

**PARTICIPATING ADDENDUM
to NASPO ValuePoint
Commercial Card Services
Administered by the State of Washington
with U.S. Bank National Association
Master Agreement No. 00719
And
The State of Colorado
Contract # 163382**

1. PARTIES AND SCOPE

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the “Participating Addendum”), is entered into by and between **U.S. Bank National Association** (the “Contractor”), and the State of Colorado (the “State”). This Participating Addendum covers participation in the **Commercial Card Services** Master Agreement, Contract No. 00719 led by the State of **Washington** (the “Master Agreement”), for use by State Agencies, political subdivisions, and institutions of higher education, located in Colorado which are authorized by law to utilize State contracts with the prior approval of the State Purchasing Director. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit A and Exhibit E** of the **Master Agreement**.

2. PARTICIPATION

Agencies, political subdivisions and other entities (including cooperatives) authorized by the State’s statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date (each, a “Participant”). Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

- A.** The Master Agreement and all its terms and conditions shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum with respect to that particular term. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this Participating Addendum.
- B.** The following modification shall be made to the Master Agreement with respect to Contractor’s performance pursuant to this Participating Addendum:
 - i.** **§6.2, Payment**, shall be modified as follows:

“Payment is the sole responsibility of, and will be made by, the Participant. Payment is due within forty-five (45) days from the billing cycle date on the monthly account statement. If Participant fails to make payment within forty-five (45) days, then on the 46th day, Contractor may invoice the Participant in the amount of one percent (1%) per month on the amount overdue.”

- ii. **§16.3(b)**, under Purchasing Entity Default, shall be deleted in its entirety.
- iii. **§16.3(c)**, under Purchasing Entity Default, shall be deleted in its entirety.
- iv. **§16.4**, Purchasing Entity Cure Process, shall be deleted in its entirety.
- v. **§16.5**, Contractor Remedies for Purchasing Entity Default, shall be deleted in its entirety.
- vi. **§16.9** Limitation on Damages, shall be modified as follows:

“The liability of Contractor, its subcontractors, and their respective personnel to the State for any claims, liabilities, or damages relating to this Contract shall be limited to damages, including, but not limited to, direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss of State Records or unauthorized disclosure of State Confidential Information. This limitation of damages shall not exceed 4 Million (\$4,000.000.00) aggregate. Further, no limitation on Contractor liability to the State under this Section shall limit or affect:

 - a) Contractor’s indemnification obligations to the State under this Contract;
 - b) Any claims, losses, or damages for which coverage is available under any insurance required under this Contract;
 - c) Claims or damages arising out of bodily injury, including death, or damage to tangible property of the State; or
 - d) Claims or damages resulting from the reckless, bad faith, or intentional misconduct of Contractor.”
- vii. **§16.12**, Agreement Term, shall be modified as follows:

“During the term, neither U.S. Bank nor Purchasing Entity may terminate the applicable Card User Agreement, except by mutual consent or as otherwise provided in the Master Agreement or Participating Addendum.”
- viii. **§16.13**, Participating Addendum or Card User Agreement Termination by Contractor, shall be modified as follows:

“In addition to any rights arising under this Master Agreement, U.S. Bank may terminate the applicable Card User Agreement upon (i) thirty (30) days’ prior written notice to Purchasing Entity, if there has been no material activity on Commercial Cards for any twelve (12) consecutive month period; or (ii) at any time upon with proper justification, upon one-hundred and twenty (120) days’ prior written notice.”
- ix. **§16.14**, Participating Addendum or Card User Agreement Termination by Purchasing Entity, shall be modified as follows:

“In addition to any rights arising under this Master Agreement, Purchasing Entity may terminate the applicable Card User Agreement (i) at any time upon sixty (60) days’ prior written notice; provided, however, that Purchasing Entity remains liable for any obligations incurred prior to the effective date of termination; or (ii) upon thirty (30) days’ prior written notice in the event Purchasing Entity fails to appropriate or allocate sufficient funds to perform under the Agreement; provided, however, that Purchasing Entity remains liable for all obligations incurred prior to the effective date of termination.”
- x. **§17.2(a)**, Force Majeure, shall be modified as follows:

“Neither Purchasing Entity or Contractor is responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, fire, flood, strikes, war, epidemics, pandemics, shortage of power, telecommunications or Internet service

interruptions or other acts or causes reasonably beyond the control of that party. The party suffering the force majeure event will (i) implement its applicable disaster recovery plan to the extent appropriate and practicable; (ii) give the other party written notice within five (5) business days to the other specifying such force majeure event and their detailed plan to resume normal operations of the occurrence of a force majeure event; (iii) use diligent efforts to re-commence performance as promptly as commercially practicable pursuant to its disaster recovery plan; and (iv) provide periodic updates to the other party regarding its efforts to re-commence performance, until performance has re-commenced in accordance with the Participating Addendum.”

- xi. **§17.2(b)**, Force Majeure, shall be modified as follows:
“The Contractor or the State may terminate the Participating Addendum, upon written notice to the other, if the non-terminating party is unable to perform a material portion of its obligations, as a direct result of a force majeure event, for more than thirty (30) consecutive days. Delay in either party's performance is excused to the extent its performance is delayed solely due to an act or omission of the other party.”
- xii. **§17.8**, Assignment, shall be deleted in its entirety.
- xiii. **§17.15**, Jurisdiction & Venue, shall be deleted in its entirety.
- xiv. **§17.24**, Delegation, shall be deleted in its entirety.

4. RESERVED

5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum. The Contractor's primary contact shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

Primary Contact for the State:

Michelle Garcia
Colorado Office of the State Controller
1525 Sherman Street, 5th Floor
Denver, CO 80203
Phone: 303-866-6147
Email: michelle.garcia1@state.co.us

Primary Contact for the Contractor:

Jack Cole
U.S. Bank, National Association
65 Heights Road
Barrington, NH 03825
Phone: 603.664.5779
Email: Jack.Cole@usbank.com

With a copy to (for legal notices):

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

Each individual identified in **§5** of this Participating Addendum shall be the primary contact of the designating Party. All notices required or permitted to be given under this Participating Addendum shall be in writing and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's primary contact at the address set forth above or (C) as an email with read receipt requested to the primary contact at the email address, if any, set forth above. If a Party delivers a notice to another

through email and the email is undeliverable then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's primary contact at the address set forth above. Unless otherwise provided in this Participating Addendum, notices shall be effective upon delivery of the written notice.

In addition to the primary contact in this section, the Contractor shall also designate one or more Account Coordinators who shall be responsible for addressing Participant issues pertaining to the card program. The Contractor may change this individual(s) or their contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum.

Account Coordinator for the Contractor:

Melissa Murphy
U.S. Bank, Corporate Payment Systems
200 S. Sixth Street
Minneapolis, MN 55402
Phone: 855.250.6421 ext. 1566260
Email: Melissa.Murphy@usbank.com

6. RESERVED

7. RESERVED

8. ORDER OF PRECEDENCE AND ATTACHED EXHIBITS

All of the exhibits listed in this section are attached to this Participating Addendum and are incorporated herein by reference. In the event of a conflict or inconsistency between this Participating Addendum and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- A.** Colorado Special Provisions in **§20 of Exhibit A**, State Specific Terms
- B.** **Exhibit B**, Information Technology Provisions
- C.** The provisions of this Participating Addendum
- D.** All other sections of **Exhibit A**, State Specific Terms
- E.** **Exhibit C**, Statement of Work
- F.** **Exhibit D**, State of Colorado Affiliate Addendum
- G.** **Exhibit D-1**, Affiliate Program Information
- H.** **Exhibit D-2**, Exempt Entities Required Information Form and **Exhibit D-3**, U.S. Bank W-9 & Related Information Form, with equal precedence.

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement between the Parties that **(i)** requires the State to indemnify or hold harmless Contractor or any other party, **(ii)** is in violation of State law as, regulations, rules, fiscal rules, policies, or **(iii)** is contrary to any of the provisions incorporated into **Exhibit A, §19** or the main body of this Participating Addendum.

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

CONTRACTOR U.S. Bank National Association By: Brad Hoffelt Title: CFO DocuSigned by: <i>Brad Hoffelt</i> A99CEDB077774CB... Signature Date: 1/8/2021	STATE OF COLORADO Jared Polis, Governor Department of Personnel and Administration State Purchasing and Contracts Office Kara Veitch, Executive Director DocuSigned by: <i>Tobin Follenweider</i> 36F987D71631450... By: Tobin Follenweider, Deputy Director Date: 1/8/2021
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STATE CHIEF INFORMATION OFFICER
Anthony Neal-Graves, Chief Information Officer and Executive Director (Interim)

DocuSigned by:
Laura Calder
AAADC6558C9A4BD...

Signed: _____

Printed Name: Laura Calder

Title: CFO

Date: 1/8/2021

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

§24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Participating Addendum is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

DocuSigned by:
Clark Bolser
29ADEADE71B5433...

By: _____

Name: Clark Bolser

Delegate

Effective Date: 1/8/2021

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EXHIBIT A, STATE SPECIFIC TERMS

1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01., and its associated rules.

2. PURPOSE

The Parties are entering into this Participating Addendum for the Contractor to provide Commercial Card Services to State of Colorado Purchasing Entities (“**Participants**”). The Contractor was selected as a result of the RFP issued by the State of Washington for Commercial Card Services Program, 00719/00819 (“**Program**”).

3. TERM

A. Initial Term - Work Commencement

The Parties’ respective performances under this Participating Addendum shall commence on the Effective Date and shall be co-terminus with NASPO ValuePoint Master Agreement **00719**. Unless this Participating Addendum is terminated earlier, as described herein, or the State cancels its participation as described in the Master Agreement (the “Term”), the term of the Participating Addendum shall follow the Master Agreement initial term and will be automatically extended beyond the initial term if the Master Agreement term is extended (See **§3.B.**).

B. Extension of Term

If the term of NASPO ValuePoint Master Agreement is extended for any reason, the Term of this Participating Addendum shall be automatically modified to account for that extension, so long as such extension complies with the Colorado Procurement Code.

C. Reserved

D. Reserved

E. Early Termination in the Public Interest

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Participating Addendum by the State for breach by Contractor, which shall be governed by **§14.A.i** of this Exhibit A.

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§5** of the Participating Addendum. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Participating Addendum, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§14.A** of this Exhibit A.

iii. Payments

If the State terminates this Participating Addendum in the public interest, the Participants shall pay Contractor according to their Commercial Card statement balance due. The sum of all payments shall not exceed the maximum amount payable to Contractor according to the Participant's Commercial Card statement.

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Account"** means any Commercial Card Products (i.e. card types, supplemental solutions) provided to a Cardholder for use under this Participating Addendum.
- B. **"Affiliate"** means political subdivisions and Institutions of Higher Education within the State of Colorado that will receive their own rebate under the Program, and which are authorized by the State to participate in the Commercial Card Services program with Contractor.
- C. **"Breach of Contract"** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- D. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- E. **"Cardholder"** means an employee, contractor, or representative of a Participant to whom a Commercial Card is issued for making designated business purchases/payments on behalf of his or her organization. In addition, Cardholder shall also mean **"Purchaser,"** as referenced throughout the Master Agreement.
- F. **"Chief Procurement Officer"** means the individual to whom the Executive Director of the Department of Personnel & Administration has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- G. **"Community Colleges"** means, for purposes of this Participating Addendum, a 2-year government-supported college that offers an associate degree.
- H. **"Confidential Information"** means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S. ("CORA").
- I. **"Contract"** means this Participating Addendum, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- J. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- K. **"Effective Date"** means the date on which this Participating Addendum is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Participating Addendum.
- L. **"Exhibits"** means the following exhibits attached to this Contract:
 - i. **Exhibit A, State Specific Terms**

- ii. **Exhibit B**, Information Technology Provisions
 - iii. **Exhibit C**, Statement of Work
 - iv. **Exhibit D**, State of Colorado Affiliate Addendum
 - v. **Exhibit D-1**, Sample Affiliate Program Information
 - vi. **Exhibit D-2**, Sample Exempt Entities Required Information Form
 - vii. **Exhibit D-3**, Sample U.S. Bank W-9 & Related Information Form
- M. **“Extension Term”** means the time period defined in **§3.B.** of this Exhibit A.
- N. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- O. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- P. **“Initial Term”** means the time period defined in **§3.A** of this Exhibit A.
- Q. **“Institutions of Higher Education”** means, for purposes of this Participating Addendum, a 4-year government supported institution that awards bachelor degrees.
- R. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- S. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- T. **“Participant”** means any entity or organization that has been authorized by the State and approved by Contractor to participate in the Commercial Card Program with the Contractor, and may include, without limitation, State Agencies, government-supported institutions of higher education within the State, and political subdivisions of the State. In addition, Participant shall also have the same meaning as **“Purchasing Entity.”**
- U. **“Participant Agreement”** means the agreement (reference Exhibit D) entered into between the Affiliate and the Contractor, which allows the government entity (“Participant”) to utilize the goods and services provided under this Participating Addendum and the NASPO Master Agreement. Participant Agreement shall also have the same meaning as “Card User Agreement,” as described in the Master Agreement, and shall also include any documents agreed upon by Contractor and the State to allow State Agencies to participate in the Program.
- V. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- W. **“Purchasing Entity”** means Affiliate and State Agencies.

- X. **“Rebate”** means a monetary payment based on the spend volume during a specified time period and shall be paid by the Contractor in accordance with the terms and conditions of the Participating Addendum and the Master Agreement.
- Y. **“Rebate Adjustment”** means Contractor’s right for any amounts not paid (including, without limitation, charges, fees, and late payment interest) by a Participant within 180 days after the billing statement date or otherwise charged off by Contractor, or prior to the Rebate calculation, whichever is later, to reduce that Participant’s Rebate by such unpaid amount.
- Z. **“Services”** means the services to be performed by Contractor as set forth in this Participating Addendum, and shall include any services to be rendered by Contractor in connection with the Goods.
- AA. **“State Agencies”** means the departments and their divisions within the Executive, Judicial and Legislative Branches of government for the State of Colorado. In addition, State Agencies shall also include the Attorney General, Department of Law, Department of the Treasury, and Community Colleges. For purposes of this Participating Addendum, State Agencies shall be one collective entity.
- BB. **“Statewide Commercial Card Program Administrator”** means the primary contact for the State who oversees the administration of this Participating Addendum as well as the performance of the Contractor. This position shall have the duties assigned, per **Exhibit G** of the **Master Agreement**. Statewide Commercial Card Program Administrator shall also have the same meaning as **“Program Administrator”** in the Master Agreement.
- CC. **“State Confidential Information”** means all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PCI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- DD. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- EE. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- FF. **“State Records”** means all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- GG. **“Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation.
- HH. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- II. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data,

images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Participating Addendum that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

5. RESERVED

6. PAYMENTS TO CONTRACTOR

Participant payments shall be made in accordance with **Exhibit G, Section 13**, of the **Master Agreement**, or as otherwise stated in the Participating Addendum.

7. PAYMENTS TO STATE AND AFFILIATES

A. Rebate

- i. The State Agencies Rebate as well as any Affiliate Rebate will be calculated and paid in accordance with **Exhibit B** of the **Master Agreement**. In addition, the State Agencies Rebate will be paid via EFT, whereas each Affiliate will determine their preferred method of payment receipt.
- ii. Contractor shall pay the Rebate/Incentive Share to State Agencies and Affiliates on a quarterly basis, and payment will be due within sixty (60) days of the completion of the applicable quarter.
- iii. Contractor shall pay the National Annual Volume Incentive to State Agencies and Affiliates on a quarterly basis, and payment will be due within sixty (60) days of the completion of the applicable quarter.

B. Contractor shall remit the State Agencies Rebate to the State's primary contact identified in §5 of the Participating Addendum and with the payee as "State of Colorado".

8. REPORTING – NOTIFICATION

A. Reserved

B. Flat File

- i. In accordance with **Exhibit G, Section 6.5** of the **Master Agreement**, Contractor shall provide the entire banking information flat file on a monthly basis via CSV and XLS, to the State's primary contact identified in §5 of the Participating Addendum.
- ii. Contractor shall also provide a separate flat file to any Participant upon request, or upon mutual agreement, and in a format that adheres to the requirements and availability under the Master Agreement.

C. Additional Operational Reporting

Upon request by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to the State or any of the Participants as requested by the State. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

D. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a

court or other administrative decision making body, and such pleading or document relates to this Participating Addendum, Contractor shall, within 10 days after being served, notify the State of such action to the extent such notification is permitted.

E. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact in accordance with §5 of the Participating Addendum and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a subcontractor to perform Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum. This section shall not apply if the Participating Addendum Funds include any federal funds.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records") performed by the Contractor under this Participating Addendum, that are required to ensure proper performance of that Work. Contractor shall maintain Contractor Records and audit documentation in accordance with Contractor's record retention policy or as required by applicable law (the "Record Retention Period"). Any documents related to litigation or claims, including all appeals, will be maintained in accordance with Contractor's legal records hold policy.

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records related to the Work performed by Contractor pursuant to this Participating Addendum during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at mutually agreed upon times or locations, upon no fewer than 10 Business Days' notice from the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Participating Addendum using procedures as reasonably determined by the State and Contractor. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor will provide its most recent independent auditor's report (e.g. SSAE 18, SOC 2, etc.) to the applicable Purchasing Entity, within 15 days from date of issue.

E. Periodic Business Reviews

- i. The State may schedule periodic business reviews to review Contractor's performance under this Participating Addendum.
- ii. Contractor shall ensure personnel assigned to the Participating Addendum are available for these meetings with the State as scheduled by the State.

- iii. Contractor's primary contact designated in §5 of the Participating Addendum shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Participating Addendum, permitted by law or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI. Contractor shall immediately forward any request or demand for State Records to the State's primary contact as identified in §5 of the Participating Addendum.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and subcontractors who require access to perform their obligations under this Participating Addendum. Contractor's agents, employees, assigns and subcontracts shall be advised as to the confidential nature of such Confidential Information and shall be subject to restrictions no less stringent than those set forth herein.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with non-on-site access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Participating Addendum, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State promptly and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement. Unless Contractor can establish that neither Contractor nor any of Contractor's agents, employees, assigns nor subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is developed with the reasonable assistance and input of the State at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, reasonably request Contractor to engage the services of an independent, qualified third-party to conduct a security audit. Should Contractor engage in such audit, Contractor will provide the State

with a summary overview of the findings of such audit.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor will or may receive PII under this Contract, Contractor shall maintain physical, electronic, and procedural safeguards that are designed to (i) maintain the security and confidentiality of PII; (ii) protect PII against anticipated threats or hazards to the security or integrity of PII; and (iii) prevent unauthorized access to or use of such PII that could result in substantial harm or inconvenience to the particular individual. Contractor shall comply with industry-accepted information security practices, as provided by the NIST CSF 1.1, NIST 800-53 v4 Cybersecurity Framework, Federal Information Process Standards Publication 200, and other applicable standards organizations. Furthermore, Contractor's Technology Operations Services include elements of IT Services Management Standards and best practices such as COBIT 5 and ITIL.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Participating Addendum. Such a conflict of interest would arise when a Contractor's or employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Participating Addendum.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Participating Addendum, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Participating Addendum.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction concerning the actual or apparent conflict constitutes a breach of this Participating Addendum.

12. INSURANCE

Contractor shall maintain insurance as specified in this section at all times during the term of this Participating Addendum and until all orders for Goods, Services, or both have been delivered and accepted, regardless of whether this Participating Addendum has expired or has been terminated. All insurance policies required by this Participating Addendum shall be issued by insurance companies with A.M Best ratings of at least A-VII.

A. Workers' Compensation

Workers' Compensation insurance as required by state statute, and employers' liability insurance

covering all Contractor employees acting within the course and scope of their employment. Insurance must stay in place and in effect even if the contract terms expires, until all product or terms of the contract are completed and satisfied up to 120 days after contract term expires.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, contractual liability for personal and advertising injury, personal injury, and advertising liability with minimum limits as follows:

- i. \$2,000,000 each occurrence;
- ii. \$4,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, data breach management exposure, and loss of income or extra expense as a result of actual breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$4,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor.

H. Primacy of Coverage

Commercial General Liability and Automobile Liability Coverage required of Contractor shall be primary over any Commercial General Liability and Automobile Liability insurance or self-insurance program carried by Contractor or the State.

I. Cancellation

The above Commercial General Liability and Automobile Liability insurance policies shall include

provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §5 of the Participating Addendum within 7 days of Contractor's receipt of such notice.

J. Subrogation Waiver

The Commercial General Liability, Workers Compensation, and Automobile Liability insurance policies secured or maintained by Contractor in relation to this Participating Addendum shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Participating Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Participating Addendum within 7 Business Days following the Effective Date. No later than 15 days after the expiration date of Contractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals without a lapse in coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 of this Exhibit A, for that Party. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion in order to protect the public interest of the State, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in this Participating Addendum; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

14. REMEDIES

A. State's Remedies

With the exception of §7 and §10 of this Exhibit A, if Contractor is in material breach under any provision of this Participating Addendum and fails to cure such breach, the State, following the notice and cure period set forth in §13 of this Exhibit A, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Participating Addendum or any part of this Participating Addendum. Contractor shall continue performance of this Participating Addendum to the extent not terminated, if any.

If after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest under §3.E of this Exhibit A.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and neither the State nor any Participant shall be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

For any lawful reason, demand removal of any of Contractor's employees or agents from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest or the State's best interest.

c. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, at the option of and as approved by the State or Participant **(i)** secure that right to use such Work for the State, Participant and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period in §13 of this Exhibit A, and the dispute resolution process in §15 of this Exhibit A shall, in addition to all remedies set forth in the Master Agreement or this Participating Addendum, have all remedies available at law and equity. If a Participant is in breach of a provision of a Participant Agreement, Contractor shall have all remedies available to it under that Participant Agreement and this Participating Addendum, and available at law and equity.

C. Participant's Remedies

- i.** If Contractor is in breach under any provision of the Master Agreement, Participating Addendum, or Participant Agreement, the Participant shall have all of the remedies listed in §14.A.ii. above, all remedies listed here in §14.C and all other remedies available by law or equity. The Participant may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

- ii. If a Participant gives Contractor notice of breach or terminates a Participant Agreement because of Contractor's breach of that Participant Agreement, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.
- iii. **Payments and Damages**
 - a. Notwithstanding anything to the contrary, Participants shall pay Contractor for all obligations and related fees incurred by Participant up to and including the date of termination.
 - b. Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Participant for any damages sustained by the State or Participant in connection with any breach by Contractor.

15. DISPUTE RESOLUTION

A. Disputes, Termination and Resolution

- i. If a dispute related to a Participant Agreement or Cardholder statement arises between Contractor and a Participant, Contractor shall meet with the Participant to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Participant, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with §5 of the Participating Addendum. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Participant under this Contract.
- ii. A Participant may terminate a Participant Agreement if it determines that Contractor was in breach of that Participant Agreement and has failed to cure the breach. Termination of a Participant Agreement shall not terminate any other Participant Agreement or this Participating Addendum.
- iii. If a Participant gives Contractor notice of breach or terminates a Participant Agreement because of Contractor's breach of that Participant Agreement, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

B. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum which cannot be resolved by the designated Participating Addendum primary contacts, as identified in §5 of the Participating Addendum, or through a dispute on a Participant Agreement or Cardholder statement, shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

C. Resolution of Controversies arising under this Participating Addendum

If the initial resolution described in §15.B. fails to resolve the dispute within ten (10) Business Days, Contractor shall submit any alleged breach of this Participating Addendum by the State to the Procurement Official of the State Purchasing and Contracts Office as described in in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"). Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

With the exception of reporting information provided per §8 of this Exhibit A, any Work Product developed by Contractor during its performance of this Participating Addendum shall be the property of Contractor, and Contractor retains all rights, title and ownership to all such Work Product. Contractor may not charge a Participant for any Work Product, copyright material or patentable discovery developed during the terms of the Participating Addendum or extensions thereto.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Participating Addendum, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Participating Addendum without the prior written consent of the State. Upon termination of this Participating Addendum for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract ("Contractor Property"). Contractor Property shall be licensed to the State or applicable Participant as set forth in this Contract or a State approved license agreement: (i) entered into as exhibits to this Contract; (ii) obtained by the State from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

17. OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to Purchasing Entities all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum's terms. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the appropriate Participant has an interest. At the State or Participant's request, Contractor shall return materials owned by the Participant that Contractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the appropriate Participant at the State or Participant's request.

18. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

19. GENERAL PROVISIONS

A. Assignment

Except for “Permitted Transfers”, Contractor may not assign this Addendum without the prior, written consent of the State; provided that in the event of a breach of this provision, the State’s sole and exclusive remedy will be to terminate this Addendum. Notwithstanding the foregoing, the parties agree that Contractor shall have the right to assign or otherwise transfer and delegate its rights, obligations, or duties under this Participating Addendum in its entirety or a portion with notice to the State, the execution of a consent to assign, as may be appropriate, and the W-9 of the entity receiving or resulting from the transfer, to: **(i)** any entity resulting from a merger or consolidation with Contractor; **(ii)** any entity succeeding to a significant portion of Contractor’s stock, Contractor’s assets or offices for its Corporate Payment Systems division; **(iii)** any parent, subsidiary or affiliate of Contractor having direct or indirect common ownership or control with the Contractor; or **(iv)** any financial institution with the capacity to offer substantially similar products and services to the State that are substantially similar to the services delivered to the State under this Participating Addendum (each a “**Permitted Transfer**”). For the purposes of this Participating Addendum, the following shall not be considered an assignment, transfer or delegation and, in no event, require the State’s approval or notice: **(a)** Contractor’s going from a publicly held corporation to a privately held corporation; **(b)** any public offering of Contractor’s stock; or **(c)** any change in ownership of Contractor’s stock, unless the resulting ownership must report federal income taxes on a W-9 different than the Contractor.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each subcontract. All subcontracts entered into by Contractor in connection with this Participating Addendum shall comply with all applicable federal and state laws and regulations, and shall provide that they are governed by the laws of the State of Colorado.

C. Binding Effect

Except as otherwise provided in §19.A., all provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Participating Addendum and the performance of such Party’s obligations have been duly authorized.

E. Captions and References

The captions and headings in this Participating Addendum are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Participating Addendum to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Participating Addendum may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Participating Addendum represents the complete integration of all understandings between the

Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Participating Addendum. Prior or contemporaneous additions, deletions, or other changes to this Participating Addendum shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Participating Addendum, any modification to this Participating Addendum shall only be effective if agreed to in a formal amendment to this Participating Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Participating Addendum, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Participating Addendum to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Participating Addendum.

K. Severability

The invalidity or unenforceability of any provision of this Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of this Participating Addendum.

L. Survival of Certain Contract Terms

Any provision of this Participating Addendum that imposes an obligation on the Contractor or a Participant after termination or expiration of this Participating Addendum shall survive the termination or expiration of this Participating Addendum and shall be enforceable by the other Party.

M. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Contractor shall honor any tax exemption that any Participant has, and shall not charge any Participant any excise, sales, or use taxes from which that Participant is exempt. Any Participant shall supply Contractor with a current, valid Exemption Certificate upon request.

N. Third Party Beneficiaries

Except for a Participant and/or the Parties' respective successors and assigns described in §19.A,

this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Participating Addendum, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal law, this Participating Addendum and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

Contractor shall perform its obligations under this Participating Addendum in accordance with industry standards of care, skill and diligence in Contractor's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Participating Addendum, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Participating Addendum, and shall ensure that all employees, agents and subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Participating Addendum.

S. Indemnification

i. General Indemnification

Except to the extent of the State's negligence or willful misconduct, Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all third-party costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any negligent act or omission by Contractor, or its employees, agents, subcontractors, or assignees in connection with this Participating Addendum.

ii. Intellectual Property Indemnification

Except to the extent of the State's negligence or willful misconduct, Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all third-party costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

20. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the Participant payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes, income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW

Contractor, the State, and any Participant shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination, unfair employment practices, U.S. economic sanctions, and anti-money laundering.

F. CHOICE OF LAW, JURISDICTION, AND VENUE

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's

liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor, to the best of its knowledge, has no interest, nor shall it acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State Agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving

the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT B, INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit.

1. PROTECTION OF SYSTEM DATA

- A. In addition to the requirements of the main body of this Contract, if Contractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this Exhibit.
- B. The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. Information Technology is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
 - i. Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.;
 - ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
 - iii. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
- C. Contractor shall meet all of the following:
 - i. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
 - ii. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
 - iii. Comply with applicable laws and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - iv. Maintain security safeguards that prevent unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - v. Promptly report all Incidents to a designated representative of the State’s Office of Information Security (“OIS”).
 - vi. Comply with all rules, policies, procedures, and standards issued by the Governor’s Office of Information Technology (“OIT”), including change management, project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at www.oit.state.co.us/about/policies.
- D. Subject to Contractor’s reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.
- E. Contractor shall perform background checks on all of its respective employees and agents performing services or having access to State Records provided under this Contract.

2. DATA HANDLING

- A. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- B. Contractor shall not allow any of its agents, employees, assigns or subcontractor's remote access to State Records from outside the United States, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- C. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete download file of all State data.
 - i. This download file shall be made available to the State within 10 Business Days of the State's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, or delimited text files with documents, detailed schema definitions along with attachments in its native format.
 - ii. Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State's ability to access and retrieve State Records stored by Contractor.
- D. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Contract. Such assessment will be conducted during regular business hours upon not less than 90 days prior written notice by the State to Contractor on a date mutually agreed upon by the State and Contractor.

3. DELIVERY AND ACCEPTANCE

- A. Contractor shall provide and maintain a quality assurance system acceptable to the State for any Work under this Contract and shall provide to the State only such Work that have been inspected and found to conform to the specifications identified in this Contract and any applicable solicitation, bid, offer, or proposal from which this Contract results.
- B. Contractor's delivery of any Work to the State shall constitute certification that such Work has been determined to conform to the applicable specifications, and Contractor shall make records of such quality assurance available to the State upon request during the term of the Contract or at any time within three years following expiration or termination of the Contract.
- C. For any Work other than the purchase or license of commercially available goods or software, acceptance of the Work shall require written acceptance by the State, if applicable. Such

communication shall be provided within a reasonable time period from the delivery of the Work and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor's gross negligence or willful misconduct.

4. WARRANTY OF ONLINE PLATFORM

- A.** Notwithstanding the acceptance of the online platform, or the payment of any invoice for the online platform, Contractor warrants that the online platform provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that the online platform shall be, at the time of delivery, free from any harmful or malicious code, including without limitation, viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor's warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of the online platform.
- B.** Upon notice of any defect or material nonconformity, Contractor shall work with the State to ascertain feasibility, risks, and impacts of recommendations for corrective actions. The State's remedy for such defect or material non-conformity shall be:
 - i.** Contractor shall re-perform, repair, or replace such Work as mutually agreed upon by the Parties. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work; or
 - ii.** Any Work delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work. The duration of the warranty for any replacement or corrected Work shall run from the date of the corrected or replacement Work.

5. COMPLIANCE

- A.** In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:
 - i.** All Colorado Office of Information Security (OIS) policies and procedures which OIS has issued pursuant to §§24-37.5-401 through 406, C.R.S. and 8 CCR §1501-5 and posted at <http://oit.state.co.us/ois>.
 - ii.** All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any specifically incorporated industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance under the Contract. Such obligations may arise from:
 - a.** Payment Card Industry Data Security Standard (PCI-DSS)
 - b.** CMS Minimum Acceptable Risk Standards for Exchanges
 - c.** Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration.
 - iii.** Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, et seq., C.R.S. Contractor shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines

(WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.

- B.** Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.
- C.** Contractor shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information shall include:
 - i.** An annual SOC2 Type II audit or other equivalent independent auditor's report within 15 days of the State's written request for such report.
- D.** To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with a redacted application penetration test, to the extent applicable, and upon receipt of written request from the State.

6. TRANSITION OF SERVICES

Upon request by the State prior to expiration or earlier termination of this Contract or any Services provided in this Contract, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services. Contractor shall cooperate fully with the State or any successor provider and shall promptly take all steps reasonably required to assist in effecting a complete transition of the Services designated by the State. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Contract.

7. LICENSE OR USE AUDIT RIGHTS

- A.** To the extent that Contractor, through this Contract or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.
- B.** Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor ("Audit Certification") within 120 days following the State's receipt of the Audit Request.
- C.** If upon receipt of the State's Audit Certification, the Contractor reasonably determines that: **(i)** the State's use of licenses, use of software, use of programs, or any other use during the audit period exceeded the use restrictions and limitations contained in this Contract or any other license grant contained in this Contract ("Overuse") and **(ii)** the State would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide written notice to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request assurances that the State bring its use into compliance with such use restrictions and limitations.

EXHIBIT C, STATEMENT OF WORK

1. GOODS AND/OR SERVICES

For a description of the Goods and Services provided under this Participating Addendum, see **Exhibit A (Commercial Card Products)** and **Exhibit E (Supplemental Services and Fees)** of the Master Agreement # 00719.

2. OTHER PROJECT REQUIREMENTS

In addition to the requirements outlined in the Statement of Work, **Exhibit G (Commercial Card Requirements)**, and the process outlined in **Exhibit D (Establishing a Card User Agreement)**, of the **Master Agreement**, Contractor shall also ensure the following:

A. Delivery of Goods and Performance of Services

- i. Prior to the commencement of any Good or Service provided by Contractor to any Participant, a Participant must provide the necessary information in Exhibit D, Exhibit D-1, Exhibit D-2, and/or any other information requested by Contractor ("Participant Agreement").
- ii. Each Participant's rights and obligations hereunder shall be independent of, and severable from, the rights and obligations of the State, and any other Participant under this Participating Addendum, provided, however, that at the discretion of the Contractor, a Rebate Adjustment may be made for the obligations of any Participant, when applicable.
- iii. With respect to State Agencies, the State agrees to be jointly and severally liable for any and all Obligations incurred by State Agencies.
- iv. Contractor understands and agrees that this Participating Addendum and each Participant Agreement shall be treated as a separate, severable agreement, which shall be effective and binding on the Contractor and such applicable Participant once fully executed.
- v. Contractor reserves the right of final approval and acceptance of Affiliate Addendums based on the Participant's credit and risk ratings. State Agency Participant Agreements shall be approved and accepted based on the State of Colorado's credit and risk rating.
- vi. Upon receipt of a Participant Agreement, fully executed by all parties, Contractor shall commence performance of its obligations under this Participating Addendum and the Master Agreement.
- vii. All Goods shall be free on board ("F.O.B.") destination to the location specified by the Participant.

B. Card Issuance and Renewal

- i. The Contractor shall issue a Commercial Card to each eligible individual designated by the Participant provided that each such designee is an employee, partner or officer of the Participant.
- ii. State Agencies shall have the ability to customize cards at no additional cost.
- iii. Affiliates may use the customization model specified by State Agencies, and may also use their own logo, at no additional cost. Any customization beyond what State Agencies have elected (logos excluded) will be subject to a fee, paid for by the Affiliate.
- iv. Each Commercial Card shall be valid for the term indicated thereon, unless the Contractor, pursuant to the provisions of this Participating Addendum or at the request of the State or applicable Participant, has cancelled such Commercial Card. The Contractor shall provide the

Cardholder with a new Commercial Card or a notice to the Participant via reporting through the online platform advising that the Commercial Card will not be renewed, approximately thirty (30) days prior to the expiration of the Commercial Card.

C. Spending Limit

- i. The Contractor shall set the total spending limit for each Participant. The Participant may also request the Contractor to establish sub-limits for individual Cardholder Accounts. The Contractor may lower or raise the spending limits in its sole discretion and shall inform the Participant and Statewide Commercial Card Program Administrator of such changes as they may relate to the Participant's spending limits.
- ii. State Agencies shall not be allowed to request a spending limit increase without written approval by the Statewide Commercial Card Program Administrator, and such increase will be subject to the Contractor's approval as provided herein.
- iii. Affiliates shall work directly with the Contractor to determine spending limit adjustments.
- iv. Participants shall not exceed the spending limits without the Contractor's written permission, and the Contractor shall be under no obligation to permit charges in excess of the spending limits or any individual spending sub-limit.

D. Ordering and Order Fulfillment

- i. Contractor shall provide a complete and accurate Internal Revenue Service form W-9 to the State prior to accepting an order from any Participant. Upon a request by a Participant, Contractor shall provide a complete and accurate Internal Revenue Service form W-9 to that Participant.
- ii. Each Participant may complete an order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an order.
- iii. Contractor shall communicate directly with each Participant related to that Participant's orders.
- iv. Contractor shall ensure that all orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of the Master Agreement, as well as those outlined in §8.A of Exhibit A of the Participating Addendum.
- v. If Contractor provides for Commercial Card ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor's necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.

E. Account Closure

- i. The Contractor may cancel or suspend a Commercial Card or any Cardholder's Account privileges at any time for any reason. Notice of any canceled or suspended Commercial Cards is available through the online platform. Upon notice from the Contractor, the Participant shall immediately instruct a Cardholder to cease using his or her canceled or suspended Card and Account.
- ii. The Participant shall take all reasonable actions necessary to prohibit access and use of Accounts by, and to collect Commercial Cards issued to, Cardholders whose employment has terminated or whose Accounts have been cancelled, and shall immediately destroy such Commercial Cards.

- iii. The State or applicable Participant, shall immediately advise the Contractor if any Participant is the subject of an insolvency event where the Participant shall no longer have the ability or legal right to pay off its Charges (in such circumstances, such Participant being referred to herein as an "**Excluded Entity**"). The State or applicable Participant, as the case may be, shall take all reasonable actions necessary to prohibit access and use of Accounts by an Excluded Entity and any employee, partner, officer or contractor thereof, including access to all systems or other channels for obtaining or modifying any Account information.
- iv. The Participant shall not be liable for charges made to an Account under this Participating Addendum after the State or applicable Participant, has closed such Account and disputed all applicable Charges within 60 days of the date the transaction posts, unless recurring charges (for example, journal subscriptions and memberships) continue to be made to such Account regardless of the termination, suspension or cancellation of such Account.

F. Exclusivity

- i. The State agrees Contractor will be the exclusive provider to State Agencies, where authority exists, for the products and services selected in this Participating Addendum.
- ii. Contractor understands that the State may transition to another Contractor upon expiration or termination of the Master Agreement, and that this transition may occur prior to such expiration or termination. In such case, Contractor agrees that the State will not be held in breach of Contract of §2.F(i).

G. Additional Terms

Any additional terms and conditions on any invoice, statement, website, electronic license or use agreement or any other form regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Participating Addendum or an order. The signature of any employee of a Participant on any such form shall be effective to establish receipt of Goods or completion of Services and shall not make any term listed herein of that form enforceable.

EXHIBIT D, STATE OF COLORADO AFFILIATE ADDENDUM

STATE OF COLORADO AFFILIATE ADDENDUM FOR PA # 163382

This Affiliate Addendum (“**Addendum**”) is entered into by **Insert Political Subdivision or Institution of Higher Education Name (“Affiliate”)** organized under the laws of the State of Colorado (“**State**”), and U.S. Bank. This Addendum shall become effective upon signing by the State.

RECITALS

1. The State of Colorado (the “**State**”) and U.S. Bank entered into the NASPO Value Point Participating Addendum effective January 1, 2021, as amended or supplemented (the “**Agreement**”);
2. Affiliate desires to participate as a “**Purchasing Entity**” under the Program and Agreement, with sole liability of its own obligations it may incur under the Program and Agreement; and
3. U.S. Bank has agreed to allow Affiliate to be bound under the Agreement and participate in the Program as a “**Purchasing Entity**”.

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

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

4. **LIABILITY FOR AFFILIATE’S PERFORMANCE AND OBLIGATIONS.** Affiliate agrees that it shall be solely liable for its

performance of the terms and conditions of the Agreement and this Addendum. The State shall have no liability for any obligations incurred under the Program by Affiliate and any Account holder designated by such Affiliate.

5. NOTICES. The notice address for Affiliate is:

Affiliate:

Attn:	

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

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

(SIGNATURE PAGE FOLLOWS)

SIGNATURE PAGE**AFFILIATE****STATE OF COLORADO**

Date: _____

Date: _____

Legal Name of Affiliate_____
Department of Personnel & Administration
Name of Department Managing Program_____
(Signature of Authorized Individual)_____
(Signature of Authorized Individual)_____
(Printed Name of Authorized Individual)_____
(Printed Name of Authorized Individual)_____
Title of Authorized Individual_____
Title of Authorized Individual**U.S. BANK**

Date: _____

U.S. Bank National Association
Legal Name of Contractor_____
(Signature of Authorized Individual)_____
(Printed Name of Authorized Individual)_____
Title of Authorized Individual

EXHIBIT D-1, SAMPLE AFFILIATE PROGRAM INFORMATION

**STATE OF COLORADO
AFFILIATE PROGRAM INFORMATION**

Legal Name of Affiliate _____

Tax ID Number: _____

Web Address for Financials*: _____

*Affiliate must provide 3 (three) years of audited financials. It is preferred that these financials can be obtained online, but if not, they should be sent to leslie.massey@usbank.com or cpsmidmarketsalescoordinator@usbank.com

Affiliate Point of Contact: The person designated below will serve as the initial point of contact for establishing an Account or Accounts with U.S. Bank.

Name: _____

Mailing Address: _____

City, State, ZIP: _____

Phone: _____

Email Address: _____

1. Does the Affiliate have an existing Corporate/Purchasing/One Card Program? (Check one)

☐ Yes ☐ No

2. What payment programs do you plan to implement? (Check all that apply)

CARD TYPES – VISA – ONE CARD		
Payment Solution	Liability Offered	Billing Option
☐ One Card/Integrated Cards	Commercial Liability	Corporate Bill/Corporate Pay Individual Bill (IBA)/Individual Pay Individual Bill (IBA)/Corporate Pay Central Billed Accounts (CBA)
☐ Declining Balance Card/Managed Spend Card	Commercial Liability	Corporate Bill/Corporate Pay Central Billed Accounts (CBA)
☐ Emergency Card	Commercial Liability	Corporate Bill/Corporate Pay
☐ Electronic Payable/Single Use Accounts/Virtual Card	Commercial Liability	Corporate Bill/Corporate Pay
☐ Ghost Cards	Commercial Liability	Corporate Bill/Corporate Pay
☐ Travel Virtual Pay	Commercial Liability	Corporate Bill/Corporate Pay
☐ Event Planner Card	Commercial Liability	Corporate Bill/Corporate Pay Central Billed Accounts (CBA)

CARD TYPES – VISA – PURCHASE CARD		
Payment Solution	Liability Offered	Billing Option
☐ Purchase Card	Commercial Liability	Corporate Bill/Corporate Pay Individual Bill (IBA)/Individual Pay Individual Bill (IBA)/Corporate Pay Central Billed Accounts (CBA)
☐ Declining Balance Card/ Managed Spend Card	Commercial Liability	Corporate Bill/Corporate Pay Central Billed Accounts (CBA)
☐ Emergency Card	Commercial Liability	Corporate Bill/Corporate Pay
☐ Electronic Payable/Single Use Accounts/Virtual Card	Commercial Liability	Corporate Bill/Corporate Pay
☐ Ghost Cards	Commercial Liability	Corporate Bill/Corporate Pay

CARD TYPES – VISA – TRAVEL CARD		
Payment Solution	Liability Offered	Billing Option
☐ Travel Card	Commercial Liability	Corporate Bill/Corporate Pay Individual Bill (IBA)/Individual Pay Individual Bill (IBA)/Corporate Pay Central Billed Accounts (CBA)
☐ Declining Balance Card/ Managed Spend Card	Commercial Liability	Corporate Bill/Corporate Pay Central Billed Accounts (CBA)
☐ Travel Virtual Pay	Commercial Liability	Corporate Bill/Corporate Pay
☐ Ghost Cards	Commercial Liability	Corporate Bill/Corporate Pay
☐ Event Planner Card	Commercial Liability	Corporate Bill/Corporate Pay Central Billed Accounts (CBA)
☐ Travel Card	Individual Liability Joint & Several Liability	Individual Bill (IBA)/Individual Pay Individual Bill (IBA)/Corporate Pay

3. Annual Card and Spend Information: (write "N/A" if not applicable)

Estimated Number of PCards: Estimated Annual PCard spend: \$
 Estimated One Cards: Estimated Annual One Card spend: \$
 Estimated Number of Travel Cards: Estimated Annual Travel Card spend: \$
 Estimated Number of Declining Balance Cards: Estimated Annual Declining Balance Card spend: \$
 Estimated Number of Emergency Cards: Estimated Annual Emergency Card spend: \$
 Estimated Number of Ghost Cards: Estimated Annual Ghost Card spend: \$
 Estimated Number of Event Planner Cards: Estimated Annual Event Planner spend: \$
 Estimated Annual Virtual Pay spend: \$

EXHIBIT D-2, SAMPLE EXEMPT ENTITIES REQUIRED INFORMATION FORM

**Know Your Customer
Exempt Entities
Required Information Collection Form**

To help the United States government fight the funding of terrorism and prevent money laundering activities, U.S. Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (individual, corporation, partnership, trust, estate, or any other entity recognized as a legal person) who opens an account. U.S. Bank will ask for the legal name, address, tax identification number, and other identifying information that will assist us in completing the review of contract/application. We may also ask for copies of certified articles of incorporation, an unexpired government-issued business license, a partnership agreement, or other documents that indicate the existence and standing of the entity. U.S. Federal law also requires financial institutions to conduct ongoing customer due diligence, verify the identity of beneficial owners of certain legal entities, and comply with U.S. Economic Sanctions. U.S. Bank may require identification information on Customer, its Affiliates, Related Parties, or Cardholders, if applicable, to allow U.S. Bank to remain in compliance with U.S. Federal law or U.S. Bank policy. Customer agrees to promptly provide such identification information to U.S. Bank, and Customer shall cause its Affiliates, Related Parties or Cardholders, if applicable, to provide identification information to U.S. Bank

Customer Information

Answer all questions completely and thoroughly. Provide first, middle and last names on **all** individuals. Date of Birth is to be in mm/dd/yyyy format. Forms that are returned with missing information will cause delays in processing. Do not leave any section blank unless instructed to do so. If additional space is needed, you may attach additional pages. Abbreviations or acronyms are not acceptable. P.O. Boxes are not acceptable in address. You must notify U.S. Bank if any information contained in the form changes during your relationship with us.

Company (Legal Entity) Name:

Provide the full legal name of the customer as it is captured on formation documents, this does not include DBA/Trade names or Operating As names. Examples: Articles of Incorporation, Partnership Agreements, etc. If the entity is a Sole Proprietorship, provide the full legal name, first, middle, last, of the Owner.

Company Information

Identification number: TIN, EIN; SSN (for a Sole Proprietorship, a Non-U.S. business identification number from a government-issued document certifying the existence of a business or enterprise).		
Physical Business Address • Street, City, State, Postal Code, Country		
Does your company have a Doing Business As (DBA)/Assumed Name/Fictitious Name? ☐ Yes ☐ No 		
If Yes, provide all DBAs or trade names		
Provide the DBA address if it is different than the company address. • Street, City, State, Postal Code, Country		

Do any of the below business types apply to your business?

If yes, check those that apply and complete the form

If no, reach out to the individual who supplied this form as additional information is required.

- ☐ U.S. Department or Agency of any Federal, State or political subdivision, including Tribal governmental entities
☐ U.S. Political Subdivision (e.g.. Municipality)
☐ Financial institution that is regulated by a Federal or State Regulator:
☐ Any entity established under under an interstate compact, including Indian Tribal Governmental Entities
☐ An entity that is listed on the New York, NYSE Market LLC or NASDAQ stock exchanges or majority owned (51% or greater)
☐ subsidiary of a Publicly Traded parent – this only applies to U.S. operations and entities

Name of Exchange:

Ticker Symbol:



**Know Your Customer
Exempt Entities
Required Information Collection Form**

Section A: Standard Due Diligence Questions - This section is required to be completed by all applicants

1	What is the nature of your business? • Include NAICS if known		
2	What is the legal structure of your business (e.g., Corporation, Limited Partnership/LLP, Not-for-Profit Organization, LLC)?		
3	What is the company's country of formation?		
4	What is the country of primary business operations for the company?		
5	What is the company's expected monthly value of incoming and outgoing international (outside of the U.S.) activity? If none, please indicate with \$0. None and N/A are not allowed.	\$	
6	Does the company provide any of the following services? If Yes, which service? • check cashing services • issue or cash travelers checks or money orders • provide money transmission or foreign exchange services • offer prepaid cards	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No	☐ No ☐ No ☐ No ☐ No
7	What is the company's estimated or projected annual revenue/budget (USD)? None and N/A are not allowed. If none, please indicate with a \$0	\$	
8	What is the purpose of the account?		

Section B: Related Parties (Authorized Signers, Guarantors, Executor) Requirements:

- An Account Opener is the individual(s), who signed the Corporate Payment Systems (CPS) contract document(s) on behalf of the company. This is required for all entities each time this form is completed. The account opener must be a Member or Manager of an LLC, Partner of a Partnership, Business Owner, CEO, Controller or other individual who performs a similar function.
- If there are more than four (4) individuals, make a copy of the form and complete it.

	Full Name (First, Middle, Last)	Date of Birth (mm/dd/yyyy)	OR	Physical Residential Address (preferred) or Business Address	SSN	Role
1	☐ No Middle Name					☐ Authorized Signer ☐ Guarantor ☐ Executor
2	☐ No Middle Name					☐ Authorized Signer ☐ Guarantor ☐ Executor
3	☐ No Middle Name					☐ Authorized Signer ☐ Guarantor ☐ Executor
4	☐ No Middle Name					☐ Authorized Signer ☐ Guarantor ☐ Executor

EXHIBIT D-3, SAMPLE U.S. BANK W-9 & RELATED INFORMATION FORM**U.S. Bank W-9 & Related Information****Form instructions**

Vendor Number: To be completed by U.S. Bank's Corporate Payables department

Section 1: W-9 information

U.S. Bank requires your taxpayer identification number and filing information in the case that we must file an information return to the IRS to report income paid to you. Please complete Section 1 in its entirety.

Section 2: Automated Clearing House (ACH)

ACH is U.S. Bank's preferred payment method. Signing up for ACH will allow U.S. Bank to pay you (vendor) through an automated electronic deposit into your preferred checking account. ACH eliminates mail delivery time and funds are credited to your account within 1-2 business days of the payment date for U.S. Bank account holders and 3-5 business days for non-U.S. Bank account holders. A remittance advice detailing the invoice number(s), date and dollar amount will be sent to you via e-mail if an e-mail address is provided or mail when the payment has been sent electronically to your account.

Please acquire your routing number and account number from a check (not from a deposit slip).

Section 3: Minority and Women Owned Business Enterprises (MWBEs)

U. S. Bank is committed to building relationships with certified MWBEs, defined as companies that are at least 51 percent owned, controlled and managed by one or more of the following categories - African American, Hispanic American, Asian Pacific American, Asian Indian American, Native American, Woman.

Please include a copy of the company's certification from a regional council of the National Minority Supplier Development Council (NMSDC); the Women's Business Enterprise National Council (WBENC); the National Women Business Owners Corporation (NWBOC); or a federal, state or local government affiliate.

Section 4: Signature and Submission

Please submit the signed and completed form to:

Mail: Rebates 901 Marquette Ave S
EP-MN-A18S
Minneapolis, MN 55402

Email: cps.rebates@usbank.com

Foreign and Sole Proprietor

If you are a sole proprietor, please complete and submit a W-9 form or Form 8233 from the IRS. For all other legal structures for foreign vendors, please complete a W-8BEN form or W-8ECI form.



U.S. Bank W-9 & Related Information

Return completed form to cps.rebates@usbank.com or US Postal Mail as indicated on the instruction page.

Vendor Number (to be completed by U. S. Bank):

Section 1: W-9

Must be completed and returned for payments to be processed.

Legal Name

Trade Name

Address

City

State

ZIP

Phone

Fax

Federal Tax ID/Social Security Number*

*MUST match the person/entity listed above

Legal Structure

- ☐ Sole Proprietorship
☐ Corporation
☐ Partnership
☐ Tax Exempt Organization
☐ Government Agency
☐ Other, please specify

If LLC, please select one of the following:

- ☐ LLC Corporation
☐ LLC Partnership
☐ LLC Sole Proprietorship (legal name and SSN required)

Legal Name

SSN

Section 2: Automated Clearing House (Direct Deposit)

U.S. Bank's preferred payment method.

☐ Authorization Agreement for Automatic Deposits (ACH Credits)

I (We) hereby authorize U.S. Bank, on behalf of any affiliate for which it processes payments, hereinafter called COMPANY, to initiate credit entries to my (our) account indicated below and the depository/financial institution named below, hereinafter called BANK, to credit the same to such account.

cps.rebates@usbank.com

E-mail address (to receive electronic remittance advices)

Checking Account Information (Please attach a voided check or copy of a check with MICR coding)

Routing/ABA Number

Account Number

Bank Name

Branch

City

State

ZIP

Phone

This authority is to remain in full force and effect until COMPANY has received written notification from me (us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonably opportunity to act on it.

Section 3: Minority and Women Owned Business Enterprises (MWBEs)

U. S. Bank is committed to building relationships with certified Minority and Women Owned Business Enterprises (MWBEs), defined as companies that are at least 51 percent owned, controlled and managed by one or more of the following categories - African American, Hispanic American, Asian Pacific American, Asian Indian American, Native American, Woman

Is your company certified as a minority/ woman owned business?

☐ No ☐ Yes (if yes, a copy of your minority/woman owned certification MUST BE INCLUDED)

MWBE Business Status (check all that apply):

- ☐ African American
☐ Hispanic American

- ☐ Asian Pacific American
☐ Asian Indian American

- ☐ Native American
☐ Woman

Section 4: Signature (required)

Name (Print):

Title:

Signature

Date

For Internal Use Only: DUNs#