY'S AFFILIATES, REPRESENTATIVES AND ASSIGNS SHALL IN ANY EVENT BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES OF ANY NATURE (INCLUDING LOST PROFITS) EVEN IF SUCH PARTY HAD BEEN NOTIFIED OF THEIR POSSIBLE EXISTENCE.
- D. **Representations and Warranties.** Each Party represents and warrants with respect to such Party that:
1. This Agreement constitutes a valid, binding and enforceable agreement;
 2. The execution of this Agreement and the performance of the obligations hereunder are within such Party's powers; have been authorized by all necessary action; do not require action by or approval of any governmental or regulatory body, agency or official; and do not constitute a breach of any material agreement of such Party;
 3. The execution of this Agreement and the performance of the obligations hereunder shall not cause a material breach of any duty arising in law or equity; and
 4. As of the date of this Agreement, such Party possesses the financial capacity to perform all of its obligations under this Agreement.

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

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

- E. **Modification or Amendment.** This Agreement shall not be modified or amended except by writing and signed by both Government Entity and U.S. Bank.

State of Minnesota – U.S. Bank Commercial Card Solutions – Participating Addendum
Contract # 75413 Purchasing Card Contract # 75427 Fleet Card
Appendix A, Document 2 – U.S. Bank Commercial Card Master Agreement

- F. **Severability.** Should any provision of this Agreement be declared invalid for any reason, such declaration shall not affect the validity of any other provision of this Agreement, which shall remain in full force and effect as if this Agreement had been executed with the invalid provision(s) eliminated. The Parties shall use their commercially reasonable efforts to agree upon a valid substitute provision in accordance with the purpose of this Agreement and the intent of the Parties.
- G. **Non-Waiver.** The failure of U.S. Bank or Government Entity to exercise any right, power or option arising under this Agreement, or to insist upon strict compliance with the terms of this Agreement shall not constitute a waiver of this Agreement with respect to any other or subsequent breach hereof, nor a waiver by either of U.S. Bank or Government Entity of its rights at any time thereafter to require exact and strict compliance with all the terms hereof.
- H. **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- I. **Interpretation of this Agreement.** The Parties expressly agree that this Agreement shall not be construed more strongly against either Party regardless of which Party is more responsible for its preparation. This Agreement constitutes the entire agreement between the Parties concerning the matters addressed in this Agreement, and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof. Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa, words importing any gender include all genders and references to agreements and other contractual instruments shall be deemed to include all present or future amendments, supplements, restatements or replacements thereof or thereto. Headings are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- J. **Sole Provider.** The Parties acknowledge and agree that U.S. Bank shall be the sole provider to Government Entity of the Card Products and Ancillary Services set forth in the Participating Addendum.
- K. **Commercial Card Program and Card Issuance.** U.S. Bank has approved Government Entity for the Commercial Card Program in the United States and shall provide the products and options indicated in the Participating Addendum. Government Entity shall designate to U.S. Bank proposed employees who are anticipated to incur expenses on behalf of Government Entity and who are to receive Accounts, with or without Cards, by submitting completed, duly authorized applications, in a format specified by U.S. Bank, and with any applicable consents or authorizations from such Cardholder applicant as may be required herein or in such applications. If an Account is used for Purchases or to obtain cash in a country other than the United States, the Statement shall reflect the conversion into U.S. Dollars of Transactions that occurred in a different currency and an applicable exchange rate for any such conversion. Due to fluctuations in foreign exchange rates, a credit transaction may not be in the same amount as the original debit transaction.
- L. **Notice and Communication.** Except with respect to notices relating to the status of individual Cards and/or Accounts, all notices, requests and other communications provided for hereunder must be directed to the other Party at the respective addresses set forth below, unless otherwise specified herein, and must be in writing, postage prepaid or hand delivered. Either Party may change its address by written notice to the other Party.

U.S. Bank	Government Entity
U.S. Bank National Association Corporate Payment Systems Mail Code EP-MN-A17S 901 Marquette Avenue Minneapolis, MN 55402 U.S.A. Attn: CPS Contract Services	State of Minnesota Department of Administration 50 Sherburne Avenue, Room 112 St. Paul, Minnesota 55155 Attn: Acquisition Management Specialist

- M. **USA PATRIOT Act.** In order to comply with the requirements of the USA PATRIOT Act, U.S. Bank may require Government Entity and Cardholders to provide their legal entity name, street address, taxpayer identification number and other information that will allow U.S. Bank to identify each Government Entity and Cardholders prior to establishing an Account under or in connection with the Agreement. U.S. Bank reserves the right to require that Government Entity and Cardholders promptly provide to U.S. Bank sufficient identification documents upon request and in connection with USA PATRIOT Act compliance.
- N. **Governing Law.** Except as provided to the contrary herein, the law of the state in which Government Entity resides and applicable federal laws and regulations of the United States shall apply to all Commercial Card Program services provided by U.S. Bank under this Agreement. Notwithstanding the foregoing, the laws of the State of Minnesota and applicable federal laws and regulations of the United States shall govern Software Services provided to Government Entity under this Agreement.
- O. **Interchange Rate.** The Revenue Sharing Opportunity described in this Agreement is based on current interchange rates determined by the Association. These interchange rates are subject to change by authorities outside the control of U.S. Bank. In the event of a decrease or increase in the Association's published interchange rates by five percent (5%) or more, U.S. Bank will have the right to replace the current Revenue Sharing Opportunity with a new Revenue Sharing Opportunity proportionate to the change of the revised interchange rates.

State of Minnesota – U.S. Bank Commercial Card Solutions – Participating Addendum
Contract # 75413 Purchasing Card **Contract # 75427 Fleet Card**
Appendix A, Document 2 – U.S. Bank Commercial Card Master Agreement

- P. Other Agreements and Regulations.** In addition to this Agreement, the products and services provided to Government Entity are subject to the following additional agreements and/or regulations:
1. **Clearing House Operating Regulations.** Any applicable automated clearinghouse operating rules, including, without limitation, the National Automated Clearing House Association Operating Rules and Guidelines (collectively referred to as the "NACHA Rules");
 2. **Association Operating Regulations.** Association operating rules and regulations, including, without limitation, Visa USA, Visa International, MasterCard USA, and MasterCard International; and
 3. **Cardholder Agreement.** Each Cardholder may receive a Cardholder Agreement that governs the use of the Account. Activation of the Card or Account by the Cardholder and/or use of the Card or Account by the Cardholder constitutes concurrence with the terms and conditions of the Cardholder Agreement.
- Q. Disputes.** All disputes regarding Charges or billings for the U.S. Bank Commercial Card Program shall be communicated in writing through Access Online or by mail within sixty (60) days of statement date to U.S. Bank at the address set forth below:

U.S. Bank
P.O. Box 6344
Fargo, ND 58125-6344 U.S.A.

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

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

VI. DEFINITIONS

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

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

U.S. BANK FLEET CARD PROGRAM AGREEMENT

This Fleet Card Agreement (the "**Fleet Card Agreement**") governs the U.S. Bank Fleet Program provided by the WSCA-NASPO Cooperative Purchasing Program Commercial Card Solutions Contract #00612, Category 2 (the "**Fleet Card Contract**") and is an attachment to the Participating Addendum entered into by and between U.S. Bank National Association ("**U.S. Bank**") and the Government Entity which is a signatory to that Participating Addendum ("**Government Entity**").

1. **EFFECTIVE DATE.** The date of execution of the Fleet Card Contract by the latter of the State of Washington and U.S. Bank shall be the "**Effective Date**" of the Fleet Card Program.
2. **PARTICIPATION.** Certain entities designated by Government Entity may participate in the Fleet Card Program.
 - A. "**Government Entity Agencies**" means those Government Entity departments and agencies that rely upon the Government Entity for funding, or are appropriated funds by the Government Entity for the charges on the accounts issued to the employees of those departments and agencies. In order for Government Entity Agencies to participate in the Fleet Card Program, the Government Entity will furnish to U.S. Bank a Government Entity Agency Addendum listing those agencies allowed to participate. The Government Entity has the right to exclude any agencies from the Fleet Card Agreement by providing written notice to U.S. Bank at any time.
 - B. "**Minnesota CPV Member**" means any municipalities, counties, and institutions of higher education located in the state of Minnesota that do not rely upon the Government Entity for funding. Minnesota CPV Members may participate in this Fleet Card Program upon credit approval by U.S. Bank and upon the signing and submission of a properly completed Minnesota CPV Member Addendum.
3. **SCOPE OF FLEET CARD PROGRAM.** U.S. Bank issues charge cards and has established a transaction processing, reporting and payment system for purchases of motor fuels and other products and services by fleet vehicle operations. Government Entity shall be responsible for selecting a personal identification number ("**PIN**"), a driver identification number ("**Driver ID**"), and/or a vehicle identification number ("**Vehicle ID**") pursuant to the Fleet Card Program. Unless U.S. Bank notifies Government Entity to the contrary, or a Fleet Card has been terminated as provided herein, all Fleet Cards will expire upon the expiration or termination of this Fleet Card Agreement.
4. **SOLE PROVIDER OF FLEET CARD SERVICES.** The Parties acknowledge and agree that U.S. Bank shall be the sole provider to Government Entity of Fleet Cards and services pertaining to the Fleet Card Program.
5. **LIABILITY.**
 - A. Except as expressly provided to the contrary herein, Government Entity shall be liable for all purchases, fees, Finance Charges and other charges incurred or arising by virtue of the use of a Fleet Card.
 - B. Government Entity shall immediately, upon receipt of such information, notify U.S. Bank by telephone at 1-800-987-6591 as to any lost or stolen Fleet Card, PINs, Driver IDs, or Vehicle IDs. Government Entity shall also immediately notify U.S. Bank by telephone at 1-800-987-6591 to cancel a PINs, Driver IDs, or Vehicle IDs. After notification has been made to U.S. Bank to cancel such Fleet Card(s), use of such Fleet Card(s) is expressly prohibited. Government Entity is liable for the unauthorized use of the Fleet Card until U.S. Bank receives notification of the lost or stolen Fleet Card or to cancel the PIN, Driver ID, or Vehicle ID. Government Entity shall not be liable for any purchase, fees, finance charges or other charge incurred or arising by virtue of the use of a Fleet Card following receipt by U.S. Bank of notice of such loss, theft or request to cancel a PIN, Vehicle ID, or Driver ID. Government Entity agrees to assist U.S. Bank in determining the facts, circumstances and other pertinent information related to any loss, theft or possible unauthorized use of the Fleet Card and to comply with such procedures as may be required by U.S. Bank in connection with U.S. Bank's investigation. U.S. Bank is not responsible for controlling the use of a Fleet Card, other than as specifically provided herein.
6. **PRICING.** Government Entity shall pay to U.S. Bank the fees as set forth on Addendum A, attached hereto and made a part hereof. U.S. Bank reserves the right to renegotiate pricing in subsequent years of the Fleet Card Agreement if Government Entity's estimated billing volume is substantially inaccurate.
7. **FINANCE CHARGES.** A Finance Charge can be avoided if U.S. Bank receives payment of Government Entity's "**New Balance**" within twenty five (25) days of the statement closing date (the "**Statement Date**"). If Government Entity's New Balance is not paid in full, a Finance Charge will be computed using the average daily balance ("**ADB**"). To arrive at the ADB, U.S. Bank will take the beginning balance on Government Entity's account each day, add debits and any new purchases (except in the states of IL, ME, MA, MN, MS, MT, and NM) from the date of posting (if the New Balance

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is not received), then subtract any payments or credits, returned check fees, and unpaid Finance Charges. The result will be the "Daily Balance." U.S. Bank will then add all the Daily Balances for the billing cycle and divide by the total number of days in the billing cycle. The result will be the ADB. The Finance Charge will be determined by multiplying the ADB by a Periodic (monthly) Rate for Government Entity's state of mailing address as shown in Section 20, Notices, below.

State of Mailing Address	ADB	Periodic (monthly) Rate	Annual Percentage Rate
MN	All	1.33%	16.0%

8. **DELINQUENCY.** The Fleet Card account will become delinquent unless U.S. Bank receives the amount shown on the Statement as Total Payment Due, less any disputed amounts, before the next billing date (approximately twenty five (25) days). Any unpaid portion of the Total Payment Due will be shown on subsequent Statements as the "Past Due Amount." The Fleet Card account will be suspended if any part of the Past Due Amount is unpaid for three (3) billing dates. In the event of Government Entity's delinquency, U.S. Bank may elect to terminate this Fleet Card Agreement immediately upon notice to Government Entity. Court costs plus reasonable attorney fees (as allowed by law) may be added to any delinquent balance referred to an attorney for collection.
9. **BILLING PROCEDURE.** U.S. Bank will send to Government Entity a monthly billing statement (the "Statement"), which will itemize all charges for the billing period. The amount shown on the Statement as "Total Payment Due" shall be due and payable in U.S. Dollars upon Government Entity's receipt of the Statement.
10. **DISPUTED BILLINGS.** Disputes regarding charges or billings hereunder shall be communicated by phone to U.S. Bank 1-800-987-6591. Written notice is not required but may be submitted to U.S. Bank by email to fueldisputes@usbank.com. Whether by phone or in writing communications should include Government Entity's and, if applicable, the Participant's name(s) and account number, the dollar amount of any dispute or suspected error and a description of the dispute or error. Any communication regarding a dispute or suspected error must be received by U.S. Bank within sixty (60) days after the date on the billing statement on which the disputed or incorrect charge first appeared. Disputed billings are categorized as, but not necessarily limited to, failure to receive goods or services charged, fraud, forgery, altered charges and charges incurred by telephone order where the authenticity of the charge is in question.
11. **TERM, TERMINATION AND SUSPENSION.**
 - A. This Fleet Card Agreement shall remain in full force and effect for an initial term of five (5) years from the Effective Date of this Fleet Card Agreement, and shall continue thereafter until terminated by either Government Entity or U.S. Bank upon ninety (90) days prior written notice to the other Party. The effective date of termination shall be stated in such written notice of termination. All Fleet Cards and related accounts shall be deemed canceled effective upon termination of this Fleet Card Agreement.
 - B. Notwithstanding the foregoing, either Party shall have the right to terminate this Fleet Card Agreement immediately, by written notice of such termination to the other Party, upon any one (1) or more of the following events:
 - (i) Dissolution or liquidation of the other Party;
 - (ii) Insolvency of the other Party or the filing of a bankruptcy or insolvency proceeding, the appointment of a receiver or trustee for benefit of creditors or the other Party enters into an arrangement with its creditors;
 - (iii) Any material and adverse change in the financial condition of the other Party;
 - (iv) Any failure to perform a material obligation of this Fleet Card Agreement.
 - C. Upon termination of this Fleet Card Agreement for any reason, Government Entity shall destroy all Fleet Cards. Government Entity shall remain liable for all purchases, fees, Finance Charges and other charges incurred or arising by virtue of the use of a Fleet Card prior to the termination date.
 - D. U.S. Bank shall have the right to suspend any and all services and obligations under this Fleet Card Agreement to Government Entity in the event that: (i) Government Entity has breached any term of this Fleet Card Agreement; (ii) the amount due from Government Entity, as the result of purchases, fees, Finance Charges and other such charges, in the aggregate, exceeds the credit limit established pursuant to Section 16; or (iii) payment is not received by U.S. Bank within ninety (90) days after any Statement Date.
 - E. Rights, obligations or liability, which arise prior to the suspension or termination of this Fleet Card Agreement, shall survive the suspension or termination of this Fleet Card Agreement.

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12. CONFIDENTIALITY.

- A. U.S. Bank considers the Fleet Card Program to be a unique service involving proprietary information of U.S. Bank. Government Entity agrees that Fleet Card Program reports, manuals, documentation and related materials (whether or not in writing) will be circulated only to persons, and only to the extent necessary, in order that Government Entity may participate in the Fleet Card Program. Government Entity and Participants agree to take all reasonable steps to safeguard such proprietary information and not to release such information to any person or party not essential to participation in the Fleet Card Program as herein described.
- B. U.S. Bank agrees that it will maintain all data relative to Government Entity's account(s) under the Fleet Card Program as confidential information and will exercise the same standard of care and security to protect such information as U.S. Bank uses to protect its own confidential information. U.S. Bank agrees to use such data exclusively for the providing of services to Government Entity and Participants hereunder and not to release such information to any other party; provided, however, that U.S. Bank may collect, maintain and, at its option, disseminate information and data concerning charge activity which does not contain any direct or indirect identification of Government Entity or Participants.

13. INDEMNIFICATION.

- A. Except to the extent that any injury is due to Government Entity's or a Participant's negligent acts or omissions, U.S. Bank shall indemnify and hold Government Entity and Participants harmless against all losses, damages, costs, expenses and liability which may result in any way from any negligent or wrongful act or omission of U.S. Bank, its agents, employees and subcontractors. U.S. Bank shall indemnify and hold Government Entity and Participants harmless against demands, claims, suits, or proceedings alleging infringement of any patent of the United States, or any trademark, service mark, copyright or other proprietary right arising out of or incident to this Fleet Card Agreement.
- B. BANK SHALL IN NO EVENT BE LIABLE TO GOVERNMENT ENTITY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES OF ANY NATURE.

14. WARRANTIES.

- A. The Parties agree that the failure of any of the below representations and warranties to be true during the term of this Fleet Card Agreement shall constitute a material breach of this Fleet Card Agreement and the non-breaching Party will have the right, upon notice to the other Party, to immediately terminate this Fleet Card Agreement and all amounts outstanding hereunder shall be immediately due and payable.
- B. Government Entity warrants that:
 - (i) The financial information and all other information provided to U.S. Bank by Government Entity or its officers, employees, agents, successors and assigns is true, complete and accurate;
 - (ii) This Fleet Card Agreement constitutes a valid, binding and enforceable agreement of Government Entity;
 - (iii) The transaction contemplated by this Fleet Card Agreement is within the scope of the normal course of business and does not require further authorization for Government Entity to be duly bound by this Agreement;
 - (iv) The execution of this Fleet Card Agreement and the performance of its obligations under this Fleet Card Agreement are within Government Entity's powers; have been authorized by all necessary action; and do not constitute a breach of any agreement of Government Entity with any party;
 - (v) Government Entity has and continues to comply with all applicable state and federal statutes, ordinances, rules, regulations and requirements of governmental authorities as they relate to the use of the Fleet Card and/or participation in the Fleet Card Program;
 - (vi) The execution of this Fleet Card Agreement and the performance of its obligations under this Fleet Card Agreement will not cause a breach by it of any duty arising in law or equity; and
 - (vii) Government Entity possesses the financial capacity to perform all of its obligations under this Fleet Card Agreement.
- C. U.S. Bank warrants that:
 - (i) This Fleet Card Agreement constitutes a valid, binding and enforceable agreement of U.S. Bank;
 - (ii) The execution of this Fleet Card Agreement and the performance of its obligations under this Fleet Card Agreement are within U.S. Bank's powers; have been authorized by all necessary action; do not require action by or approval of any governmental or regulatory body, agency or official; and do not constitute a breach of any agreement of U.S. Bank with any party;
 - (iii) U.S. Bank has and continues to comply with all applicable state and federal statutes, ordinances, rules, regulations and requirements of governmental authorities as they relate to the Fleet Card Program;
 - (iv) The execution of this Fleet Card Agreement and the performance of U.S. Bank's obligations under this Fleet Card Agreement will not cause a breach by it of any duty arising in law or equity; and
 - (v) U.S. Bank possesses the financial capacity to perform all of its obligations under this Fleet Card Agreement.

15. **FINANCIAL INFORMATION.** Since this Fleet Card Agreement is for an extension of credit with a financial institution and not a vendor services agreement, Government Entity shall provide information as requested by U.S. Bank to perform periodic credit reviews. Unless such information is publicly available or available through U.S. Bancorp (the parent company of U.S. Bank) or any of its subsidiaries, Government Entity shall provide audited financial statements, prepared by Government Entity's independent certified public accountant, as soon as available and in any event not later than one hundred eighty (180) days after the end of each fiscal year of company. In the event U.S. Bank requires additional information to conduct its review of company, Government Entity agrees to provide to U.S. Bank such other information regarding the business, operations, affairs, and financial condition of Government Entity as U.S. Bank may reasonably request. Such information may include, but is not limited to, quarterly financial statements, organizational charts, executive biographies and other formal documentation.
16. **AGGREGATE PRODUCT CREDIT LIMIT AND ACCOUNT CREDIT LIMITS.** Subject to credit approval by U.S. Bank, an account credit limit (an "ACL") for each Account and an aggregate product credit limit (the "PCL") for all Accounts shall be established by U.S. Bank pursuant to this Fleet Card Agreement.
- A. **Revising the PCL.** U.S. Bank, at its sole discretion, shall have the right to revise the PCL. U.S. Bank shall provide notice to Government Entity of any decrease in the PCL which results in a revised PCL that is lower than the aggregate current amount outstanding on all Accounts. Upon such notice, Government Entity shall have ten (10) days to make a payment to U.S. Bank that is sufficient to reduce the aggregate current amount outstanding to an amount that is equal to or less than the revised PCL.
- B. **Revising ACLs.** U.S. Bank, at its sole discretion, shall have the right to revise any ACL.
- (i) **Government Entity Accounts.** U.S. Bank shall provide notice to Government Entity of any decrease in an ACL which results in a revised ACL that is lower than the aggregate current amount outstanding on the Account. Upon such event, Government Entity shall have ten (10) days to make a payment to U.S. Bank on the Account that is sufficient to reduce the aggregate current amount outstanding for such Account to an amount that is equal to or less than the revised ACL.
- (ii) **Fraudulent Activity.** U.S. Bank may revise any ACL and/or limit spending activity on any Account for which fraudulent activity is suspected.
17. **REGISTERED MARKS AND TRADEMARKS.** Government Entity and U.S. Bank each recognize that they have no right, title or interest, proprietary or otherwise, in or to the name or any logo, copyright, service mark or trademark owned or licensed by the other Party. Government Entity and U.S. Bank each agree that, without prior written consent of the other Party, they will not use the name or any name, logo, copyright, service mark or trademark owned or licensed by the other Party.
18. **SURVIVABILITY OF PAYMENT OBLIGATIONS, RIGHTS AND REMEDIES.** The obligation of Government Entity to make payments as herein set forth shall continue until fully performed. Any rights and remedies Government Entity or U.S. Bank may have with respect to each other arising out of either Party's performance of services or obligations hereunder shall survive the expiration or termination of this Fleet Card Agreement.
19. **GOVERNING LAW.** The validity, interpretation and performance of this Fleet Card Agreement will be controlled by and construed under the laws of the State of where Government Entity is located (without giving effect to the conflict of law principles thereof) and applicable federal laws.
20. **NOTICES.** Except with respect to notices relating to the status of individual Fleet Cards which may be established in writing between U.S. Bank and Government Entity or a Participant, all notices, requests and other communication provided for hereunder must be directed to the other Party at the respective addresses indicated below and, unless otherwise specified herein, must be in writing, postage prepaid or hand delivered or delivered by telecopy. Either Party may, by written notice to the other, change its address indicated below.
- | | |
|--|---|
| U.S. Bank:
U.S. Bank National Association ND
Mail Code EP-MN-L26C
901 Marquette Avenue
Minneapolis, MN 55402
Attn: CPS Contract Services | Government Entity:
State of Minnesota – Department of Administration
50 Sherburne Avenue
Room 112
St. Paul, Minnesota 55155
Attn: Acquisition Management Specialist |
|--|---|
21. **EMPLOYMENT OF AGENTS.** U.S. Bank may, in its sole discretion, employ agents to perform part or all of its obligations under this Fleet Card Agreement at any time without the consent of Government Entity; provided, however, that such action shall not affect its obligations to Government Entity hereunder.

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22. MISCELLANEOUS.

- A. Complete Agreement; Amendments. This Fleet Card Agreement constitutes the complete understanding between the Parties with respect to the subject matter hereof and all prior oral or written communications and agreements with respect thereto are superseded. No failure on the part of either Party to exercise, and no delay in exercising any right under this Fleet Card Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Fleet Card Agreement preclude any other or further exercise thereof or the exercise of any other right. This Fleet Card Agreement may not be altered, modified or amended, and no provision contained in it may be waived, except in writing and signed by authorized representatives of both Government Entity and U.S. Bank, with specific reference to this Fleet Card Agreement.
- B. Successors and Assigns. This Fleet Card Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that this Fleet Card Agreement may not be assigned by Government Entity without the prior written approval of U.S. Bank or its designate, which shall not unreasonably be withheld or delayed.
- C. Severability. Should any provision of this Fleet Card Agreement be declared invalid for any reason, such decision shall not affect the validity of any other provisions, which other provisions shall remain in force and effect as if this Fleet Card Agreement had been executed with the invalid provision(s) eliminated. The Parties shall use their best efforts to agree upon a valid substitute provision in accordance with the purpose of this Fleet Card Agreement and the intent of the Parties.
- D. USA PATRIOT Act. In order to comply with the requirements of the USA PATRIOT Act, U.S. Bank requires Government Entity to provide its legal entity name, street address, taxpayer identification number and other information that will allow U.S. Bank to Government Entity prior to establishing an account for such entity. U.S. Bank reserves the right to require that Government Entity promptly provide to U.S. Bank sufficient identification documents upon request in connection with USA PATRIOT Act compliance.
- E. Headings. The headings of the sections of this Fleet Card Agreement are intended for the convenience of the Parties only and shall in no way be held to explain, modify, amplify or aid in the interpretation of the provisions hereof.

For Government Entities with two hundred (200) or more Fleet Cards and a monthly billing volume of at least seventeen thousand U.S. Dollars (\$17,000.00), U.S. Bank will not assess a fee to Government Entity for account set-up, Fleet Card issuance, transactions or standard monthly or annual billings. For Government Entities with less than two hundred (200) Fleet Cards and monthly billings of less than seventeen thousand U.S. Dollars (\$17,000.00), U.S. Bank will assess a fee to Government Entity for account set-up, Fleet Card issuance, transactions or standard monthly or annual billings as provided below. Government Entity may be automatically assessed all applicable fees provided in Addendum A without prior notice.

For additional reporting and Government Entities with less than two hundred (200) Fleet Cards and less than seventeen thousand U.S. Dollars (\$17,000.00) in monthly billings, the fees are as follows.

Set Up Fees	
Account Set Up (one time fee)-----	\$0.00
Fleet Card Fees	
Number of Cards (monthly):	
7 – 25 -----	\$0.00
26 – 100 -----	\$0.00
101 – 200 -----	\$0.00
Additional Reporting Fees	
Invoice (includes: statement, payments and adjustments and taxes) -----	\$0.00
Invoice Report -----	\$0.00
Driver Report-----	\$0.00
Vehicle Report-----	\$0.00
Exception Report-----	\$0.00
Service Station Activity Report -----	\$0.00
Product Purchase Summary -----	\$0.00
Expense Summary By Business Unit -----	\$0.00

U.S. BANK PRODUCT DESCRIPTIONS

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

APPLICABLE CARD FEE AND REBATE INFORMATION

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

	Fees Applicable to Fleet Card The following fees will only be assessed for those customers with few than 200 Fleet Cards and monthly billings of less than \$17,000,000. The following fees are subject to change without prior notice.	Charge
1.	Account Set Up – one-time fee	\$0.00
2.	Fleet Card Fees – monthly fee dependent on number of cards <ul style="list-style-type: none"> • 7-25 cards • 26-100 cars • 101-200 cards 	\$0.00 \$0.00 \$0.00
3.	Invoice, including statement, payments, adjustments and taxes	\$0.00
4.	Driver Report	\$0.00
5.	Exception Report	\$0.00
6.	Service Station Activity Report	\$0.00
7.	Product Purchase Summary	\$0.00
8.	FleetCommander Online web access by user	\$0.00
9.	Card delivery charge when overnight delivery service used	\$20.00
10.	Expense Summary by Business Unit	\$0.00
11.	Logo Embossing Fee; a two-week delay may occur with Card issuance and implementation.	\$0.00
12.	Foreign Currency Fee. a foreign currency conversion fee ("Foreign Currency Conversion Fee") for transactions made outside the United States; the Statement will reflect the conversion into U.S. Dollars on transactions that occurred in a different currency and an applicable exchange rate for such conversions.	2.0%
13.	Finance Charges. Assessed on balances not paid by due date on statement at a periodic rate in accord with Entity's state rate as set forth herein and based on the Average Daily Balance ("ADB"). To calculate, U.S. Bank will take the beginning balance on Entity's account each day, add debits and any new purchases (except in the states of IL, ME, MA, MN, MS, MT, and NM) from the date of posting (if the New Balance is not received), then subtract any payments or credits, returned check fees, and unpaid Finance Charges. The result will be the "Daily Balance." U.S. Bank will then add all the Daily Balances for the billing cycle and divide by the total number of days in the billing cycle. The result will be the "Average Daily Balance."	Periodic Rate APR

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Appendix A, Document 5 – Applicable Card Fee and Rebate Information

Incentive Share	Rebates Applicable to Corporate Liability Purchase, Corporate, and One Cards (individual liability Corporate Cards are not included in Incentive Share Components 1, 2, and 3)	Rebate BPS	Paid
1	Each Participating Entity will receive a basis point (percentage) of their quarterly sales volume. The Formula to determine quarterly volume incentive share: <u>$\text{Quarterly sales volume per entity} - \text{qualifying large ticket volume} \times \text{basis points (percentage)} = \text{Participating Entity Quarterly Volume Incentive}$</u>	130	Quarterly via credits to managing accounts
2	A Prompt Payment Incentive will be offered to each Entity. The Prompt Payment Incentive calculation is designed to provide an incentive to each Entity, when Client Held Days is less than forty-five (45) days. Client held days cannot be less than zero (0) The Prompt Payment Incentive is based solely on the Client Held Days Payment Performance for each Entity for each Agreement Quarter (3 calendar months). The Formula to determine Prompt Payment Incentive: <u>$(45 - \text{Client Held Days}) / 45 \times 0.0045 \times \text{Quarterly Sales Volume}$</u>	45 (1bp/day)	Quarterly via credits to managing accounts
3	Large Ticket Incentive: Entity will receive an incentive for qualifying large ticket transactions. Qualifying large ticket transactions will be subject to the same speed of pay incentive. Contractor will provide a quarterly report identifying all qualifying large ticket transactions to each Entity. The formula for calculating Large Ticket Incentive is: <u>$\text{Qualifying Quarterly Large Ticket volume sales per Entity} \times \text{basis points (percentage)} = \text{Entity Large Ticket Volume Incentive}$</u>	75	Quarterly via credits to managing accounts
4	Annual Sales Volume Incentive: Each participating state will receive an additional WSCA-NASPO Annual Sales Volume Incentive based on a tier established from all WSCA-NASPO participating states annual volume and applied to each state's annual sales volume. The formula for calculating WSCA-NASPO Annual Sales Volume Incentive is: <u>$\text{Participating state annual sales volume (all products)} \times \text{applicable basis points (percentage) corresponding to the Tier established for the Annual Overall WSCA-NASPO Sales Volume (all product)} = \text{WSCA/NASPO Participating State Annual Sales Volume Incentive}$</u> <div style="text-align: right;"> \$500,000,000 - \$2,000,000,000 \$2,000,000,001 - \$3,000,000,000 \$3,000,000,001 - \$4,000,000,000 \$4,000,000,001 - \$5,000,000,000 </div> The State of Minnesota Annual Incentive will be distributed as follows: 1) 15 basis points to the State of Minnesota, Materials Management Division, paid annually via electronic payment 2) 30 basis points to State Agencies and Cooperative Purchasing Venture Members, paid quarterly via credit to managing accounts	45 45 45 45	See details to the left

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Appendix A, Document 5 – Applicable Card Fee and Rebate Information

MINIMUM REQUIREMENTS

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

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

In the event that the Card Program or the Contract is terminated prior to the completion of the Base Period or prior to the completion of any Agreement Quarter after the completion of the Base Period by Entity without cause, or by Contractor with cause, and/or the sole provider provision of this Contract is violated, in addition to any other remedies available to Contractor, this Incentive Share opportunity shall immediately terminate and no Incentive Share shall be paid to Entity. The State of Minnesota, Materials Management will receive the annual incentive based on all spend regardless if an entity terminates within the Base Period.

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

Incentive Share	Rebates Applicable to Fleet Card	Rebate BPS	Paid
1	Participating Entity Volume: Entity will receive a basis point (percentage) of their quarterly sales volume. The Formula to determine quarterly volume incentive share: <u>$\text{Quarterly sales volume per entity} - \text{qualifying large ticket volume} \times \text{basis points (percentage)} = \text{Entity Quarterly Volume Incentive}$</u>	130	Quarterly via credits to managing accounts
2	Participating Entity Prompt payment: A prompt payment incentive will be offered and is designed to provide an incentive to each entity when Client Held Days is less than 45 days. Client held days cannot be less than zero (0) The Prompt Payment Incentive is based solely on the Client Held Days Payment Performance for each Entity for each Agreement Quarter (3 calendar months). The Formula to determine Prompt Payment Incentive: $(45 - \text{Client Held Days}) / 45 \times 0.0045 \times \text{Quarterly Sales Volume}$	45 (1bp/day)	Quarterly via credits to managing accounts
3	All WSCA-NASPO States Annual Volume Incentive (per State) \$50,000,000 - \$100,000,000 \$100,000,001 - \$300,000,000 \$300,000,001 - \$500,000,000 \$500,000,001 - \$1,000,000,000	40 41 43 45	Annually via electronic payment to the State of Minnesota, Materials Management Division

MINIMUM REQUIREMENTS

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

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

In the event that the Card Program or the Contract is terminated prior to the completion of the Base Period or prior to the completion of any Agreement Quarter after the completion of the Base Period by Entity without cause, or by Contractor with cause, and/or the sole provider provision of this Contract is violated, in addition to any other remedies available to Contractor, this Incentive Share opportunity shall immediately terminate and no Incentive Share shall be paid to Entity. The State of Minnesota, Materials Management will receive the annual incentive based on all spend regardless if an entity terminates within the Base Period.

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

MINNESOTA GENERAL TERMS, CONDITIONS AND SPECIFICATIONS

1. DEFINITIONS.

- a. **Agreement Quarter.** A three (3) month period beginning with the first such period following the Effective Date of the Card Program.
- b. **Agreement Year.** A twelve (12) month period beginning with the first such period following the Effective Date of the Card Program.
- c. **Client Held Days.** The sum of the daily balances for the quarter divided by the total Net Charge Volume for the quarter less fifteen (15) days and cannot be less than zero (0) days.
- d. **Client Held Days Payment Performance.** The average speed of repayment of charges made for each quarter.
- e. **Contract.** Contract is defined as the WSCA/NASPO Contract with Contract Vendor and the Minnesota Participating Addendum.
- f. **Contract Vendor and Contractor.** These two terms apply to U.S. Bank National Association, the awarded vendor from the WSCA/NASPO Contract that MMD selects to enter into a Participating Addendum.
- g. **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 Materials Management Division (MMD) 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 MMD 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 MMD 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 at the same prices, terms, conditions, and specifications. For additional information, visit the MMD website at www.mmd.admin.state.mn.us. Only CPV members located in the State of Minnesota are eligible to participate under the Minnesota WSCA-NASPO agreement.
- h. **Large Ticket Transaction.** Transaction which qualifies for an incentive interchange rate that is lower than the standard interchange provided on a card transaction. Transaction size to qualify will vary over time with interchange rate changes set by card networks. Large ticket interchange rates may require the merchant to provide additional enhanced data to qualify for the lower rate however exceptions to this requirement can occur.
- i. **Ordering Entity.** This term applies to any State Agency or CPV Member when allowed in the Participating Addendum.
- j. **Quarterly Large Ticket Volume.** Those Charges for each Agreement Quarter which the Association governing Customer's Card Program has determined qualify for large ticket interchange rates and which are processed by such Association using large ticket interchange rates, less credits, for each Agreement Year. All other Charges and all amounts related to Fees, Cash Advances, Convenience Checks, Fraudulent Charges, chargebacks and Charge-offs are excluded from Large Ticket Volume.
- k. **Quarterly Sales Volume.** All Charges set forth on the Billing Statements furnished for all Accounts, less Fees, Cash Advances, Fraudulent Charges, Charge-backs, and amounts Charged-off by Contractor with respect to such accounts as uncollectible for each quarter (3 calendar months).
- l. **State Agencies.** This term applies only to State agencies and departments, as defined in Minn. Stat. §§ 15.01 and 15.021.
- m. **State and State of Minnesota.** These two terms apply to the Minnesota Department of Administration, Materials Management Division (MMD), representing the State of Minnesota as the contracting agency for the Participating Addendum.
- n. **Travel Insurance.** U.S. Bank will provide the state of Minnesota with Travel Accident Insurance in the amount of \$250,000.00 Common Carrier coverage per Purchasing Card Account at no cost to the entity. U.S. Bank will provide a copy of coverage details upon request.

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Appendix B– Minnesota General Terms, Conditions and Specifications

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. **INSURANCE.** 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 coverage per the Insurance requirements listed below:

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

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

1. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$2 million per occurrence/\$2 million general aggregate;
2. Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements;
3. Network Security and Privacy Liability Insurance (or equivalent) insurance covering claims which may arise from failure of Contractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of confidential or private information, transmission of a computer virus or denial of service, with a limit of not less than \$2,000,000 per occurrence/\$2,000,000 annual aggregate;
4. Bankers Blanket Bond (or equivalent) covering liability to third parties for dishonest and fraudulent acts of employees, including but not limited to theft, fraud, and forgery, with a limit of not less than the face value of money & securities that belong to the Entity.

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

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

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

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

4. **INDEMNIFICATION, HOLD HARMLESS, AND LIMITATION OF LIABILITY.** The Contract Vendor shall indemnify, protect, save and hold harmless the State, its representatives and employees, from any and all claims or causes of action, including all legal fees and related costs 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.

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. 16C.02, in addition to the legislative and judicial branches and constitutional offices of state government.

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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, INTELLECTUAL PROPERTY INDEMNIFICATION, and COPYRIGHT of this Contract. This indemnification does not include liabilities caused by the State's gross negligence or intentional wrong doing of the State. The State will not indemnify or hold harmless the Contract Vendor.

5. **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.
6. **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 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 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.

7. **GOVERNING LAW.** The Contract will be construed in accordance with and performance governed by the laws of the State of Minnesota. Except to the extent that the provisions of the Contract are clearly inconsistent therewith, the Contract shall be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent the Contract entails delivery or performance of services, the services will be deemed "goods" within the meaning of the UCC, except when to deem such services as "goods" is unreasonable. Venue for any court action related to the Contract and/or the Participating Addendum, Software Licenses and/or Software License Click Agreements will be in State court located in Ramsey County, Minnesota.
8. **JURISDICTION AND VENUE.** The Contract, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of the Contract or breach thereof shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota. The Contract Vendor voluntarily agrees to be subject to the jurisdiction of Minnesota for all proceedings arising out of the Contract, or any breach thereof.
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

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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. **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

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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.

- 11. 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.
- 12. DEFAULT.** All commodities and services furnished will be subject to inspection and acceptance by the Ordering Entity after delivery. 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, and 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.
- 13. 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, 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.

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.
- 14. 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.
- 15. 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.
- 16. 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.

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- 17. 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.
- 18. 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 non-copyrighted composition, secret process, patented or non-patented invention, article or appliance furnished or used in the performance of the Contract.
- 19. SURVIVABILITY.** In addition to the 6.3 Survivorship of the Master Agreement Washington Contract, 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.
- 20. IT ACCESSIBILITY STANDARDS.** US Bank 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/policies-and-standards/accessibility/#> 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. As upgrades are made to the software/products/subscriptions available through this Agreement, US Bank agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above mentioned accessibility Standards, US Bank agrees to provide alternative solutions upon request at no additional charge to the State.
- 21. 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 MMD 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.

- 22. 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.

- 23. SOFTWARE LICENSING & SOFTWARE LICENSING 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 the Materials Management Division: 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.
- 24. 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

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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 to the extent permitted by applicable law or regulation. 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 immediately 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 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 Vendor will establish 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 make its Policy available to the State on a confidential, need-to-know basis, along with other related information reasonably requested by the State regarding Contract Vendor's security practices and policies. Unless inconsistent with applicable laws, Contract Vendor and the State must treat the Policy and related information 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.

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- 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 all State data in transit, if such data is part of or associated with Contract Vendor's cloud computing or hosting services. 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 2014; (2) will be performed according to appropriate industry security 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 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 application 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 stated 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 applicable and 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 currently available and applicable Attestation of Compliance signed by a PCI QSA ("Qualified Security Assessor").