



State of West Virginia
Agency Master Agreement

Order Date: 2024-06-12

CORRECT ORDER NUMBER MUST
 APPEAR ON ALL PACKAGES,
 INVOICES, AND SHIPPING PAPERS.
 QUESTIONS CONCERNING THIS
 ORDER SHOULD BE DIRECTED TO
 THE DEPARTMENT CONTACT.

Order Number:	AMA 1200 A100 AUD2400000008 1	Procurement Folder:	1448019
Document Name:	EMERGENCY CONTRACT-PROVIDE PURCHASING CARD SERVICE	Reason for Modification:	
Document Description:	EMERGENCY CONTRACT- PROVIDE PURCHASING CARD SERVICE		
Procurement Type:	Agency Master Agreement		
Buyer Name:	Julie A Myers		
Telephone:	(304) 558-2251		
Email:	julie.myers@wvsao.gov		
Shipping Method:	Best Way	Effective Start Date:	2024-11-11
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2025-11-10

VENDOR		DEPARTMENT CONTACT	
Vendor Customer Code:	000000172239	Requestor Name:	Amy Lewis
US BANK NA 10 WEST BROAD ST 12TH FL COLUMBUS OH 43215 US		Requestor Phone:	(304) 558-2251
Vendor Contact Phone:	252-335-5834	Requestor Email:	amy.lewis@wvsao.gov
Discount Details:			
	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	No		
#3	No		
#4	No		

INVOICE TO	SHIP TO
STATE AUDITOR'S OFFICE 1900 KANAWHA BLVD E 1900 KANAWHA BLVD E CHARLESTON WV 25305-0230 US	STATE AUDITORS OFFICE 1900 KANAWHA BLVD E CHARLESTON WV 25305-0230 US

Total Order Amount:	Open End
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DEPARTMENT AUTHORIZED SIGNATURE
SIGNED BY : Anthony M Woods
DATE: 2024-06-13
ELECTRONIC SIGNATURE ON FILE

Extended Description:

EMERGENCY CONTRACT- PROVIDE PURCHASING CARD SERVICE
EFFECTIVE DATE 11/11/2024-11/10/2025
WITH 1 YEAR OPTIONAL RENEWAL

TERMS & CONDITIONS AND REBATE TO REMAIN THE SAME AS OLD CONTRACT CMAAUD18*01 WITH ONE (1) YEAR OPTIONAL RENEWAL

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	84141602			JOB	\$0.00
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: CREDIT CARD, CHARGE CARD SERVICES

Extended Description:

	Document Phase	Document Description	Page
AUD240000008	Final	EMERGENCY CONTRACT- PROVIDE PURCHASING CARD SERVICE	3

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions



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US BANK NA 10 WEST BROAD ST 12TH FL		Requestor Phone:	(304) 558-2251
COLUMBUS OH 43215		Requestor Email:	amy.lewis@wvsao.gov
US			
Vendor Contact Phone:	252-335-5634	Extension:	
Discount Details:			
	Discount Allowed	Discount Percentage	Discount Days
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Total Order Amount: Open End

DEPARTMENT AUTHORIZED SIGNATURE

DATE:
ELECTRONIC SIGNATURE ON FILE

Approved as to form prior to acknowledgment thereof
 this 13th day of June, 2024
 Patrick Morrisey, Attorney General
 by: John L. Gray

Extended Description:

EMERGENCY CONTRACT- PROVIDE PURCHASING CARD SERVICE
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US BANK National Association
Order of Precedence Agreement

Pursuant to this Order of Precedence Agreement, US Bank National Association ("US Bank") and the State of West Virginia ("State") agree that contract resulting from CRFP AUD 1700000001 between US Bank and the State of West Virginia ("State") for credit card services (the "Contract") shall be interpreted in the order of precedence listed below.

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the contract document in this section. Any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.

Contract Documents:

- a. Order of Precedence Agreement (this document) - First Priority
- b. WV-96 (attached hereto as Exhibit A) - Second Priority
- c. US Bank's Master Agreement (attached hereto as Exhibit B) -Third Priority
- d. US Bank's US Country Addendum (attached hereto as Exhibit C) - Fourth Priority.
- e. RFP AUD1700000001 issued by the State of WV and any addenda issued - Fifth Priority
- f. US Bank's Proposal Submitted in response to RFP AUD1700000001 - Sixth Priority

US BANK NATIONAL ASSOCIATION

BY: E-SIGNED by Brad Hoffelt
on 2024-06-11 21:02:33 GMT

ITS: Senior Vice President

DATE: June 11, 2024

STATE AGENCY

BY: [Signature]

ITS: Chief of Staff

DATE: 6-7-2024

West Virginia Purchasing Division

BY: [Signature]

ITS: Purchasing Director

DATE: 6/14/24

West Virginia Attorney General (as to form)

BY: [Signature]

ITS: Deputy Attorney General

DATE: 6/13/2024

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominant over any competing terms made a part of the Contract:

- ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
- PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.
Any language imposing any interest or charges due to late payment is deleted.
- FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
- RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
- DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
- FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
- GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
- RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
- LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
- TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
- NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.


12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that is has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strike through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: WEST Virginia
By: Jeff Waybright
Printed Name: Jeff Waybright
Title: Chief of Staff
Date: 6-7-2024

Vendor: U.S. Bank National Association
By: 
Printed Name: Brad Hoffelt
Title: Senior Vice President
Date: June 11, 2024

**MASTER AGREEMENT
COMMERCIAL CARD & ACCOUNT PROGRAM**

This Master Agreement (the "Agreement") is a multipurpose agreement used in the United States and Canada to govern the Commercial Card & Account Programs ("Programs"), and if applicable, Global Commercial Card Program offered by U.S. Bank. This Agreement is entered into by U.S. Bank National Association ("U.S. Bank USA") or U.S. Bank National Association, operating through its Canada branch ("U.S. Bank Canada") (collectively, "U.S. Bank") and the entity executing this Agreement as "Customer Canada" or "Customer USA" (collectively, "Customer"). This Agreement is effective upon signing by U.S. Bank ("Effective Date") and supersedes any like and previous agreements with Customer.

I. CREDIT PROVISIONS.

- A. Financial Information.** This Agreement is for the extension of credit with a financial institution and not a vendor services agreement. Accordingly, Customer shall provide information requested by U.S. Bank to perform periodic credit reviews. Unless such information is publicly available or available through U.S. Bancorp or any of its subsidiaries, Customer shall provide audited financial statements prepared by Customer's independent certified public accountant as soon as available and in any event not later than 120 days after the end of each fiscal year of Customer. If U.S. Bank requires additional information to conduct its review, Customer shall provide U.S. Bank such other information regarding the business, operations, affairs, and financial condition of Customer as U.S. Bank may reasonably request. Such information may include, but is not limited to, quarterly financial statements, organizational charts, executive biographies and other formal documentation.
- B. Credit Accounts.** U.S. Bank may, in its sole discretion, revise any credit limits or controls associated with the Program; provided, however, that U.S. Bank will provide notice to Customer of any decrease in Customer's overall credit limit. Customer shall make a payment to U.S. Bank, within ten days of such notice, sufficient to reduce the Debt to an amount equal to or less than the revised credit limit.
- C. ATM Access/Cash Advances.** U.S. Bank provides access to Cash Advances through owned and participating bank Automated Teller Machines and Association member offices. If Customer elects to use Cash Advances, Customer will establish Cash Advance limits for Cardholders, either as a group or individually. U.S. Bank may suspend or terminate Cash Advance access for Cardholders, either as a group or individually, if U.S. Bank determines that continued access presents a risk of loss or liability to U.S. Bank or Customer.
- D. Convenience Checks (in Canada, "Convenience Cheques").** U.S. Bank can issue Convenience Checks to Cardholders designated by Customer. Replenishment of Convenience Checks will occur upon request by the Cardholder, subject to the Cardholder's Account status and cash availability. Convenience Check transactions are posted to the Cardholder Statement as a Cash Advance. U.S. Bank may suspend or terminate Convenience Check access for Cardholders, either as a group or individually, if U.S. Bank determines that continued access presents a risk of loss or liability to U.S. Bank or Customer. There are a number of limitations associated with Convenience Checks:
- 1. Authorization.** There is no authorization process associated with the use of Convenience Checks. At the time of Purchase, U.S. Bank has no duty to verify the authenticity of the signature on a Convenience Check, the identity of the person signing the Convenience Check, or restrict the use of Convenience Checks to specific Merchant types.
 - 2. Disputes.** Use of Convenience Checks and disputes arising therefrom are not covered by Association regulations. Other than the fraudulent use of a Convenience Check by an individual other than the Cardholder, which is governed by the applicable law pertaining to negotiable instruments, there are no dispute rights once a Convenience Check is used to make a Purchase.
 - 3. Returned Checks.** U.S. Bank may return a Convenience Check unpaid to the payee if (i) the amount of the Convenience Check exceeds the Cardholder's Cash Advance limit or (ii) U.S. Bank determines that honoring the check presents a risk of loss or liability to U.S. Bank or Customer.
 - 4. Limitation of Liability.** U.S. Bank is not liable for any damages resulting from U.S. Bank's refusal to honor a Convenience Check presented for payment.
 - 5. Stopping Payment.** Customer shall contact U.S. Bank promptly by phone to request that payment be stopped on a Convenience Check. Customer shall then provide a written confirmation of the stop payment request within 14 calendar days of the verbal stop payment request. Any written stop payment request received by U.S. Bank will remain in effect for six months, unless the request is renewed by Customer, in writing, before the end of the six (6) month period. U.S. Bank may pay Convenience Checks more than six (6) months old. There may be circumstances under which a Convenience Check must be paid, even if U.S. Bank has received a stop payment request from Customer. U.S. Bank is not liable to Customer if U.S. Bank does not honor the stop payment request under those circumstances. If it is determined that a Convenience Check should have been paid, but was not, U.S. Bank is not liable for any consequential, punitive or incidental damages if U.S. Bank acted in good faith. U.S. Bank's only obligation under those circumstances is to pay the designated payee the amount of the Convenience Check and to cancel any charges assessed against Customer's Account as a result of any wrongful failure to honor the Convenience Check.

II. U.S. AND CANADA PROGRAMS.

- A. Scope of Programs.** U.S. Bank USA is qualified to provide Commercial Card & Account Programs in the United States and U.S. Bank Canada is qualified to provide Commercial Card & Account Programs in Canada. Customer's wholly owned Affiliates may participate under this Agreement upon completion and execution of an applicable addendum and upon U.S. Bank's approval of such addendum. Affiliates approved for participation are known herein as "Participant(s)".

- B. Products.** U.S. Bank may provide the following Products to Customer and its Cardholders. Products available in the U.S. may differ from those available in Canada. Product availability and the Products for which Customer is approved are specified in the applicable Country Addendum.
- 1. Products.**
 - a. U.S. Bank Purchase Card & Accounts.** The U.S. Bank Purchase Card & Accounts are designed for charging goods and services related to the business activities of Customer.
 - b. U.S. Bank Corporate Card & Accounts.** The U.S. Bank Corporate Card & Accounts are designed for charging travel, entertainment and other goods and services related to the business activities of Customer.
 - c. U.S. Bank One Card & Accounts.** The U.S. Bank One Card & Accounts are designed to combine the capabilities of the Corporate Card & Accounts and the Purchase Card & Accounts on a single Account used for travel and entertainment related expenses and goods and services related to the business activities of Customer.
 - 2. Ancillary Products.**
 - a. U.S. Bank Central Billing Accounts.** Central Billing Accounts are specialized corporate liability Accounts designed for use without the issuance of a plastic Card. Central Billing Accounts include but are not limited to Central Billing Accounts, Central Travel Accounts, Central Purchasing Accounts, Central Travel System Accounts and Managed Spend Central Billing Accounts.
 - b. U.S. Bank Managed Spend Card.** The U.S. Bank Managed Spend Card is a specialized corporate liability card designed for use by Customers or Cardholders to charge business related goods and services. Unless requested for a different duration, the Managed Spend Card has a term of 12 to 36 months. Among the features of the Managed Spend Card are Managed Spend Central Billing Accounts, which can also be used for business or relocation expenses. Based on the credit worthiness of Customer U.S. Bank, at its sole discretion, will establish a credit limit of no less than five hundred U.S. Dollars (\$500.00) per Account.
 - c. U.S. Bank Executive Card and U.S. Bank Executive Platinum Card.** The U.S. Bank Executive Card and U.S. Bank Executive Platinum Card are specialized Corporate Cards that include a premium package of services for top executives of Customer. Issuance of Executive Cards and Executive Platinum Cards is limited to select employees.
- C. Card and Account Issuance.** Upon approval of this Master Agreement, U.S. Bank will issue Cards and establish Accounts as identified herein for Customer and/or Participants, at Customer's or Participant's request. Customer or Participant shall designate in a manner specified by U.S. Bank which employees will receive Cards or be issued Account numbers and which other Accounts will be established. All Accounts established and Cards issued are for business purposes only and are subject to the terms of this Master Agreement and any Cardholder Agreement provided to Cardholder. U.S. Bank may amend the Cardholder Agreement from time to time without notice to the Cardholder. U.S. Bank will provide Cardholder notice of any material change to the Cardholder Agreement. Notwithstanding the foregoing, if the terms and conditions of the Cardholder Agreement conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.
- 1. Account Types.**
 - a. Cards.** U.S. Bank will establish Accounts and issue Cards with corresponding Account numbers to Cardholders as directed by Customer or Participant, and as stated herein. Purchases, Transactions, and Debt are charged to the Account by use of the Card at the point of sale. Purchases, Transactions, and Debt may also be charged to Accounts by Cardholders through online platforms or by telephone. Corporate Cards, Purchase Cards, One Cards, and other Cards, e.g., Managed Spend or Executive Cards may be issued to Customer's employees depending on Customer needs; provided, that U.S. Bank may deny issuance of a Card or Account due to regulatory requirements.
 - b. Virtual Accounts.** U.S. Bank may establish Accounts without the issuance of a physical Card ("Virtual Accounts") in the name of Customer or Participant upon the request of Customer or Participant. Virtual Accounts may be established by U.S. Bank for Customer or Participant for a single use or for ongoing use. Purchases and Transactions are charged to Virtual Accounts solely at the instruction of Customer or Participant. Virtual Accounts are established as an alternative to physical Cards in Customer's Commercial Card & Account Programs. Virtual Accounts include but are not limited to single use accounts and/or reusable accounts with pre-authorized limits that are established at Customer's request. All Virtual Accounts are Corporate Liability with Central Billing only.
 - 2. Credit Checks.** At its sole expense and to the extent permitted by applicable law, U.S. Bank may conduct a credit check on any proposed Cardholder who may have sole or shared liability for any Debt incurred under this Agreement. Customer agrees to provide U.S. Bank with the proposed Cardholder's social security number, tax identification number, or other information as may reasonably be required by U.S. Bank to conduct due diligence on proposed Cardholders. This process will include obtaining consumer Credit Reporting Agency information. Before providing such information to U.S. Bank, a Customer applying for credit on behalf of proposed Cardholders shall obtain the proposed Cardholders' consent for the release of any information to be used for the purpose of obtaining Credit Reporting Agency records.
 - 3. Exclusion.** U.S. Bank may decline to issue Cards for any Cardholder in which the Cardholder may have sole or shared liability for any Debt incurred under this Agreement.
 - 4. Card Delivery.** U.S. Bank will issue Cards directly to Cardholders unless Customer notifies U.S. Bank to the contrary.
 - 5. Creation of Cards by Customer.** Customer USA may create Cards on its own through the use of the account management system. Such Cards can be created with or without an individual's name embossed on the face of the Cards. Acceptance of cards without a name embossed on the face of the Cards is at the discretion of Merchants.

- D. Billing and Payment.** U.S. Bank provides two billing options, Individual Bill and Central Bill. U.S. Bank can deliver paper or electronic Statements, or both. U.S. Bank will implement the billing option and delivery method requested by Customer. Customer may change its Statement delivery method at any time by request to U.S. Bank.
1. **Individual Bill.** Cardholders receive a Statement at the conclusion of each Billing Cycle. Customer may elect to receive one or more Summary Statements or reports showing all Transactions billed to Cardholder Accounts. Customer or Cardholders shall pay the amount due on the Statement by the Due Date.
 2. **Central Bill.** Each Transaction is posted to an Account and rolled up to a Central Account for billing or billed directly to a Central Account. Customer receives one or more Central Bill Statements at the conclusion of each Billing Cycle for all Cardholder and Central Account Transactions. For Transactions posted to a Cardholder Account and rolled up to a Central Account, the Cardholder receives a memo Statement showing his or her respective Transactions but with no amount due. Customer receives a consolidated Statement, which includes the total amount due for all Cardholder Accounts and Central Accounts. Customer shall pay the amount due on the Statement by the Due Date.
 3. **Billing Disputes.** All disputes regarding Charges or billings for the Program may be communicated via the online platform, telephone, or in writing within sixty (60) days of statement date to U.S. Bank at U.S. Bank P.O. Box 6344, Fargo, ND 58125-6344 U.S.A.
 4. **Trailing Transactions.** Upon cancellation of an Account, Customer or Cardholder shall cancel the billing of all recurring Transactions to the Account.
 5. **Delinquency.** If the amount shown on the Statement as the current amount due has not been paid to U.S. Bank by Customer and/or the Cardholder by the Due Date, U.S. Bank has the following rights:
 - a. **Suspension.** U.S. Bank may suspend any Account that is delinquent for a period exceeding two (2) Billing Cycles.
 - b. **Cancellation.** U.S. Bank may cancel any Account that is delinquent for a period exceeding three (3) Billing Cycles.
 - c. **Collection Fees.** U.S. Bank may recover any reasonable legal fees administered by a court of competent jurisdiction, and/or other expenses incurred in collecting any delinquent amount on a cancelled Account.
 6. **Cardholder Bankruptcy.** Upon learning of a Contingent Cardholder bankruptcy, U.S. Bank will immediately suppress Statements and cease collection efforts on that Contingent Cardholder Account. Within 15 business days U.S. Bank will close the Cardholder Account.
- E. Liability.** U.S. Bank provides a variety of liability options. Liability options for Products available in the U.S. may differ from those available in Canada. Liability option availability and the liability option for which Customer is approved are specified in the applicable Country Addendum.
1. **Corporate Liability.** Customer is solely liable to U.S. Bank for all Transactions.
 2. **Joint and Several Liability.** Customer and the Cardholder are jointly and severally liable to U.S. Bank for all Transactions.
 3. **Contingent Liability.** The Cardholder is liable to U.S. Bank for all Transactions. Customer has contingent liability, which means Customer is liable for any billed Transactions that are legitimate business charges that have not been previously reimbursed by Customer to the Cardholder.
 4. **Use of Commercial Card Programs outside the United States and Canada.** To the extent U.S. Bank provides Commercial Card Programs offered under this Agreement beyond the United States and Canada, Customer is liable for all Transactions charged on such Accounts.
 5. **Notification of Compromised Accounts.** Customer shall immediately notify U.S. Bank of any of the following events and shall provide U.S. Bank with sufficient information for U.S. Bank to act on such notifications.
 - a. Termination of employment of any Cardholder or Participant;
 - b. Any lost or stolen Card;
 - c. Any compromised Account; or
 - d. Any compromised information regarding Cards, Accounts or other sensitive data including, but not limited to, Account numbers, personal identification numbers, passwords, or Cardholder information.
 - e. Failure of Customer to provide timely notification may result in the liability of Customer or Cardholder to pay for Transactions on such Cards or Accounts notwithstanding any liability option specified in the applicable Country Addendum.
 6. **Merchant Category Disclaimer.** U.S. Bank may prevent or restrict usage of its Products to selected Merchants based on Merchant Category Code and upon Customer's request. The following disclaimers apply:
 - a. **Limitation of Liability.** U.S. Bank can only enforce Merchant Category Code restrictions to the extent it receives accurate Merchant Category Code data with the Transaction authorization request. U.S. Bank has no liability for Transactions declined or approved contrary to the intent of Customer as a result of inaccurate Merchant Category Codes.
 - b. **Incorrect Merchant Category Codes.** To the extent Customer believes a Merchant has not been assigned an accurate Merchant Category Code, U.S. Bank will advise the Association of the inaccuracy. Whether or not the Merchant Category Code is changed is dependent upon applicable Association regulations.

III. SECURITY AND CONFIDENTIALITY.

- A. Security.** U.S. Bank, Customer and its Affiliates and Participants shall safeguard information regarding Cards, Account numbers, passwords, personal identification numbers, and other sensitive information provided by U.S. Bank in a manner that is no less stringent than those applicable to each Party's own proprietary information. Each Party shall utilize each Party's respective industry standards to maintain an appropriate information security program to prevent the unauthorized disclosure, misuse, alteration, or destruction of Confidential Information.
- B. Confidentiality.**
1. **Confidential Information.** For purposes of this Agreement, "Confidential Information" means information supplied by one Party ("Disclosing Party") to the other Party ("Recipient") that is expressly or implicitly protected from unrestricted use by persons not associated with Disclosing Party.

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

IV. TERM AND TERMINATION.

- A. **Agreement Term.** This Agreement commences on and remains in effect for each Product and Ancillary Product selected on Schedule 1, Section A, for the term set forth in Schedule 1, Section C, ("Agreement Term") of the applicable Country Addendum and continues thereafter for each Product or Ancillary Service selected until terminated by Customer or U.S. Bank upon ninety (90) days prior written notice to the non-terminating Party. During the Agreement Term neither Customer nor U.S. Bank may terminate this Agreement, in whole or in part, except by mutual consent or as otherwise provided under this Section.
- B. **Termination for Cause by Either Party.** Either Party may terminate this Agreement immediately in its entirety or with respect to any Product and/or Ancillary Service provided under the applicable Country Addendum by providing written notice of such termination to the other Party, upon one or more of the following events:
 1. Dissolution or liquidation of the other Party, or Parent thereof;
 2. Insolvency of, the filing of a bankruptcy or insolvency proceeding with respect to, or the appointment of a receiver or trustee for the benefit of creditors of, the other Party, or parent thereof, if applicable or the other Party enters into any other similar proceeding or arrangement for the general benefit of its creditors;
 3. Any failure to perform a material obligation of this Agreement;
 4. The failure of any material statement, representation or warranty of a Party, its Affiliates or Parent at any time furnished to the other Party to be true in any material respect when made;
 5. A material breach of any other agreement entered into by the Parties.
- C. **Termination for Cause by Customer.** Customer may terminate this Agreement in its entirety or with respect to any Product and/or Ancillary Service provided under the applicable Country Addendum by providing ten days prior written notice of such termination to U.S. Bank upon one or more of the following events:
 1. U.S. Bank's reduction of Customer's Account credit limits, as defined in Section I.B., has materially and adversely affected Customer's utilization of any Product or the Program.
 2. U.S. Bank's failure to reasonably perform in accordance with a material term of any written proposal and/or presentation provided to Customer by U.S. Bank in contemplation of this Agreement, provided that:
 - a. Customer has worked with U.S. Bank to develop a sixty (60) day action plan to ensure U.S. Bank's performance materially complies with any aforementioned proposal and/or presentation; and
 - b. U.S. Bank has failed to successfully complete all deliverables agreed to in the action plan.
- D. **Termination for Cause by U.S. Bank.** U.S. Bank may terminate this Agreement in its entirety or with respect to any Product and/or Ancillary Service provided under the applicable Country Addendum by providing ten days prior written notice of such termination to Customer upon one or more of the following events:
 1. Customer's merger, sale, or transfer of all or substantially all of its assets that causes a material change to Customer's business and/or financial condition.

2. A material adverse change in the business prospects or financial condition of Customer.
 3. The overall relationship is unprofitable for U.S. Bank, provided that:
 - a. U.S. Bank has worked with Customer to develop a sixty (60) day action plan to return the relationship to profitability; and
 - b. Customer has failed to successfully complete all deliverables agreed to in the action plan.
- E. Regulatory Termination & Suspension.** U.S. Bank may immediately take the following action:
1. U.S. Bank may suspend or terminate any Cardholder Account if Customer fails to comply with requests for Cardholder Identification Information pursuant to Section D, Compliance with Applicable Statutes and Regulations, of the applicable Country Addendum.
 2. U.S. Bank may terminate any Cardholder Account if U.S. Bank is unable to verify the identity of Cardholder based on the Identification Information submitted to U.S. Bank.
 3. U.S. Bank may terminate any Cardholder Account if U.S. Bank is unable to verify that providing services to Cardholder does not pose a risk to U.S. Bank of violating any requirement in Section D, Compliance with Applicable Statutes and Regulations, of the applicable Country Addendum.
 4. U.S. Bank may terminate this Agreement for Customer's failure to comply with Section D, Compliance with Applicable Statutes and Regulations, of the applicable Country Addendum; or
 5. U.S. Bank may terminate this Agreement if U.S. Bank determines that provision of services under this Agreement is counter to any existing, new, or amended law, regulation, regulatory interpretation, anticipated regulatory interpretation, or any enforcement of existing, new, or amended law, regulation, regulatory interpretation, or anticipated regulatory interpretation.
- F. Termination for Non-Use.** U.S. Bank may terminate this Agreement immediately upon written notice to Customer in the event that there has been no activity on Accounts within twelve months of the Effective Date of this Agreement or for any twelve-month period after the Effective Date of the Agreement.
- G. Effect of Termination.** All applicable Cards, Accounts, and related services are terminated upon termination of this Agreement with respect to any Product or Ancillary Service provided under the applicable Country Addendum, or termination of this Agreement in its entirety. Upon termination, Customer shall instruct all Cardholders to destroy their Cards and any records of Account numbers. U.S. Bank will terminate all applicable services upon a stated termination date. Customer is liable for all Debts arising from the use of any Card and Account prior to the termination date, in accordance with the liability options in the applicable Country Addendum.
- H. Surviving Rights.** Rights, obligations, and liabilities that arise prior to the termination of this Agreement with respect to any Product and/or Ancillary Service provided under the applicable Country Addendum, or termination of this Agreement in its entirety, survive any such termination.
- V. OTHER TERMS AND CONDITIONS.**
- A. Intellectual Property.** Customer and U.S. Bank have no right, title or interest, proprietary or otherwise, in or to the name or any logo, or Intellectual Property owned or licensed by the other. Each Party shall obtain the prior written consent of the other Party before using the name, any logo, or Intellectual Property owned or licensed by the other Party.
- B. No Third-Party Beneficiaries or Claims.** Any Program and Global Commercial Card Program provided pursuant to this Agreement is for the sole and exclusive benefit of Customer and no other persons or organizations has any rights or remedies in connection with this Agreement.
- C. Limitation of Liability.** Neither Customer nor U.S. Bank, nor any Party's affiliates, representatives, or assigns are in any event liable to the other Party for any consequential, special, indirect, or punitive damages of any nature (including lost profits) even if such Party had been notified of their possible existence.
- D. Representations and Warranties.** Each Party represents and warrants that:
1. This Agreement is a valid, binding and enforceable agreement;
 2. The execution of this Agreement and the performance of the obligations hereunder are within such Party's powers; have been authorized by all necessary action; do not require action by or approval of any governmental or regulatory body, agency or official; and do not constitute a breach of any material agreement of such Party;
 3. The execution of this Agreement and the performance of the obligations hereunder will not cause a material breach of any duty arising in law or equity;
 4. The transaction contemplated by this Agreement is within the scope of the normal course of business and does not require further authorization for such Party to be duly bound by this Agreement; and
 5. As of the date of this Agreement, such Party possesses the financial capacity to perform all of its obligations under this Agreement.
- The failure of any of the above representations and warranties to be true during the term of this Agreement constitutes a material breach of this Agreement and the non-breaching Party has the right to terminate this Agreement in accordance with Section IV.B.4. Except as expressly provided herein, U.S. Bank makes no warranties, express or implied, in law or in fact, including, without limitation, the implied warranties of fitness for a particular purpose and of merchantability, either to Customer or to any other person or third Party, with respect to the Program or the Global Commercial Card Program Provided by U.S. Bank or its representatives or with respect to software services provided or made available to Customer or any other person for its use by U.S. Bank in connection with this agreement and any services thereunder.
- E. Modification or Amendment.** The Parties may modify the Agreement only in writing signed by Customer and U.S. Bank.
- F. Severability.** Should any provision of this Agreement be declared invalid for any reason, such declaration will not affect the validity of any other provision of this Agreement, which will remain in full force and effect as if this Agreement had been executed with the invalid provision(s) eliminated. The Parties shall use their commercially reasonable efforts to agree upon a valid substitute provision in accordance with the purpose of this Agreement and the intent of the Parties.
- G. Non-Waiver.** The failure of U.S. Bank or Customer to exercise any right, power or option arising under this Agreement, or to insist upon strict compliance with the terms of this Agreement does not constitute a waiver of this Agreement by such Party with respect to any other or subsequent breach hereof, nor a waiver by such Party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof.

- H. **Binding Effect and Assignment.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. This Agreement may not be assigned by Customer or its Affiliates without the prior written approval of U.S. Bank, which will not be unreasonably withheld or delayed.
- I. **Interpretation of this Agreement.** The Parties expressly agree that this Agreement will not be construed more strongly against either Party regardless of which Party is more responsible for its preparation. This Agreement constitutes the entire agreement between the Parties concerning the matters addressed in this Agreement, and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof. Unless the context otherwise requires, words importing the singular number include the plural and vice versa, words importing any gender include all genders and references to agreements and other contractual instruments are deemed to include all present or future amendments, supplements, restatements or replacements thereof or thereto. Headings are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- J. **Force Majeure and Excusable Delay.**
1. Except for any duty arising under this Agreement to make payments, neither Party 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 shall:
 - a. Implement its applicable disaster recovery plan to the extent appropriate and practicable;
 - b. Give the other Party prompt notice of the occurrence of a force majeure event;
 - c. Use diligent efforts to re-commence performance as promptly as commercially practicable pursuant to its disaster recovery plan; and
 - d. Provide periodic updates to the other Party regarding its efforts to re-commence performance until performance has re-commenced in accordance with this Agreement.
 2. Either Party may terminate this Agreement 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 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.
- K. **Notice and Communication.** All notices, requests and other communications permitted or required hereunder must be directed to the other Party at the respective addresses indicated in the applicable Country Addendum and, unless otherwise specified herein, must be in writing, postage prepaid or hand delivered, except notices relating to Individual Cards or Accounts. Either Party may change its address indicated on such Country Addendum, by written notice to the other.

VI. DEFINITIONS.

- A. **Definitions.** All capitalized terms used in this Agreement are defined herein and have the following meaning:
1. **"Account"** means any account established by U.S. Bank pursuant to this Agreement in the name of Customer, its Affiliates, Participants or Cardholders, to which Debt is charged, regardless of whether or not a Card is issued in conjunction with such account.
 2. **"Affiliate"** means, in respect of any Person, a Person that directly or indirectly controls, is controlled by, or is under common control with, the Person specified.
 3. **"Ancillary Services"** means any additional services offered in conjunction with an Account, including but not limited to Cash Advances, Convenience Checks and U.S. Bank Expense Management.
 4. **"Association"** means, collectively, the Persons who govern commercial card and Account issuance, including, without limitation, Visa USA, Inc., Visa Canada Association, and Visa International Service Association, Inc., MasterCard USA, and MasterCard International.
 5. **"Billing Cycle"** means the period of time from which a Statement is generated until the next Statement is generated.
 6. **"Card"** means, in connection with an Account, any commercial charge card issued by U.S. Bank pursuant to this Agreement in the name of Customer, its Affiliates, and/or Cardholders.
 7. **"Cardholder"** means an individual employee of Customer and/or its Affiliates, named as the holder of the Account or using the Account in the name of Customer and/or its Affiliates, regardless of whether a physical card is issued in conjunction with the Account.
 8. **"Cardholder Agreement"** means the U.S. Bank Cardholder agreement in standard form between U.S. Bank and the Cardholder.
 9. **"Cash Advance"** means an advance of cash in the form of cash or check that, if permitted according to the terms of this Agreement, is charged to an Account.
 10. **"Cash Advance Fee"** means the fee charged by U.S. Bank for a Cash Advance according to the terms of the applicable Country Addendum.
 11. **"Charge"** means any transaction posted to an Account that has a debit value, including without limitation, Purchases, Cash Advances, and Fees.
 12. **"Commercial Card & Account Program"** means the Card, Accounts, Ancillary Products and Product Enhancements offered by U.S. Bank USA, U.S. Bank Canada, or a Participating Bank.
 13. **"Control"** or **"Controlled"** means, with respect to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership, membership or other ownership interests, by contract or otherwise) of such Person.
 14. **"Convenience Checks"** (in Canada, "Convenience Cheques") means the drafts drawn against an Account by the Cardholder for Purchases.
 15. **"Data"** means the information regarding or in connection with Accounts or Transactions associated with the Program or any such information provided by a Lead or Participating Bank associated with the Global Commercial Card Program.
 16. **"Debt"** means all amounts charged to an Account including without limitation all amounts related to Charges that are owed to U.S. Bank by Customer, its Affiliates, Participants, or Cardholders.

17. "Discount Interchange Rate Programs" means 1) large ticket programs, and 2) any other interchange programs entered into by the Associations, Customer, Merchants, or others whereby the parties to those interchange programs have agreed to lower interchange rates for certain Transactions.
18. "Due Date" means, with respect to a Statement, the date, as measured by the number of days after the date of the Statement, by which the payment of Debt that is listed on the Statement is due.
19. "Fees" means all fees that are posted to an Account and due and payable to U.S. Bank by Customer, its Affiliates, Participants, or its Cardholders that are associated with any Program or Global Commercial Card Program, including but not limited to Cash Advance, Foreign Transaction and Late Fees.
20. "Foreign Transaction Fee" means the fee U.S. Bank charges on the amount of any Debt or other Transaction posted to an Account that is not in the same currency in which the Account is billed and which must be converted to the currency used for billing purposes.
21. "Fraudulent Charges" means any Charges which are not initiated, authorized or otherwise requested by Customer, its Affiliates, or a Cardholder by any means (electronic, telephonic or written) and do not directly or indirectly benefit Customer, its Affiliates, or a Cardholder.
22. "Identification Information" means legal names, physical street addresses, taxpayer identification numbers, dates of births or other information or documentation.
23. "Intellectual Property" or "Intellectual Property Rights" means any patent rights, copyrights, trade secrets, trade names, service marks, moral rights, know-how and any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force.
24. "Late Fee" means the fees associated with any Debt that remains unpaid to U.S. Bank by Customer, its Affiliates, Participants, or Cardholders after the Due Date on the Statement.
25. "Lead Bank" means the financial institution that solicits or obtains a multinational commercial card customer for the purpose of providing a global commercial card program utilizing the services of Participating Banks and of which U.S. Bank USA or U.S. Bank Canada is a Lead Bank or a Participating Bank under the terms of the Agreement and applicable Country Addendum and related Schedules.
26. "Master Agreement" or "Agreement" means this Commercial Card Master Agreement between U.S. Bank and Customer and all addenda, schedules or other attachments hereto.
27. "MasterCard" means MasterCard® USA, Inc., MasterCard International, and any other MasterCard entity identified in any Country Addendum.
28. "Merchant" means any entity that has entered into an agreement that governs the acceptance of Cards.
29. "Merchant Category Code" means the code established by the Associations that identifies and classifies goods or services offered by a Merchant. Each Merchant designates its Merchant Category Code to the applicable Association.
30. "Parent" means any Person that Controls a Party.
31. "Participant" means any entity designated by Customer to participate in the Program and have access to program materials.
32. "Participating Bank" means a financial institution that provides supporting commercial card program services in a specified territory for the Lead Bank in connection with providing a global commercial card program to Customer or its Affiliates of which U.S. Bank is a Lead Bank or Participating Bank with Customer or its Affiliates under the terms of this Agreement and any applicable Country Addendum and related schedules.
33. "Party" means any one of U.S. Bank USA, U.S. Bank Canada, Customer or Customer Canada and "Parties" means U.S. Bank USA or U.S. Bank Canada and Customer or Customer Canada.
34. "Past Due Balance" means, with respect to a Statement, the total amount of any Debt which remains unpaid to U.S. Bank by Customer, its Affiliate or Cardholder after the Due Date specified on such Statement.
35. "Person" means any corporation, company, limited liability company, general partnership, limited partnership, limited liability partnership, unincorporated association, trust, joint venture, estate or other judicial entity or any governmental body.
36. "Program Administrator" means the employee designated by Customer to serve as the primary point of contact between Customer and U.S. Bank and will be trained and have thorough knowledge of the Programs offered by U.S. Bank to Customer.
37. "Products" means the U.S. Bank Commercial Card & Account product offerings, including but not limited to the Purchase Card & Accounts, Corporate Card & Accounts, One Card & Accounts, Managed Spend Card, and Executive Cards.
38. "Purchase" means a purchase of goods or services that is charged to an Account.
39. "Related Parties" means Authorized Signers, beneficial owners, or directors of Customer or Customer's Affiliates.
40. "Software Services" means hosting, maintaining and upgrading U.S. Bank's internet-based Commercial Card Account management software (including without limitation AccessOnline or Commercial Payments Manager ("CPM"), for USA), maintaining and upgrading U.S. Bank's desktop Commercial Card Account management software, and all system support, training and customer support for the foregoing.
41. "Statement" means, with respect to one or more accounts, a periodic billing statement from U.S. Bank listing all Transactions posted to such Accounts.
42. "Summary Statement" means, with respect to one or more accounts, a billing Statement that provides only an aggregate amount of all Transactions posted to such Accounts.
43. "Transaction" means any activity posted to an Account, both debit and credits, including but not limited to Purchases, Cash Advances, Fees and payments.
44. "U.S. Bank Expense Management" means the automated expense management and reporting solution offered by U.S. Bank.


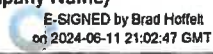
- 45. "U.S. Economic Sanctions" means the economic sanctions programs administered by the U.S. Department of Treasury's Office of Foreign Assets Control.
- 46. "Visa" means Visa® USA, Inc., Visa Canada Association, Visa International Service Association, Inc. and any other Visa entity identified in any Country Addendum.

VII. **AUTHORIZATION AND EXECUTION.** Customer certifies to U.S. Bank that the person executing this Agreement (1) is authorized by Customer in accordance with its organization rules and applicable law to bind Customer to this Agreement, (2) has the authority to incur Debt in the name of Customer, (3) is an officer of Customer, and (4) is acting in his or her capacity as an agent of Customer.

The signer represents and warrants that (1) he or she is duly authorized by an applicable Bylaw, Article or other corporate authority to enter into all transactions contemplated by this Agreement, and (2) the signatures appearing on all supporting documents of authority are authentic.

Signatures. In witness whereof the parties have executed this Agreement, by their authorized representatives.

In the United States:

<p>DATE: 6-7-2024</p> <p>By Customer:</p> <p>State of West Virginia (Company Name)</p> <p> (Signature of Authorized Signer)</p> <p>Jeff Waybright (Printed Name of Authorized Signer)</p> <p>Chief of Staff (Printed Title of Authorized Signer)</p>	<p>DATE: June 11, 2024</p> <p>By U.S. Bank:</p> <p>U.S. Bank National Association (Company Name)</p> <p> (Signature of Authorized Signer)</p> <p>Brad Hoffelt (Printed Name of Authorized Signer)</p> <p>Senior Vice President (Printed Title of Authorized Signer)</p>

**U.S. COUNTRY ADDENDUM
COMMERCIAL CARD & ACCOUNT PROGRAM AGREEMENT**

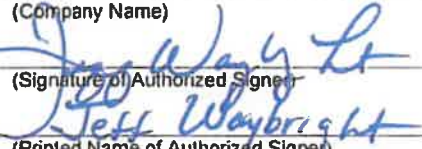
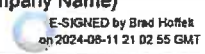
- A. Applicability and Scope of this Addendum.** The United States Country Addendum ("U.S. Country Addendum") is incorporated by reference and modifies, to the extent applicable, the terms and conditions of the Master Agreement between U.S. Bank USA and Customer USA. The terms and conditions of this U.S. Country Addendum are only applicable to U.S. Bank USA and Customer USA with respect to the Commercial Card & Account Program ("Program") provided by U.S. Bank USA to Customer USA in the United States. All capitalized terms used herein that are not defined herein have the meaning ascribed thereto in the Master Agreement.
- B. Primary Provider.** The Parties acknowledge and agree that U.S. Bank USA shall be the primary provider to Customer USA of the Card Products and Ancillary Services stated in U.S. Schedule 1.
- C. United States Commercial Card & Account Program and Card Issuance.** U.S. Bank USA has approved Customer USA for the Program in the United States and shall provide the products and options indicated in U.S. Schedule 1. Customer USA shall designate to U.S. Bank USA proposed employees who are anticipated to incur expenses on behalf of Customer USA and who are to receive Accounts, with or without Cards, by submitting completed, duly authorized applications, in a format specified by U.S. Bank USA, and with any applicable consents or authorizations from such Cardholder applicant as may be required herein or in such applications. If an Account is used for Purchases or to obtain cash in a country other than the United States, the Statement shall reflect the conversion into U.S. Dollars of Transactions that occurred in a different currency and an applicable exchange rate for any such conversion. Due to fluctuations in foreign exchange rates, a credit transaction may not be in the same amount as the original debit transaction.
- D. Compliance with Applicable Statutes and Regulations.** The Parties shall maintain compliance with all statutes, regulations, and U.S. Bank policy applicable to the products and services contemplated under this Agreement, including but not limited to Anti-Money Laundering and U.S. Economic Sanctions. 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. 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 USA's Affiliates, Participants, Related Parties, or Cardholders, as applicable, to allow U.S. Bank to remain in compliance with U.S. Federal law or U.S. Bank policy. Customer USA shall promptly provide such Identification Information to U.S. Bank, and Customer USA shall cause its Affiliates, Participants, Related Parties or Cardholders, as applicable, to provide Identification Information to U.S. Bank.
- E. Governing Law and Venue.** The laws of the state of West Virginia and applicable federal laws and regulations of the United States apply to any dispute arising out of this Master Agreement, its subject matter, or its formation. The laws of the state of West Virginia and applicable federal laws and regulations of the United States govern software services provided to Customer USA under this U.S. Country Addendum. Any dispute or claim arising out of this Agreement, its subject matter, or its formation must be brought before a state or federal court located in the city of Charleston, West Virginia.
- F. Interchange Rate.** The rebates described in this U.S. Country Addendum are based on current interchange rates and programs determined by the Associations. These interchange rates and programs are subject to change by authorities outside the control of U.S. Bank. In the event that the Associations or any government entity modify the existing interchange rates or programs or introduce new interchange rates or programs U.S. Bank has the right to replace the current rebates with new rebates upon 60 days written notice to Customer USA.
- G. Other Agreements and Regulations.** In addition to this U.S. Country Addendum, the products and services provided to Customer USA are subject to the following additional agreements and/or regulations:
- 1. Clearing House Operating Regulations.** Any applicable automated clearinghouse operating rules, including, without limitation, the National Automated Clearing House Association Operating Rules and Guidelines (collectively referred to as the "NACHA Rules");
 - 2. Association Operating Regulations.** Association operating rules and regulations, including, without limitation, Visa USA, Visa International, MasterCard USA, and MasterCard International; and
 - 3. Cardholder Agreement.** Each Cardholder may receive a Cardholder Agreement that governs the use of the Account. Activation of the Card or Account by the Cardholder and/or use of the Card or Account by the Cardholder constitutes concurrence with the terms and conditions of the Cardholder Agreement.
- H. Notices.** In the United States, all notices required by and subject to this U.S. Country Addendum shall be sent to U.S. Bank at U.S. Bank National Association, Corporate Payment Systems, Mail Code EP-MN-A17S, 901 Marquette Ave., Minneapolis, MN 55402, U.S.A. Attn: CPS Contract Services. Attn: CPS Contract Services and to Customer USA at 315 70th Street, SE, Charleston, WV 25304.
- I. Disputes.** All disputes regarding Charges or billings for the Program may be communicated via the online platform, telephone, or in writing within sixty (60) days of statement date to U.S. Bank USA at U.S. Bank P.O. Box 6344, Fargo, ND 58125-6344 U.S.A.

- J. **Customer Service.** In the United States, Customer USA, its Participants and Cardholders may call Customer Service to report lost or stolen Cards or compromised Accounts, or to ask questions about Program Services or U.S. Bank USA Accounts.
- K. **Waiver of Jury Trial.** Customer USA and U.S. Bank hereby waive all rights to trial by jury in any proceeding relating to the Master Agreement.
- L. **U.S. Schedules.** The following schedules are attached to and incorporated into this U.S. Country Addendum:
 1. U.S. Schedule 1 – Approved Card & Account Products/Ancillary Services/Fees.
 2. U.S. Schedule 2 – Commercial Card Rebate
 3. U.S. Schedule 3 – Discount Interchange Rate Program Rebate
- M. **AUTHORIZATION AND EXECUTION.** Customer USA certifies to U.S. Bank that the person executing this Agreement (1) is authorized by Customer USA in accordance with its organization rules and applicable law to bind Customer USA to this Agreement, (2) has the authority to incur Debt in the name of Customer USA, (3) is an officer of Customer USA, and (4) is acting in his or her capacity as an agent of Customer USA.

The signer represents and warrants that (1) he or she is duly authorized by an applicable Bylaw, Article or other corporate authority to enter into all transactions contemplated by this Agreement, and (2) the signatures appearing on all supporting documents of authority are authentic.

Signatures. In witness whereof the Parties have executed this Agreement, by their authorized representatives.

In the United States:

<p>DATE: 6-7-2024</p>	<p>DATE: June 11, 2024</p>
<p>By Customer USA:</p>	<p>By U.S. Bank:</p>
<p>State of West Virginia (Company Name)</p>	<p>U.S. Bank National Association (Company Name)</p>
<p> (Signature of Authorized Signer)</p>	<p> (Signature of Authorized Signer)</p>
<p>Jeff Waybright (Printed Name of Authorized Signer)</p>	<p>Brad Hoffelt (Printed Name of Authorized Signer)</p>
<p>Chief of Staff (Printed Title of Authorized Signer)</p>	<p>Senior Vice President (Printed Title of Authorized Signer)</p>

**U.S. Schedule 1
Products**

A. Products.

Customer USA may use the Products, Ancillary Products, and Product Enhancements shown below. Travel Accident Insurance, if available, Liability, Billing Cycles and Payment Due Dates are shown below for each Product. Ancillary Products carry the same terms and conditions as the main product unless otherwise stated.

Purchase Card & Accounts.

Liability: Corporate

Travel Accident Insurance: Not available with Purchase Cards or any Ancillary Product associated with the Purchase Card.

Billing Cycle Monthly Payment Due Date 30 days

Ancillary Products

- Central Billing Accounts
- Managed Spend Accounts

Product Enhancements

- Cash

One Card & Accounts.

Liability: Corporate

Travel Accident Insurance: \$500,000

Billing Cycle Monthly Payment Due Date 30 days

Ancillary Products

- Central Billing Accounts
- Managed Spend Accounts

Product Enhancements

- Cash

B. Charge Volume Estimates. U.S. Schedule 2 has been prepared by U.S. Bank USA using the following non-binding Charge volume estimates which were provided to U.S. Bank USA by Customer USA.

Estimated Charge Volume, by Agreement Year	
	One Card & Accounts
Agreement Year 1	\$525,000,000.00
Agreement Year 2	\$525,000,000.00

C. Agreement Term

Agreement Term	Commencement Date
One year, which may be extended for an additional year by mutual option	<input checked="" type="checkbox"/> December 1, 2024

D. Card & Account Fees

CARD PRODUCT FEES	
Description	Fee
Annual Card Fee	\$0.00
Delinquency Fee	
Purchasing Card & Account, One Card & Account and Ancillary Products	0%
Not Paid by Due Date on the entire Past Due Balance	0%
Not Paid by Each Subsequent Billing Cycle on the entire Past Due Balance	\$0.00
Minimum Late Fee	
ATM/Cash Fee	
Transaction Fee	2.5%
Minimum Fee	\$2.00
Expedited Card Delivery Fee, per delivery	\$20.00
Non-Sufficient Funds Fee, per occurrence	\$18.00
Statement Copy Fee, each	\$ 5.00
Draft Copy, each	\$ 5.00
Foreign Transaction Fee	1.0%

**U.S. Schedule 2
Commercial Card Rebate**

A. Commercial Card Rebate. U.S. Bank USA offers Customer USA an annual Commercial Card Rebate that will be (1) distributed incrementally in four payments as provided in Section A.6. herein; (2) based on Customer USA satisfying all Annual Requirements provided in Section A.3. herein; and (3) subject to penalty should Customer USA fail to complete an Agreement Year as provided in Section A.2.c. herein.

1. Terminology.

- a. "Account" means any account number to which Charges and payments may be posted. This includes One Cards and Central Billing Accounts.
- b. "Agreement Year" means a twelve (12) month period beginning with the date stated as the Commencement Date in Section C of Schedule 1.
- c. "Average Transaction Size" means the Net Annual Charge Volume divided by the difference between the number of purchase transactions and the number of Discount Interchange Rate Program purchase transactions during each Agreement Year. A purchase transaction is a debit point of sale purchase transaction.
- d. "Charge-off" means any amount due and owing to U.S. Bank USA or its affiliates by Customer USA or Customer USA's Cardholders, including but not limited to uncollectible amounts or amounts due from Cardholder Bankruptcies.
- e. "Charge-off Adjustment" means the difference between Charge-offs and one-half of Charge-off Recoveries.
- f. "Charge-off Recovery" means a payment made on a Charge-off.
- g. "Client Held Days" means the number of days from billing cycle date to the date U.S. Bank USA applies payment.
- h. "Client Held Days Payment Performance" means the average speed of repayment of Charges made for each Agreement Year and will be calculated as File Turn Days Payment Performance less fifteen (15).
- i. "Commercial Card Rebate" means the payment described in this Schedule 2.
- j. "Commercial Card Rebate Percentage" means the sum total of the Performance Percentage and the Volume Percentage.
- k. "File Turn Days" means the number of days from the date U.S. Bank USA funds a Charge transaction to the date payment for that transaction is posted, inclusive of the beginning and ending dates.
- l. "File Turn Days Payment Performance" means the average speed of repayment of Charges made for each Agreement Year.
- m. "Fraudulent Charges" means those Charges which are not initiated, authorized, or otherwise requested by Customer USA, its Affiliates, or a Cardholder by any means (electronic, telephonic, or written) and do not directly or indirectly benefit Customer USA, its Affiliates, or a Cardholder.
- n. "Net Annual Charge Volume" means all Charges set forth on the Statements furnished for all Accounts, less Fees, Cash Advances, Convenience Checks, Fraudulent Charges, chargebacks, Charges qualifying for Discount Interchange Rate Program rates and net of Charge-off Adjustments, if any, for each Agreement Year.

2. Conditions. The following conditions apply to the Commercial Card Rebate:

- a. **Timing.** U.S. Bank USA will make the first payment, if any, within ninety (90) days after completion of the first payment period. U.S. Bank USA will make subsequent calculations and payments on each three (3) month anniversary of the first calculation. U.S. Bank USA will make any payment due on a non-business day on the next business day. U.S. Bank USA will make the final payment, if any, ninety (90) days after all Accounts are closed, the amount due and Past Due Amount on all Statements are paid, and all Debt is satisfied.
- b. **Adjustments.** U.S. Bank USA will apply Charge-off Adjustments resulting from participation in U.S. Bank USA or U.S. Bancorp Card Services, Inc. programs to the payment whether or not the underlying agreement between the parties is valid or has been terminated. Charge-off Adjustments are not satisfaction of outstanding Debt or dollar amounts recovered on outstanding Debt.
- c. **Penalties.**
 - i. **Early Termination.** In the event that the Master Agreement or this U.S. Country Addendum is terminated prior to the completion of the Agreement Term or prior to the completion of any Agreement Year by Customer USA without cause, or by U.S. Bank USA with cause, in addition to any other remedies available to U.S. Bank USA, this Commercial Card Rebate will immediately terminate and no payment will be made to Customer USA for the Agreement Year in which the termination occurred. Customer USA shall return all Commercial Card Rebate payments made during an Agreement Year in which any such termination occurred within ninety (90) days of the effective date of such a termination.
 - ii. **Violation of Primary Provider.** In the event that the primary provider provision of this U.S. Country Addendum is violated, in addition to any other remedies available to U.S. Bank USA, this Commercial Card Rebate will immediately terminate, and no payment will be made to Customer USA for the Agreement Year in which the violation occurred. Customer USA shall return all Commercial Card Rebate payments made during an Agreement Year in which any such violation occurred within ninety (90) days of the effective date of such a termination.
- d. **Confidentiality.** Customer USA expressly agrees that the terms and conditions of this Commercial Card Rebate are confidential and may not be disclosed to third parties, unless required by law or regulation, without U.S. Bank USA's prior written consent, which may be exercised at its sole option.
- e. **Automated Clearinghouse ("ACH").** To receive payment, Customer USA must register for ACH in the manner prescribed by U.S. Bank USA. U.S. Bank USA will not make any payments until Customer USA has registered for ACH. If Customer USA fails to register for ACH by the end of the first Agreement Year, Customer USA forfeits any payments for that Agreement Year and any subsequent Agreement Years in which Customer USA fails to register for ACH. Customer USA designates the following person to register Customer USA for ACH.

Authorized Person's Name:

Authorized Person's Email Address:

3. Requirements. No calculation will be made unless:

- a. The Client Held Days Payment Performance for all Account Statements is equal to or less than forty-five (45).

**U.S. Schedule 2
Commercial Card Rebate**

4. **Performance Percentage.** U.S. Bank USA will pay Customer USA a portion of its Net Annual Charge Volume based on the Client Held Days Payment Performance for all Accounts for each Agreement Year in accordance with Table A below.

Table A			
Client Held Days Payment Performance	Performance Percentage	Client Held Days Payment Performance	Performance Percentage
45	-0.0750%	22	0.0400%
44	-0.0700%	21	0.0450%
43	-0.0650%	20	0.0500%
42	-0.0600%	19	0.0550%
41	-0.0550%	18	0.0600%
40	-0.0500%	17	0.0650%
39	-0.0450%	16	0.0700%
38	-0.0400%	15	0.0750%
37	-0.0350%	14	0.0800%
36	-0.0300%	13	0.0850%
35	-0.0250%	12	0.0900%
34	-0.0200%	11	0.0950%
33	-0.0150%	10	0.1000%
32	-0.0100%	9	0.1050%
31	-0.0050%	8	0.1100%
30	0.0000%	7	0.1150%
29	0.0050%	6	0.1200%
28	0.0100%	5	0.1250%
27	0.0150%	4	0.1300%
26	0.0200%	3	0.1350%
25	0.0250%	2	0.1400%
24	0.0300%	1	0.1450%
23	0.0350%	0	0.1500%

6. **Volume Percentage.** U.S. Bank USA will pay Customer USA a portion of its Net Annual Charge Volume based on the Net Annual Charge Volume in accordance with Table B below.

Table B	
Net Annual Charge Volume	Volume Percentage
\$ 0.00	1.9350%
\$150,000,000.00	2.0050%
\$200,000,000.00	2.0650%
\$250,000,000.00	2.1150%
\$300,000,000.00	2.1600%
\$350,000,000.00	2.2000%
\$400,000,000.00	2.2050%
\$450,000,000.00	2.2100%
\$500,000,000.00	2.2150%
\$550,000,000.00	2.2200%
\$600,000,000.00	2.2250%
\$650,000,000.00	2.2300%
\$700,000,000.00	2.2350%
\$750,000,000.00	2.2400%
\$800,000,000.00	2.2450%
\$850,000,000.00	2.2500%
\$900,000,000.00	2.2550%
\$950,000,000.00	2.2600%
\$1,000,000,000.00	2.2650%

6. **Calculation.**
- a. For the first calculation of each Agreement Year:
 - i. The first calculation of each Agreement Year is based on Customer USA's performance for the initial three (3) months of the Agreement Year.
 - ii. U.S. Bank USA will calculate the Client Held Days Payment Performance for the initial three (3) months of the Agreement Year to find the Performance Percentage on Table A.
 - iii. U.S. Bank USA will calculate the Net Annual Charge Volume for the first calculation by multiplying the Net Annual Charge Volume for the initial three (3) months of the Agreement Year by four to arrive at the estimated

**U.S. Schedule 2
Commercial Card Rebate**

- Net Annual Charge Volume.** U.S. Bank USA will use this estimated Net Annual Charge Volume to find the Volume Percentage on Table B.
- iv. Next, U.S. Bank USA will add the Performance Percentage to the Volume Percentage to arrive at the Commercial Card Rebate Percentage for the first calculation. U.S. Bank USA will multiply the Commercial Card Rebate Percentage by the Net Annual Charge Volume for the initial three (3) months of the Agreement Year. The result will be the gross Commercial Card Rebate.
 - v. U.S. Bank USA will apply any Charge-off Adjustments that have not been applied at any time during any of the past payments from the gross Commercial Card Rebate. The result will be the net Commercial Card Rebate for the first calculation for that Agreement Year.
- b. For the second calculation of each Agreement Year:**
- i. The second calculation of each Agreement Year is based on Customer USA's performance for the initial six (6) months of the Agreement Year.
 - ii. U.S. Bank USA will calculate the Client Held Days Payment Performance for the initial six (6) months of the Agreement Year to find the Performance Percentage on Table A.
 - iii. U.S. Bank USA will calculate the Net Annual Charge Volume for the second calculation by multiplying the Net Annual Charge Volume from the initial six (6) months of the Agreement Year by two to arrive at the estimated Net Annual Charge Volume. U.S. Bank USA will use this estimated Net Annual Charge Volume to find the Volume Percentage on Table B.
 - iv. Next, U.S. Bank USA will add the Performance Percentage to the Volume Percentage to arrive at the Commercial Card Rebate Percentage. U.S. Bank USA will then multiply the Commercial Card Rebate Percentage by the Net Annual Charge Volume for the initial six (6) months of the Agreement Year. The result will be the gross Commercial Card Rebate.
 - v. U.S. Bank USA will subtract the first calculation payment and apply any Charge-off Adjustments that have not been applied at any time from past payments from the gross Commercial Card Rebate. The result will be the net Commercial Card Rebate for the second calculation for that Agreement Year.
- c. For the third calculation of each Agreement Year:**
- i. The third calculation of each Agreement Year is based on Customer USA's performance for the initial nine (9) months of the Agreement Year.
 - ii. U.S. Bank USA will calculate the Client Held Days Payment Performance for the initial nine (9) months of the Agreement Year to arrive at the Performance Percentage on Table A.
 - iii. U.S. Bank USA will calculate the Net Annual Charge Volume for the third calculation. U.S. Bank USA will divide the Net Annual Charge Volume for the initial nine (9) months of the Agreement Year by nine (9) and then multiply the result by twelve (12) to arrive at the estimated Net Annual Charge Volume. U.S. Bank USA will use this estimated Net Annual Charge Volume to find the Volume Percentage on Table B.
 - iv. Next, U.S. Bank USA will add the Performance Percentage to the Volume Percentage to arrive at the Commercial Card Rebate Percentage. U.S. Bank USA will then multiply the Commercial Card Rebate Percentage by the Net Annual Charge Volume for the initial nine (9) months of the Agreement Year. The result will be the gross Commercial Card Rebate.
 - v. U.S. Bank USA will subtract the first and second calculation payments and apply any Charge-off Adjustments that have not been applied at any time from any of the past payments from the gross Commercial Card Rebate. The result will be the net Commercial Card Rebate for the third calculation for that Agreement Year.
- d. For the final calculation:**
- i. The final calculation of each Agreement Year is based on Customer USA's actual year to date performance for the Agreement Year.
 - ii. U.S. Bank USA will calculate the Client Held Days Payment Performance for the Agreement Year to arrive at the Performance Percentage on Table A for the Agreement Year.
 - iii. U.S. Bank USA will calculate the Net Annual Charge Volume for the Agreement Year to find the Volume Percentage on Table B.
 - iv. Next, U.S. Bank USA will add the Performance Percentage to the Volume Percentage to arrive at the Commercial Card Rebate Percentage. U.S. Bank USA will then multiply the Commercial Card Rebate Percentage by the Net Annual Charge Volume for the Agreement Year. The result will be the gross Commercial Card Rebate for the Agreement Year.
 - v. U.S. Bank USA will subtract the first, second, and third calculation payments and apply any Charge-offs that have not been applied at any time from any of the past payments from the gross Commercial Card Rebate. The result will be the final net Commercial Card Rebate for the Agreement Year.
 - vi. If the net Commercial Card Rebate is a negative amount, the amount will be subtracted from future net Commercial Card Rebate payments. U.S. Bank will apply any Charge-off Adjustments in excess of the net Commercial Card Rebate to any payments for one or more of the following calculations. Subsequent calculations will be made in a similar fashion. Upon termination of the Master Agreement, if the net Commercial Card Rebate is a negative dollar amount, Customer USA agrees to reimburse U.S. Bank USA the dollar amount previously paid by U.S. Bank USA to Customer USA.

U.S. Schedule 3
Discount Interchange Rate Program Rebate

- A. Discount Interchange Rate Program Rebate.** U.S. Bank USA offers Customer USA an annual Discount Interchange Rate Program Rebate that will be (1) distributed incrementally in four payments as provided in Section A.6. herein; (2) based on Customer USA satisfying all Annual Requirements provided in Section A.3. herein; and (3) subject to penalty should Customer USA fail to complete an Agreement Year as provided in Section A.2.c. herein.
- 1. Terminology.**
 - a. "Account" means any account number to which Charges and payments may be posted. This includes One Cards and Central Billing Accounts.
 - b. "Agreement Year" means a twelve (12) month period beginning with date stated as the Commencement Date in Section C of Schedule 1.
 - c. "Average Transaction Size" means the Discount Interchange Rate Program Annual Volume divided by the number of Discount Interchange Rate Program purchase transactions during each Agreement Year. A purchase transaction is a debit point of sale purchase transaction.
 - d. "Charge-off" means any amount due and owing to U.S. Bank USA or its Affiliates by Customer USA or Customer USA's Cardholder(s), including but not limited to uncollectible amounts and/or amounts due from Cardholder Bankruptcies.
 - e. "Charge-off Adjustment" means the difference between Charge-offs and one-half of Charge-off Recoveries.
 - f. "Charge-off Recovery" means a payment made on a Charge-off.
 - g. "Client Held Days" means the actual number of days from billing cycle date to the date U.S. Bank USA applies payment.
 - h. "Client Held Days Payment Performance" means the average speed of repayment of Charges made for each Agreement Year and will be calculated as File Turn Days Payment Performance less fifteen (15) days.
 - i. "Discount Interchange Rate Program Annual Volume" means only those Charges that qualify for Discount Interchange Rate Program rates and which are processed using Discount Interchange Rate Program rates, less credits, and net of Charge-off Adjustments for each Agreement Year. All other Charges and all amounts related to Fees, Cash Advances, Convenience Checks, Fraudulent Charges, and chargebacks are excluded from Discount Interchange Rate Program Annual Volume.
 - j. "Discount Interchange Rate Program Rebate" means payment described in this Schedule 3.
 - k. "Discount Interchange Rate Program Rebate Percentage" means the sum total of the Performance Percentage and the Volume Percentage.
 - l. "File Turn Days" means the number of days from the date U.S. Bank USA funds a Charge transaction to the date payment for that transaction is posted, inclusive of the beginning and ending dates.
 - m. "File Turn Days Payment Performance" means the average speed of repayment of Charges made for each Agreement Year.
 - n. "Fraudulent Charges" means those Charges which are not initiated, authorized, or otherwise requested by Customer USA, its Affiliates, or a Cardholder by any means (electronic, telephonic, or written) and do not directly or indirectly benefit Customer USA, its Affiliates, or a Cardholder.
 - 2. Conditions.** The following conditions apply to the Discount Interchange Rate Program Rebates:
 - a. **Qualification.** Customer USA has qualified for and earned a Commercial Card Rebate payment pursuant to the terms and conditions of the U.S. Schedule 2 to this U.S. Country Addendum.
 - b. **Timing.** U.S. Bank will make the first Discount Interchange Rate Program Rebate payment, if any, within ninety (90) days after the end of the first payment period. U.S. Bank will make subsequent calculations and payments, if any, on each three (3) month anniversary of the first calculation. U.S. Bank will make any Discount Interchange Rate Program Rebate payment due on a non-business day on the next business day. U.S. Bank will make the final payment, if any, ninety (90) days after all Accounts are closed, the amount due and Past Due Amount on all Statements are paid, and all Debt is satisfied.
 - c. **Adjustments.** U.S. Bank will apply accumulated Charge-off Adjustments resulting from participation in U.S. Bank USA or U.S. Bancorp Card Services, Inc. programs to any Discount Interchange Rate Program Rebate payment whether the underlying agreement between the parties is valid or has been terminated. Charge-off Adjustments made to the Discount Interchange Rate Program Rebate are not satisfaction of outstanding Debt or dollar amounts recovered on outstanding Debt.
 - d. **Penalties.**
 - i. **Early Termination.** In the event that the Master Agreement or this U.S. Country Addendum is terminated prior to the completion of the Agreement Term or prior to the completion of any Agreement Year by Customer USA without cause or by U.S. Bank USA with cause, in addition to any other remedies available to U.S. Bank USA, this Discount Interchange Rate Program Rebate will immediately terminate and no Discount Interchange Rate Program payment will be made to Customer USA for the Agreement Year in which the termination occurred. Customer USA shall return all Discount Interchange Rate Program Rebate payments made during an Agreement Year in which any such termination occurred within 90 days of the effective date of such a termination.
 - ii. **Violation of Primary Provider.** In the event that the primary provider provision of this U.S. Country Addendum is violated, in addition to any other remedies available to U.S. Bank USA, this Discount Interchange Rate Program Rebate Opportunity will immediately terminate, and no payment will be made to Customer USA for the Agreement Year in which the violation occurred. Customer USA shall return all Discount Interchange Rate Program Rebate payments made during an Agreement Year in which any such violation occurred within 90 days of the effective date of such a termination.
 - e. **Confidentiality.** Customer USA expressly agrees that the terms and conditions of this Discount Interchange Rate Program Rebate are confidential and may not be disclosed to third parties, unless required by law or regulation, without U.S. Bank USA's prior written consent, which may be exercised at its sole option.
 - 3. Requirements.** No calculation will be made unless:
 - a. The Client Held Days Payment Performance for all Account Statements is equal to or less than forty-five (45).

**U.S. Schedule 3
Discount Interchange Rate Program Rebate**

4. **Performance Percentage.** U.S. Bank USA will pay Customer USA a portion of its Discount Interchange Rate Program Annual Volume based on the Client Held Days Payment Performance for all Accounts for each Agreement Year in accordance with the Table A below.

Table A			
Client Held Days Payment Performance	Performance Percentage	Client Held Days Payment Performance	Performance Percentage
45	-0.0750%	22	0.0400%
44	-0.0700%	21	0.0450%
43	-0.0650%	20	0.0500%
42	-0.0600%	19	0.0550%
41	-0.0550%	18	0.0600%
40	-0.0500%	17	0.0650%
39	-0.0480%	16	0.0700%
38	-0.0400%	15	0.0750%
37	-0.0350%	14	0.0800%
36	-0.0300%	13	0.0850%
35	-0.0250%	12	0.0900%
34	-0.0200%	11	0.0950%
33	-0.0150%	10	0.1000%
32	-0.0100%	9	0.1050%
31	-0.0050%	8	0.1100%
30	0.0000%	7	0.1150%
29	0.0050%	6	0.1200%
28	0.0100%	5	0.1250%
27	0.0150%	4	0.1300%
26	0.0200%	3	0.1350%
25	0.0250%	2	0.1400%
24	0.0300%	1	0.1450%
23	0.0350%	0	0.1500%

5. **Volume Percentage.** U.S. Bank USA will pay Customer USA a portion of its Discount Interchange Rate Program Annual Volume in accordance with Table B below.

Table B
Volume Percentage
1.0000%

6. **Calculation.**
- a. For the first calculation of each Agreement Year:
 - i. The first calculation of each Agreement Year is based on Customer USA's performance for the initial three (3) months of the Agreement Year.
 - ii. U.S. Bank USA will calculate the Client Held Days Payment Performance for the initial three (3) months of the Agreement Year to find the Performance Percentage on Table A.
 - iii. U.S. Bank USA will calculate the Discount Interchange Rate Program Annual Volume for the first calculation by multiplying the Discount Interchange Rate Program Annual Volume for the initial three (3) months of the Agreement Year by four to arrive at the estimated Discount Interchange Rate Program Annual Volume. U.S. Bank USA will use this estimated Discount Interchange Rate Program Annual Volume to find the Volume Percentage on Table B.
 - iv. Next, U.S. Bank USA will add the Performance Percentage to the Volume Percentage to arrive at the Discount Interchange Rate Program Rebate Percentage for the first calculation. U.S. Bank USA will multiply the Discount Interchange Rate Program Rebate Percentage by the Discount Interchange Rate Program Annual Volume for the initial three (3) months of the Agreement Year. The result will be the gross Discount Interchange Rate Program Rebate.
 - v. U.S. Bank USA will apply any Charge-off Adjustments that have not been applied at any time during any of the past payments from the gross Discount Interchange Rate Program Rebate. The result will be the net Discount Interchange Rate Program Rebate for the first calculation for that Agreement Year.
 - b. For the second calculation of each Agreement Year:
 - i. The second calculation of each Agreement Year is based on Customer USA's performance for the initial six (6) months of the Agreement Year.
 - ii. U.S. Bank USA will calculate the Client Held Days Payment Performance for the initial six (6) months of the Agreement Year to find the Performance Percentage on Table A.
 - iii. U.S. Bank USA will calculate the Discount Interchange Rate Program Annual Volume for the second calculation by multiplying the Discount Interchange Rate Program Annual Volume from the initial six (6) months of the Agreement

**U.S. Schedule 3
Discount Interchange Rate Program Rebate**

- Year by two to arrive at the estimated Discount Interchange Rate Program Annual Volume. U.S. Bank USA will use this estimated Discount Interchange Rate Program Annual Volume to find the Volume Percentage on Table B.
- iv. Next, U.S. Bank USA will add the Performance Percentage to the Volume Percentage to arrive at the Discount Interchange Rate Program Rebate Percentage. U.S. Bank USA will then multiply the Discount Interchange Rate Program Rebate Percentage by the Discount Interchange Rate Program Annual Volume for the initial six (6) months of the Agreement Year. The result will be the gross Discount Interchange Rate Program Rebate.
 - v. U.S. Bank USA will subtract the first calculation payment and apply any Charge-off Adjustments that have not been applied at any time from past payments from the gross Discount Interchange Rate Program Rebate. The result will be the net Discount Interchange Rate Program Rebate for the second calculation for that Agreement Year.
- c. For the third calculation of each Agreement Year:
- i. The third calculation of each Agreement Year is based on Customer USA's performance for the initial nine (9) months of the Agreement Year.
 - ii. U.S. Bank USA will calculate the Client Held Days Payment Performance for the initial nine (9) months of the Agreement Year to arrive at the Performance Percentage on Table A.
 - iii. U.S. Bank USA will calculate the Discount Interchange Rate Program Annual Volume for the third calculation. U.S. Bank USA will divide the Discount Interchange Rate Program Annual Volume for the initial nine (9) months of the Agreement Year by nine (9) and then multiply the result by twelve (12) to arrive at the estimated Discount Interchange Rate Program Annual Volume. U.S. Bank USA will use this estimated Discount Interchange Rate Program Annual Volume to find the Volume Percentage on Table B.
 - iv. Next, U.S. Bank USA will add the Performance Percentage to the Volume Percentage to arrive at the Discount Interchange Rate Program Rebate Percentage. U.S. Bank USA will then multiply the Discount Interchange Rate Program Rebate Percentage by the Discount Interchange Rate Program Annual Volume for the initial nine (9) months of the Agreement Year. The result will be the gross Discount Interchange Rate Program Rebate.
 - v. U.S. Bank USA will subtract the first and second calculation payments and apply any Charge-off Adjustments that have not been applied at any time from any of the past payments from the gross Discount Interchange Rate Program Rebate. The result will be the net Discount Interchange Rate Program Rebate for the third calculation for that Agreement Year.
- d. For the final calculation:
- i. The final calculation of each Agreement Year is based on Customer USA's actual year to date performance for the Agreement Year.
 - ii. U.S. Bank USA will calculate the Client Held Days Payment Performance for the Agreement Year to arrive at the Performance Percentage on Table A for the Agreement Year.
 - iii. U.S. Bank USA will calculate the Discount Interchange Rate Program Annual Volume for the Agreement Year to find the Volume Percentage on Table B.
 - iv. Next, U.S. Bank USA will add the Performance Percentage to the Volume Percentage to arrive at the Discount Interchange Rate Program Rebate Percentage. U.S. Bank USA will then multiply the Discount Interchange Rate Program Rebate Percentage by the Discount Interchange Rate Program Annual Volume for the Agreement Year. The result will be the gross Discount Interchange Rate Program Rebate for the Agreement Year.
 - v. U.S. Bank USA will subtract the first, second, and third calculation payments and apply any Charge-offs that have not been applied at any time from any of the past payments from the gross Discount Interchange Rate Program Rebate. The result will be the final net Discount Interchange Rate Program Rebate for the Agreement Year.
 - vi. If the net Discount Interchange Rate Program Rebate is a negative amount, the amount will be subtracted from future net Discount Interchange Rate Program Rebate payments. U.S. Bank will apply any Charge-off Adjustments in excess of the net Discount Interchange Rate Program Rebate to any payments for one or more of the following calculations. Subsequent calculations will be made in a similar fashion. Upon termination of the Master Agreement, if the net Discount Interchange Rate Program Rebate is a negative dollar amount, Customer USA agrees to reimburse U.S. Bank USA the dollar amount previously paid by U.S. Bank USA to Customer USA.

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

Term Contract

Initial Contract Term: This Emergency Contract becomes effective on November 11, 2024, and extends for a period of one (1) year.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to one (1) year or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed 12 months in total. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

Fixed Period Contract: This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

Fixed Period Contract with Renewals: This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days.

Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional _____ successive one year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of this Contract is prohibited.

One Time Purchase: The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

Other: See attached.

4. NOTICE TO PROCEED: Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

Open End Contract: Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

Service: The scope of the service to be provided will be more clearly defined in the specifications included herewith.

Combined Service and Goods: The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

One Time Purchase: This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

BID BOND (Construction Only): Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

PERFORMANCE BOND: The apparent successful Vendor shall provide a performance bond in the amount of _____. The performance bond must be received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

LABOR/MATERIAL PAYMENT BOND: The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award. In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

MAINTENANCE BOND: The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

LICENSE(S) /CERTIFICATIONS/ PERMITS: In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies mandated herein, including but not limited to, policy cancelation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of this contract. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

Commercial General Liability Insurance in at least an amount of:

Automobile Liability Insurance in at least an amount of: _____

Professional/Malpractice/Errors and Omission Insurance in at least an amount of:

Commercial Crime and Third-Party Fidelity Insurance in an amount of:

Cyber Liability Insurance in an amount of: _____

Builders Risk Insurance in an amount equal to 100% of the amount of the Contract.

9. WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. LITIGATION BOND: The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

11. LIQUIDATED DAMAGES: Vendor shall pay liquidated damages in the amount of

_____ for _____

This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.

14. PAYMENT: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

15. PURCHASING CARD ACCEPTANCE: The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-6.1.e.

20. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

Revised 06/06/2024

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. BANKRUPTCY: In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

31. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

32. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ SA-3-1 et seq., 5-22-1 et seq., and SG-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

33. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6, i.e., Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

34. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

35. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

36. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

37. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

38. PURCHASING AFFIDAVIT: In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.

39. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

40. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

41. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.requisitions@wy.gov.

42. BACKGROUND CHECK: In accordance with W. Va. Code§ 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

43. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § SA-3-56. As used in this section:

a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.

b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

44. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code§ 5-19-1 et seq., and W. Va. CSR§ 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers-or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

Julie Myers

From: Whittaker, Frank M <frank.m.whittaker@wv.gov>
Sent: Monday, May 13, 2024 8:31 AM
To: Julie Myers; Jeff Waybright
Cc: Toby L Welch; Samantha L Willis
Subject: Fwd: Emailing: SKM_650i24050914000.pdf
Attachments: SKM_650i24050914000.pdf

You don't often get email from frank.m.whittaker@wv.gov. [Learn why this is important](#)

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Julie Myers,

Ms. Myers, we are in receipt the attached memo from Jeff Waybright requesting an approval for an emergency purchase of Purchasing Card Services from 11/10/2024 through 11/09/2025 with an option for a 1 year renewal should your office not be able to complete the upgrade prior to the expiration of the initial term.

Your emergency request is approved for Purchasing Card Services under the same terms, conditions, and rebate schedule contained in the current Purchasing Card Service contract CMA AUD1800000001 for a period of one year from the expiration of CMA AUD1800000001 The emergency contract should be issued from 11/11/2024 through 11/10/2024 This approval includes the option to renew for 1 additional year.

Please follow all emergency procedures outlined in the Purchasing Division Procedures Handbook and return the completed contract to this office for posting within 30 days of this approval.

Frank Whittaker, CPPB, NIGP-CPP
Assistant Director
West Virginia Purchasing Division
2019 Washington Street, East
Charleston, WV 25305
(304) 558-2316
frank.m.whittaker@wv.gov

----- Forwarded message -----

From: Jeff Waybright <jeff.waybright@wvsao.gov>
Date: Thu, May 9, 2024 at 2:12 PM
Subject: Emailing: SKM_650i24050914000.pdf
To: Mark D. Scott <Mark.D.Scott@wv.gov>

Secretary Scott,

Hard copy on its way. Thank you.

Jeff

Your message is ready to be sent with the following file or link attachments:

SKM_650i24050914000.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

--

Julie Myers

From: Whittaker, Frank M <frank.m.whittaker@wv.gov>
Sent: Thursday, May 16, 2024 1:25 PM
To: Julie Myers
Cc: toby.l.welch@wv.gov
Subject: Re: Emailing: SKM_650i24050914000.pdf

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You are correct, this is an approval for a new emergency purchase. it is not a change order authorization. It is my understanding that CMA AUD1800000001 will expire on 11/10/2024 and has no renewals remaining.

Additionally I noticed that there is a typo in my previous response. The emergency contract should run from 11/11/24 through 11/10/25 based on the expiration date of the original contract.

Let us know if you have any additional questions or concerns.

Frank

On Thu, May 16, 2024 at 12:56 PM Julie Myers <julie.myers@wvsao.gov> wrote:

Good afternoon- I am wanting to clarify that this is not a renewal or extension of the current contract that is set to expire. But that this is a new emergency contract under a new AMA number with the same terms and conditions and rebate schedule, with optional 1 year renewal. We will be reaching out to US Bank and want to make sure that we word this correctly with them so that they realize it will be a new contract number.

Thank you.

Julie Myers

Services Administrator

West Virginia State Auditor's Office

State Capitol

Building 1, Suite W-421

1900 Kanawha Boulevard, East

Charleston, WV 25305

304-205-8576

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From: Whittaker, Frank M <frank.m.whittaker@wv.gov>

Sent: Monday, May 13, 2024 8:31 AM

To: Julie Myers <julie.myers@wvsao.gov>; Jeff Waybright <jeff.waybright@wvsao.gov>

Cc: Toby L Welch <toby.l.welch@wv.gov>; Samantha L Willis <samantha.l.willis@wv.gov>

Subject: Fwd: Emailing: SKM_650i24050914000.pdf

You don't often get email from frank.m.whittaker@wv.gov. [Learn why this is important](#)

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Julie Myers,

Ms. Myers, we are in receipt the attached memo from Jeff Waybright requesting an approval for an emergency purchase of Purchasing Card Services from 11/10/2024 through 11/09/2025 with an option for a 1 year renewal should your office not be able to complete the upgrade prior to the expiration of the initial term.

Your emergency request is approved for Purchasing Card Services under the same terms, conditions, and rebate schedule contained in the current Purchasing Card Service contract CMA AUD1800000001 for a period of one year from the expiration of CMA AUD1800000001 The emergency contract should be issued from 11/11/2024 through 11/10/2024 This approval includes the option to renew for 1 additional year.

Please follow all emergency procedures outlined in the Purchasing Division Procedures Handbook and return the completed contract to this office for posting within 30 days of this approval.

Frank Whittaker, CPPB, NIGP-CPP

Assistant Director

West Virginia Purchasing Division

2019 Washington Street, East

Charleston, WV 25305

(304) 558-2316

frank.m.whittaker@wv.gov

----- Forwarded message -----

From: **Jeff Waybright** <jeff.waybright@wvsao.gov>

Date: Thu, May 9, 2024 at 2:12 PM

Subject: Emailing: SKM_650i24050914000.pdf

To: Mark D. Scott <Mark.D.Scott@wv.gov>

Secretary Scott,

Hard copy on its way. Thank you.

Jeff

Your message is ready to be sent with the following file or link attachments:

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State of West Virginia

John B. McCuskey

State Auditor

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State Capitol, Building 1, Suite W-100
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Toll Free: (877) 982-9148
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May 9, 2024

Mark D. Scott, Cabinet Secretary
West Virginia Department of Administration
Building 1, Room E119
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Secretary Scott:

The WV State Auditor's Office is making this Emergency request for Purchasing Card Services from November 10, 2024 to November 9, 2025 due to the agency's need for continuity of services while the state completes major upgrades of interconnected services that directly affects all state agencies as well as higher education entities.

DHHR has been tasked with replacing their voucher program for emergency childcare expenses that has been rolled into the current P-Card program. The Auditor's Office will have to incorporate the requirement for these services into the next solicitation, and cannot make these crucial changes to the specifications, solicit, and award a new contract prior to the expiration of the current contract.

The situation is further complicated by the upcoming upgrade to the State's ERP system which will have to fully integrate with the State's P-Card system. The Auditor's Office cannot know what the requirements of the new P-Card system will be until the ERP upgrade is complete.

For the reasons listed above, the Auditor's Office is unable to solicit and award a new P-Card contract prior to the expiration of the current contract. It is critical that the State has the ability to continue to provide P-Card services to all of its agencies during this period of transition.

Further, we would like to request an optional renewal period not to exceed one year, should the agency not be able to fully integrate with the ERP system prior to the expiration of the initial emergency period. US Bank will continue to honor current contract terms and rebate earnings.

If you have any questions or need further information, please feel free to contact me at (304)558-2251.

Sincerely,

A handwritten signature in blue ink that reads "Jeff Waybright".

Jeff Waybright
Senior Deputy State Auditor
Chief of Staff