

CONTRACT

The State of Washington on Behalf of WSCA-NASPO Cooperative Purchasing Program Commercial Card Solutions Contract #00612, Category 1-Purchasing, Travel, One, and Declining Balance Cards

Lead State:
State of Washington
Department of Enterprise Services (DES)



For Purchases of Materials, Supplies, Services, and Equipment
Under the Authority of
Chapter 43.19 RCW

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OVERVIEW

1.1 CONTRACT SCOPE

The scope of this contract will be to establish a nationwide Commercial Card Services Contract led by the State of Washington Department of Enterprise Services (DES) on behalf of the WSCA-NASPO Cooperative Purchasing Program (WSCA-NASPO) for use by states, state agencies and political subdivisions for the as needed products/services related the Commercial Card Industry as described herein.

1.2 CONTRACT SCOPE AND MODIFICATIONS

DES reserves the right to modify this Contract by mutual written agreement between DES and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be evidenced by issuance of a written authorized amendment by the DES Contract Administrator.

1.3 RECITALS

The State of Washington, acting by and through DES on behalf of WSCA-NASPO, issued a Request for Proposal (RFP) dated 11/7/12 for the purpose of purchasing Commercial Cards including, but not limited to purchasing card, corporate (travel) cards, one cards, declining balance cards, and fleet cards in accordance with its authority under Chapter 43.19 RCW.

A Contract between a Contractor and a participating state other than the State of Washington may be subject to requirements in addition to or different from the Contract terms contained herein and from the statutes and rules contained in the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC).

US Bank submitted a timely Response to the State of Washington DES RFP.

The State of Washington DES and the WSCA-NASPO Sourcing Team evaluated all properly submitted Responses to the above-referenced RFP and identified *US Bank* as the apparently successful Contractor for the following category:

Category 1-Purchasing, Travel, One, and Declining Balance Cards

The State of Washington has determined that entering into a Contract with U.S. Bank will meet Entities needs and will be in Entities best interest.

NOW THEREFORE, DES awards this Contract to U.S. Bank (Contractor), the terms and conditions of which shall govern Contractor's furnishing to Entities the option of purchasing Commercial Cards as outlined within the awarded category. This Contract is not for personal use.

1.4 ESTIMATED USAGE

The State of Washington does not represent or guarantee any minimum purchase.

1.5 CONTRACT TERM

The initial term of this contract is five (5) years from date of award which occurs when both parties have signed the Contract. The contract may be extended for additional term(s) or portions thereof. Any term extension is not automatic and may be exercised solely at Washington's option. However, any such extension for each additional term(s) or portion thereof is subject to the mutual agreement of DES and Contractor in the form of a Contract Amendment. The total contract term, including the initial term and all subsequent extensions, shall not exceed seven (7) years unless an emergency exists and/or special circumstances require a partial term extension.

1.6 ENTITIES

General Use

This Contract is for use by the State of Washington, WSCA-NASPO states, state agencies and political subdivisions. "Political subdivisions" means financially independent government entities such as cities and counties. Each Participating state which has executed a Participating Addendum and has been credit qualified by Contractor ("Participating State") may include any state specific requirements, terms and conditions which are mutually agreed to by Contractor. Additional non-state entities are also eligible to participate subject to approval from the State Chief Procurement Official and with the consent of the awarded Contractor through the execution of a Participating Addendum. The term "Participating Entity" shall include both Participating States and those entities which have signed a Participating Addendum. Each Participating state may choose to order any of the products and services listed in this Contract. All States may choose to not participate in every product/service.

PARTICIPANTS: WSCA-NASPO is the cooperative purchasing program of the National Association of State Procurement Officials. It is a cooperative group contracting consortium for state government departments, institutions, agencies and Political Subdivisions (e.g., colleges, school districts, counties, cities, etc.,) for all 50 states, the District of Columbia and the organized US territories. Obligations under this Contract are limited to those Participating Entities who have signed a Participating Addendum. Financial obligations of Participating Entities are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of Political Subdivisions.

ENTITY PARTICIPATION: Use of specific WSCA-NASPO cooperative Contracts by state agencies, Political Subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official and subject to Contractor's approval.

2 CONTRACT ADMINISTRATION

2.1 DES CONTRACT ADMINISTRATOR

The DES shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The DES Contract Administrator will be the principal contact for the Contractor concerning business activities under this Contract. The DES will notify the Contractor, in writing, when there is a new DES Contract Administrator assigned to this Contract.

2.2 ADMINISTRATION OF CONTRACT

DES will maintain Contract information and pricing and make it available on the DES website. Contractor may propose a revision to its offering to reflect changes in technology appropriate to the scope of the Contract. Products and services may be added to this Contract by mutual agreement. New products or services will be added to the Contract by written amendment.

2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's Representative, who will be the principal point of contact for the DES Contract Administrator concerning Contractor's performance under this Contract;
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract;
4. Be bound by all written communications given to or received from the Contractor's Representative; and
5. Notify the Contract Administrator in writing, as soon as reasonably practicable, of any change of the designated Contractor's Representative assigned to this Contract.

Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.

2.4 POST AWARD CONFERENCE

The Contractor may be required to attend a post award conference scheduled by the DES Contract Administrator to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

2.5 CONTRACT MANAGEMENT

Upon award of this Contract, the Contractor shall:

1. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
2. Promote and market the use of this Contract to all authorized contract Entities.
3. Ensure that those who endeavor to utilize this Contract are authorized Entities under this Contract.
4. Ensure that transition/implementation timelines are adhered to so Customers are not without coverage.

2.6 CHANGES

Alterations to any of the terms, conditions, or requirements of this Contract shall be effective upon written issuance of a mutually agreed Contract Amendment by the Contract Administrator. However, applicable changes due to regulatory, legal and other rules that govern the Contractor's business that may impact this Contract may be made with reasonable notice without the written approval of DES. Additionally, changes to point of contact information may be updated without the issuance of a mutually agreed Contract Amendment.

2.7 WASHINGTON ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall be registered in the Contractor registration system, Washington Electronic Business Solution (WEBS) at, www.ga.wa.gov/webs maintained by DES. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

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3 INCENTIVE SHARE

3.1 INCENTIVE SHARE COMPONENTS

Incentive Share will be a combined total of volume, speed of pay, and large ticket basis points. Incentive Share will be a single payment paid directly to Entity in each state unless the state's Participating Addendum chooses to disburse any of the Incentive Share Components in an alternate manner. Incentive Share payments will be either mailed or transmitted via ACH by the 60th day following the end of each quarter.

Incentive Share Components

Volume Incentive - Each Entity will receive a basis point (percentage) of their total quarterly sales volume. The formula for calculating the quarterly volume incentive share is:

$$\frac{\text{Quarterly volume sales per entity} - \text{qualifying large ticket volume} \times \text{basis points (percentage)}}{\text{Entity Quarterly Volume Incentive}}$$

Speed of Pay Incentive - Each Entity will receive an additional incentive share based on speed of pay. Speed of Pay incentive will be determined by averaging quarterly days to pay (file-turn) and applying the appropriate percentage. Average days to pay will be from the date the transaction is posted to the account to the date payment is posted to the account. The formula for calculating Speed of Pay Incentive is:

$$\frac{(45 - \text{Average number of days to pay})}{45} \times \text{basis points (percentage)} \times \text{invoice amount (Quarter Sales Volume)} = \text{Entity Prompt Payment Incentive}$$

Large Ticket Incentives - Each Entity will receive an incentive for qualifying large ticket transactions. Qualifying large ticket transactions will be subject to the same speed of pay incentive. Contractor will provide a quarterly report identifying all qualifying large ticket transactions to each Entity. The formula for calculating Large Ticket Incentive is:

$$\frac{\text{Qualifying Quarterly Large Ticket volume sales per Entity} \times \text{basis points (percentage)}}{\text{Entity Large Ticket Volume Incentive}}$$

WSCA/NASPO Annual Sales Volume Incentive - Each participating state will receive an additional WSCA-NASPO Annual Sales Volume Incentive based on a tier established from all WSCA-NASPO participating states annual volume and applied to each state's annual sales volume. The formula for calculating WSCA-NASPO Annual Sales Volume Incentive is:

$$\frac{\text{Participating state annual sales volume (all products)} \times \text{applicable basis points (percentage)}}{\text{corresponding to the Tier established for the Annual Overall WSCA-NASPO Sales Volume (all product)}} = \text{WSCA-NASPO Participating State Annual Sales Volume Incentive}$$

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Rebates Applicable to Purchase Card and One Card	Rebate BPS	Paid								
<p>Each Participating Entity will receive a basis point (percentage) of their quarterly sales volume.</p> <p>The Formula to determine quarterly volume incentive share: <u>Quarterly volume sales per entity - qualifying large ticket volume X basis points (percentage) = Entity Quarterly Volume Incentive</u></p>	130	Quarterly								
<p>The Prompt Payment Incentive calculation is designed to provide an incentive to each Entity, when Client Held Days is less than forty-five (45) days. The Prompt Payment Incentive is based solely on the Client Held Days Payment Performance for each Entity for each Agreement Quarter (3 calendar months). The Formula to determine Prompt Payment Incentive: <u>(45 - Client Held Days) / 45 x 0.0045 x Quarterly Sales Volume</u></p>		Quarterly								
<p>Large Ticket Incentive-Entity will receive an incentive for qualifying large ticket transactions. Qualifying large ticket transactions will be subject to the same speed of pay incentive. Contractor will provide a quarterly report identifying all qualifying large ticket transactions to each Entity. The formula for calculating Large Ticket Incentive is: <u>Qualifying Quarterly Large Ticket volume sales per Entity x basis points (percentage) = Entity Large Ticket Volume Incentive.</u></p>	75	Quarterly								
<p>Annual Sales Volume Incentive- Each participating state will receive an additional WSCA-NASPO Annual Sales Volume Incentive based on a tier established from all WSCA-NASPO participating states annual volume and applied to each state's annual sales volume.</p> <p>The formula for calculating WSCA-NASPO Annual Sales Volume Incentive is: <u>Participating state annual sales volume (all products) X applicable basis points (percentage) corresponding to the Tier established for the Annual Overall WSCA-NASPO Sales Volume (all product) = WSCA/NASPO Participating State Annual Sales Volume Incentive.</u></p> <table><tr><td>\$500,000,000 - \$2,000,000,000</td><td>45</td></tr><tr><td>\$2,000,000,001 - \$3,000,000,000</td><td>45</td></tr><tr><td>\$3,000,000,001 - \$4,000,000,000</td><td>45</td></tr><tr><td>\$4,000,000,001 - \$5,000,000,000</td><td>45</td></tr></table> <p>Note: Notwithstanding the foregoing, if a political subdivision in a non-participating state is allowed to join the contract, the Annual Aggregate State rebate component will be negotiated between the Bank, WSCA/NASPO and that political subdivision so long as the net bps available for this component are not diminished.</p>	\$500,000,000 - \$2,000,000,000	45	\$2,000,000,001 - \$3,000,000,000	45	\$3,000,000,001 - \$4,000,000,000	45	\$4,000,000,001 - \$5,000,000,000	45		Annually
\$500,000,000 - \$2,000,000,000	45									
\$2,000,000,001 - \$3,000,000,000	45									
\$3,000,000,001 - \$4,000,000,000	45									
\$4,000,000,001 - \$5,000,000,000	45									

Minimum Requirements:

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

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

In the event that the Card Program or the Contract is terminated prior to the completion of the Base Period or prior to the completion of any Agreement Quarter after the completion of the Base Period by Entity without cause, or by Contractor with cause, and/or the sole provider provision of this Contract is violated, in addition to any other remedies available to Contractor, this Incentive Share opportunity shall immediately terminate and no Incentive Share shall be paid to Entity.

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

3.2 INCENTIVE SHARE ADJUSTMENTS

In the event in a decrease or increase in the interchange rates by five percent (5%) or more, US Bank will have the right (but not obligation) to replace the current Revenue Sharing Opportunity with a new Revenue Sharing Opportunity proportionate to the change of the revised interchange rates.

If any Entity does not earn at least \$75.00 in Incentive Share for Category 1, Incentive Share Components 1 through 3 they will forfeit their Incentive Share for the preceding quarter.

Contractors shall not make extensions contingent on price adjustments.

4 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

4.1 ESTABLISHED BUSINESS

Prior to commencing performance, or prior to that time if required by the DES, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the RFP. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The DES reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

4.2 USE OF SUBCONTRACTORS

Contractor shall take complete responsibility for all actions of Subcontractors.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

The following credit card provider has been selected by U.S. Bank and is authorized to perform the services listed in the Product Offering section:

Category 1-Visa

Category 2-Voyager

4.3 SUBCONTRACTS AND ASSIGNMENT

Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA-NASPO Contract Administrator. Notwithstanding the previous sentence, approval for assignment to a bank affiliate will not be unreasonably withheld.

4.4 RECORDS ADMINISTRATION AND AUDIT

The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be maintained by the Contractor for a rolling period of seven (7) years from the date of the transaction, or until all audits initiated within the seven (7) years have been completed, whichever is later. The Contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access to all the records of this Contract and any order placed under this Contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

4.5 INDEPENDENT CONTRACTOR

The Contractor shall be an independent Contractor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

4.6 INDIVIDUAL CUSTOMER

Except to the extent modified by a Participating Addendum, each Entity shall follow the terms and conditions of the Contract and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Contract, including but not limited to, any indemnity or to recover any costs allowed in the Contract and applicable Participating Addendum for their purchases. Each Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Entity individually.

4.7 INSURANCE

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

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

1. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

2. Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

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

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

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

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

4.8 LAWS AND REGULATIONS

Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

4.9 REPORTS

The Contractor shall submit reports to the DES Contract Administrator or directly to WSCA-NASPO as requested.

5 INFORMATION AND COMMUNICATIONS

5.1 ADVERTISING

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the DES Contract Administrator.

5.2 RETENTION OF RECORDS

Records for this contract will be maintained by the Contractor for a rolling period of seven (7) years from the date of a transaction. These records which shall be records related only to DES and its transactions, including materials generated under the Contract, at the sole cost and expense of DES, shall be subject at all reasonable times and with reasonable notice to inspection, review, or audit by the DES, personnel duly authorized by the DES, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the seven (7) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

5.3 NON-ENDORSEMENT AND PUBLICITY

Neither the DES nor the Entities are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the State of Washington, DES, any Participating Entity or WSCA-NASPO in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the DES and Participating Entity.

5.4 PUBLIC INFORMATION

This Contract and all related documents are subject to disclosure pursuant to the State of Washington's and individual Participating Entity's public information laws.

5.5 CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF

5.5.1 CONFIDENTIALITY

Contractor acknowledges that it and its employees or agents may, in the course of providing the product under this Contract, be exposed to or acquire information that is confidential to Entity or Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Contract, including, but not necessarily limited to (a) any Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Entity to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Entity or; (f) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

5.5.2 NON-DISCLOSURE

Contractor shall hold Confidential Information in confidence, in accordance with its normal procedures for safeguarding customer information and its policies and using the same care to satisfy its obligations under the Contract as it uses with respect to its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties that do not have a "need to know" or use Confidential Information for any purposes whatsoever other than the performance of this Contract to Entity hereunder, and to advise each of its employees, affiliates and agents of their obligations to keep confidential information confidential. Notwithstanding anything to the contrary contained herein, the Contractor and its affiliates may disclose Confidential Information, without notice to DES, to any governmental agency, regulatory authority or self-regulatory authority (including, without limitation, bank and securities examiners) having or claiming to have authority to regulate or oversee any aspect of the Contractor's business or that of its affiliates in

connection with the exercise of such authority or claimed authority Contractor shall use commercially reasonable efforts to assist Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Entity as soon as reasonably practicable if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Contractor shall, at the request and expense of Entity, cooperate with Entity in seeking injunctive or other equitable relief in the name of Entity or Contractor against any such person. Except as directed by Entity, Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract and at Entity's written request, Contractor shall, subject to applicable law, rule and regulation and Contractor's document retention policies and procedures, turn over to Entity all documents, papers, and other matter in Contractor's possession that was delivered to Contractor by or on behalf of Entity that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one (1) copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Contract.

5.5.3 INJUNCTIVE RELIEF

Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to Entity that is inadequately compensable in damages. Accordingly, Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Entity and are reasonable in scope and content.

6 GENERAL PROVISIONS

6.1 GOVERNING LAW

The Contract shall be governed by and construed in accordance with the laws of the state sponsoring and administering the Contract. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Entity's State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

6.2 SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

6.3 SURVIVORSHIP

All transactions executed for products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data;

Contractor's Commitments, Warranties and Representations; Protection of Entity's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

6.4 DEBARMENT

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency.

6.5 FORCE MAJEURE

Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The lead State of Washington's DES may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

6.6 INDEMNIFICATION

The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable from and against all third party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Contract. This section is not subject to any limitations of liability in this Contract or in any other document executed in conjunction with this Contract

6.7 INDEMNIFICATION – INTELLECTUAL PROPERTY

The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable ("Indemnified Party") from and against all third-party claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of third party claim that the product or its use, infringes any Berne Convention country copyright or any United States of America or United Kingdom patent, trade secret or trademark of any third party ("Intellectual Property Claim"). The Contractor's obligations under this section shall not extend to any combination of the product with any other product, system or method, unless:

1. the Product, system or method is:
 - (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - (b) specified by the Contractor to work with the product; or
 - (c) reasonably required, in order to use the product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
2. it would be reasonably expected to use the product in combination with such product, system or method.

The Indemnified Party shall promptly notify the Contractor after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide prompt notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the

Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. This section is not subject to any limitations of liability in this Contract or in any other document executed in conjunction with this Contract.

6.8 ASSIGNMENT OF ANTITRUST RIGHTS

Contractor irrevocably assigns to a Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or an Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract or Participating Addendum; including, at an Entity's option, the right to control any such litigation on such claim for relief or cause of action.

Contractor shall require any subcontractors hired to perform any of Contractor's obligations, under this Contract or Participating Addendum, to irrevocably assign to an Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or an Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Contract or Participating Addendum, including, at an Entity's option, the right to control any such litigation on such claim for relief or cause of action.

6.9 LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY

Contractor grants to the Entity a nonexclusive, revocable, non-transferable license for the use of the Software, which means any third-party software provided by Contractor and necessary for use of the Product and services under the Contract, and any Materials, which means any third-party materials provide by Contractor and necessary for use of the Product and series under the Contract, related to the Software provided to Entity under this Contract. Each license is granted solely for use in object code form only in connection with the Service.

6.10 NO WAIVER OF SOVEREIGN IMMUNITY

In no event shall this Contract, any Participating Addendum or any contract or any purchase order issued thereunder, or any act of a Lead State or a Entity, be a waiver by the Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

6.11 STANDARD OF PERFORMANCE AND ACCEPTANCE

The Standard of Performance, which shall be defined as that standard of performance which is customary in the industry, applies to all product(s) purchased under this Contract, including any additional, replacement, or substitute product(s) and any product(s) which are modified by or with the written approval of Contractor after Acceptance by the Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in the RFP or the Participating Addendum, starting from the day after the product is installed and Contractor certifies that the product is ready for Acceptance Testing. If the product does not meet the Standard of Performance during the initial period of Acceptance Testing, Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the Standard of Performance issue(s). If after the cure period, the product still has not met the Standard of Performance Entity may, at its option: (1) declare Contractor to be in breach and terminate the Order; (2) demand replacement product from Contractor at no additional cost to Entity; or, (3) continue the cure period for an additional time period agreed upon by the Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of product returned pursuant to the section. No product shall be accepted and no charges shall be paid until the Standard of Performance is met. The warranty period will begin upon Acceptance.

6.12 SYSTEM FAILURE OR DAMAGE

In the event of system failure, damage, data loss, or breach caused by the Contractor or its product, the Contractor agrees to use its best efforts to (i) provide required notice to affected entities and individuals and to (ii) restore or to assist in restoring the system to operational capacity.

6.13 TITLE OF PRODUCT

Upon Acceptance by the Entity, Contractor shall convey to Entity title to the product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the product shall include an irrevocable and perpetual license to use the Embedded Software, which means software (if any) that functions within the Product, in the product. If Entity subsequently transfers title of the Product to another entity, Entity shall have the right to transfer the license to use the Embedded Software with the transfer of product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Entity or Entity's transferee.

6.14 WARRANTY

Except as specifically stated above and in any Infringement Indemnity, which means indemnification of the Entity by the Contractor against any claim or suit with respect to such Entity's use of any Software, and notwithstanding any other provision in this Contract or otherwise, we make no representation or warranty, express or implied, written or oral, and, to the full extent permitted by law, disclaim all other warranties including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose, regarding the Software, the materials, and all other property, services or rights covered by this Contract.

6.15 WSCA-NASPO eMARKET CENTER

Awarded responders are required to participate in the WSCA-NASPO eMarket Center and, working through WSCA-NASPO's Contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either a hosted (by SciQuest) or Punchout Level 2 catalog configurations, but actual requirements will be determined by the Lead State Contract Administrator, WSCA-NASPO, WSCA-NASPO's Contractor (SciQuest) and the awarded Contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological understanding.

7 DISPUTES AND REMEDIES

7.1 DEFAULTS & REMEDIES

The occurrence of any of the following events shall be an event of default under this Contract:

1. Nonperformance of contractual requirements; or
2. A material breach of any term or condition of this Contract; or
3. Any representation or warranty by Contractor in response to the RFP or in this Contract proves to be untrue or materially misleading; or
4. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
5. Any default specified in another section of this Contract.

Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Contract in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Contract.

If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Contract and Lead State shall have the right to exercise any or all of the following remedies:

1. Exercise any remedy provided by law; and
2. Terminate this Contract and any related Contracts or portions thereof; and
3. Impose liquidated damages as provided in this Contract; and
4. Suspend Contractor from receiving future bid RFPs; and
5. Suspend Contractor's performance; and
6. Withhold payment until the default is remedied.

In the event of a default under a Participating Addendum, a Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Contract, in addition to those set forth in its Participating Addendum.

7.2 ADMINISTRATIVE SUSPENSION

When it in the best interest of the state, the DES may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

7.3 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

7.4 NON-EXCLUSIVE REMEDIES

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

8 CONTRACT TERMINATION

8.1 WAIVER OF BREACH

Failure of Lead State or Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Contract or Participating Addendum. Any waiver by the Lead State or Entity must be in writing. Waiver by the Lead State or Entity of any default, right or remedy under this Contract or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Contract or Participating Addendum.

9 CONTRACT EXECUTION

9.1 PARTIES

This Contract ("Contract") is entered into by and between the State of Washington, acting by and through *State of Washington Department of Enterprise Services* an agency of Washington State government ("DES" or "State") located at *1500 Jefferson Street SW, Olympia, WA 98501* and *US Bank*, a *national banking association* licensed to conduct business in the State of Washington ("Contractor"), located at *200 South Sixth Street Minneapolis, Minnesota 55402* for the purpose of providing *commercial card solutions*.

9.2 ENTIRE AGREEMENT

This Contract document and all subsequently issued amendments comprise the entire Contract between the DES and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract unless otherwise provided in the each Individual state's Participating Addendum.

PAD

9.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

Incorporated Documents:

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

1. The RFP document with all attachments and exhibits, and all amendments thereto; and
2. Approved portions of the Contractor's response to the RFP dated January 24, 2013;

In the event of a conflict between the documents which are incorporated into the Participating Addendum for each Entity, or any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the order listed in each Entities Participating Addendum.

9.4 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid [certified mail, return receipt requested, via facsimile or by electronic mail], to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To DES at:	To Contractor at:
State of Washington <i>Department of Enterprise Services</i>	U.S. Bank National Association
Attn: Cathy Moxley, Contracts Consultant	Corporate Payment Systems
1500 Jefferson Street SW	Mail Code EP-MN-L28C
Olympia, WA 98501	200 South Sixth Street
	Minneapolis, MN 55402
Phone: (360) 407-9434	Attn: CPS Contract Services
E-mail: cathy.moxley@des.wa.gov	

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or DES, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and DES further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

9.5 AUTHORITY TO BIND

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

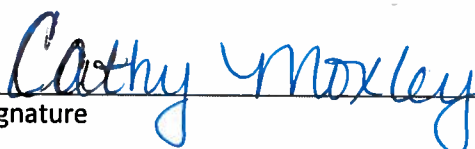
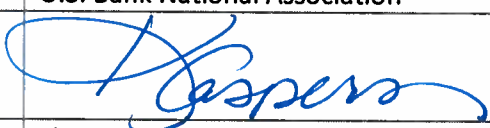
9.6 COUNTERPARTS

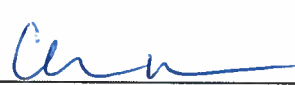

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this 1st day of January, 2013 ~~2014~~ ^{cm}

This is a Total award for Category 1

Approved	Approved
State of Washington Department of Enterprise Services	U.S. Bank National Association
	
Signature	Signature
Cathy Moxley Print or Type Name	Kelly M. Caspers Print or Type Name
12/17/13 Date	12-13-13 Date
Contracts Consultant Title	Vice President Title

Approved	Approved
State of Washington Department of Enterprise Services	State of Washington Department of Enterprise Services
	
Signature	Signature
Christine Warnock, Print or Type Name	Farrell Presnell Print or Type Name
12/17/13 Date	12/18/2013 Date
State Purchasing Agent Title	Acting Deputy Director Title