

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

7-20-99-42

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of General Services

CONTRACTOR NAME

U.S. Bank National Association

2. The term of this Agreement is:

START DATE

January 1, 2021

THROUGH END DATE

December 31, 2025

3. The maximum amount of this Agreement is:

\$0.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	12
Exhibit B	Incentive Rebates and Fees	4
Exhibit C *	General Terms and Conditions (GTC 04/17 as modified)	5
+ - Exhibit D	Definitions	2

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

U.S. Bank National Association

CONTRACTOR BUSINESS ADDRESS

901 Marquette Avenue

CITY

Minneapolis

STATE

MN

ZIP

55402

PRINTED NAME OF PERSON SIGNING

Brad Hoffelt

TITLE

Senior Vice President

CONTRACTOR AUTHORIZED SIGNATURE

Brad W. Hoffelt

Digitally signed by Brad W. Hoffelt  
Date: 2020.12.15 15:04:09 -06'00'

DATE SIGNED

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of General Services

CONTRACTING AGENCY ADDRESS

707 Third Street

CITY

West Sacramento

STATE

CA

ZIP

95605

PRINTED NAME OF PERSON SIGNING

Pat Mullen

TITLE

Multiple Awards Program Section Manager

CONTRACTING AGENCY AUTHORIZED SIGNATURE

Patrick B. Mullen

Digitally signed by Patrick B. Mullen  
Date: 2020.12.15 15:07:13 -08'00'

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL



EXEMPTION (If Applicable)

## EXHIBIT A – SCOPE OF WORK

This Participating Addendum 7-20-99-42 (hereinafter “Participating Addendum” or “Agreement”) is entered into between the State of California, Department of General Services (hereinafter “State” or “DGS”) and U.S. Bank National Association (hereinafter “Contractor”) under the State of Washington Amended and Restated NASPO ValuePoint Commercial Card Services Master Agreement 00719 (hereinafter “Master Agreement”).

### 1. OVERVIEW

- A. The State and Contractor hereby agree that Contractor will provide commercial card services to state and local agencies participating in the State of California Purchase Card Program (hereinafter referred to as “State’s CAL-Card Program”) in accordance with the terms and conditions of this Participating Addendum.
- B. This Participating Addendum includes commercial card products and associated services as outlined in Exhibit A, Section 5.D (Card Products and Liability), offered under the Master Agreement.
- C. For the purposes of this Participating Addendum, “Purchasing Entities” identified in the Master Agreement are defined in Exhibit A, Section 5.B (Eligible Participating Agencies) and will be referred to as “Participating Agencies”.
- D. Each Local Agency shall make its own determination whether this Agreement and the Master Agreement are consistent with its procurement policies and regulations.

### 2. TERM

- A. The Participating Addendum term will begin upon signature approval by the State and end December 31, 2025, or upon termination, whichever occurs first.
- B. Card services including incentive share calculation under this Participating Addendum will begin effective January 1, 2021 (“Effective Date”). Implementation, training, and set-up tasks may begin upon Participating Addendum execution.
- C. The State will have the option to extend the term of this Participating Addendum in the event the Master Agreement term is extended.
- D. Extension(s) to the term of this Participating Addendum will be through a written amendment upon mutual agreement between the State and the Contractor.

### 3. ORDER OF PRECEDENCE

- A. In the event of a discrepancy and/or inconsistency between the articles, attachments, or provisions which constitutes this Agreement, the following descending order of precedence shall apply.
- 1) California Participating Addendum 7-20-99-42, Exhibit A (Scope of Work)
  - 2) California Participating Addendum 7-20-99-42, Exhibit C (General Terms and Conditions GTC 04/17 as modified)
  - 3) California Participating Addendum 7-20-99-42, Exhibit B (Incentive Rebates and Fees)
  - 4) Master Agreement
  - 5) End User Agreement referenced in section 17.3 (c) of the Master Agreement
- B. This Participating Addendum and the Master Agreement together with its exhibits, set forth the entire agreement between the parties. Terms and conditions inconsistent with or contrary to the terms and conditions of this Participating Addendum and the Master Agreement together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the Master Agreement and its exhibits by any subsequent subsidiary agreement or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms. No amendment to the Master Agreement shall be applicable to this Participating Addendum without written permission from the State through a Participating Addendum Amendment.
- C. Section 16.3, 16.4, 16.5, and 17.17 of the Master Agreement do not apply to this Participating Addendum.
- D. Participating Agency shall not be bound by any “click-through” terms and conditions or End User Agreement terms that provide for (i) the amendment of such agreement without written consent of both parties, (ii) the indemnification of any party; (iii) the governing law or venue requirements, (iv) the waiver of any applicable statute of limitations period, (v) that incorporate any terms or conditions by reference, or (vi) any term or condition that conflicts with the terms and conditions of this Participating Addendum.
- E. For purposes of section 17.3 (c) of the Master Agreement, “End User Agreement(s)” will refer to the Cardholder Agreement only. The Participating Addendum terms and conditions shall prevail and govern in the case of a conflict between the Cardholder Agreement and the Participating Addendum.

#### 4. CONTRACT MANAGEMENT

- A. The Contractor and State primary contacts for this Participating Addendum are as follows:

Contact	Contractor Relationship Manager	State Contract Administrator
<b>Name</b>	Cheryl Mielnicki	Maureen Seiferling
<b>Phone</b>	(623) 256-6229	(916) 376-2939
<b>Email</b>	<a href="mailto:Cheryl.Mielnicki@usbank.com">Cheryl.Mielnicki@usbank.com</a>	<a href="mailto:Maureen.Seiferling@dgs.ca.gov">Maureen.Seiferling@dgs.ca.gov</a> ; <a href="mailto:CALCardProgram@dgs.ca.gov">CALCardProgram@dgs.ca.gov</a>
<b>Address</b>	U.S. Bank National Association Attn: CPS Contracts Manager EP-MN-A175 901 Marquette Avenue S Minneapolis, MN 55402	DGS, Procurement Division Attn: State CAL-Card Program 707 3rd Street, 2nd Floor, MS 2-202 West Sacramento, CA 95605

- B. Should the contact information for either party change, the party will provide written notice with updated information no later than ten business days after the change. Changes to contact information will be reflected on the State's CAL-Card Program website without amendment to this Participating Addendum.
- C. Daily account management inquiries will be directed to the Contractor's dedicated customer service unit identified on the State's CAL-Card Program website.
- D. The State and the Contractor will make all contractual notifications, consents, or approvals required under this Participating Addendum in writing.

#### 5. CAL-CARD PROGRAM REQUIREMENTS

##### A. CAL-Card Program Overview

"CAL-Card" is the official registered name of the State's Purchase Card Program administered by the DGS, Procurement Division. The purpose of the State's CAL-Card Program is to provide eligible agencies with commercial card services for the acquisition of goods and services.

##### B. Eligible Participating Agencies

- 1) State agencies and local agencies may participate in the State's CAL-Card Program under this Participating Addendum through a subsidiary agreement process.
  - b. "State Agency" is defined as any state of California government agency, department, bureau, board, or commission.
  - c. "Local Agency" is defined as any city, county, city and county, district or other local governmental body or corporation empowered to expend public

funds for the acquisition of goods, information technology, or services pursuant to Public Contract Code section 10298 (a) (b) and 10299 (b).

- 2) State Agencies may participate in the State's CAL-Card Program under this Participating Addendum upon the signing and submission of a properly completed State Agency Subsidiary Agreement, in the format specified by the State, incorporating all terms and conditions of the Participating Addendum.
- 3) Local Agencies may participate in the State's CAL-Card Program under this Participating Addendum upon credit approval by the Contractor and upon the signing and submission of a properly completed Local Agency Subsidiary Agreement acceptable to Contractor and State in form and substance. Local agencies shall assume responsibility and liability for Local Agency's performance of the terms and conditions of the Participating Addendum. Each Local Agency will be subject to credit approval by the Contractor as described in Exhibit A, Section 5.C (Financial Information).
- 4) Upon execution of a properly completed State Agency Subsidiary Agreement or Local Agency Subsidiary Agreement with credit approval from the Contractor, the State Agency and/or or Local Agency will become a "Participating Agency" and the provision of services by the Contractor to such Participating Agency will be governed by the terms of this Participating Addendum. Participating Agencies will be financially responsible to the Contractor for all accounts issued to the Participating Agency.

#### **C. Financial Information**

- 1) State Agencies. The state of California will be credit qualified as a single entity upon execution of the Participating Addendum. Individual state agencies will not be required to credit qualify on their own.
- 2) Local Agencies. To become credit qualified, each Local Agency will provide the last three (3) years of audited financial statements to Contractor prior to the issuance of any cards. Contractor shall have the right to require any Local Agency to provide annual financial statements on or before one hundred eighty (180) days after the end of the fiscal year. The Local Agency should provide this first set of financial statements with their signed, completed Local Agency Subscription Agreement. Contractor will review the financial statements and provide notice to each Local Agency of the approval or decline of their credit qualification. If satisfactory financial information can be found on a website, Contractor will not require the Local Agency to provide financial information that Contractor can obtain on its own.

#### **D. Card Products and Liability**

- 1) Contractor will provide the following card products to Participating Agencies under the State's CAL-Card Program:
  - Purchase Card (with Corporate Liability)
  - Managed Spend Card (Purchase Card with declining balance feature)

- Emergency Response Card (Purchase Card with extended activation feature)
  - Payment Plus (Local Agency Use Only)
- 2) All other commercial card products offered under the Master Agreement, including but not limited to Corporate/Travel Cards, One Cards and cash advances, are excluded from this Participating Addendum.
  - 3) All card products offered under this Participating Addendum for the State's CAL-Card Program are corporate liability. Participating Agencies shall have no liability for lost or stolen cards or fraudulent use of any corporate liability cards.

#### **E. Statewide Transition and Implementation**

- 1) Upon Participating Addendum execution, the Contractor will work with the State to transition current CAL-Card Participating Agencies to the new Participating Addendum.
- 2) Contractor and DGS State Contract Administrator will develop a transition plan specific to the State's CAL-Card Program to ensure that an efficient and effective transition takes place.
- 3) Contractor will work with the DGS State Contract Administrator to meet all required elements of the agreed to plan.

#### **F. Agency Enrollment**

- 1) Contractor will provide an agency enrollment process for new CAL-Card Program participants.
- 2) Within 15 calendar days of Participating Addendum execution, the Contractor shall provide the DGS State Contract Administrator with detailed agency enrollment process, procedures, and applicable forms for review, including the Cardholder Agreement. Should the enrollment forms or Cardholder Agreement information change, the Contractor will provide written notice to the DGS State Contract Administrator with the updated information no later than 15 business days after the change.

#### **G. Card Design**

- 1) Contractor will be responsible for the embossing and printing of cards.
- 2) The State will use a consistent design as the standard card stock to be used by all CAL-Card Program participants that will identify the card as a state of California CAL-Card commercial card. The Contractor will offer a custom design at no cost to the State.
- 3) The final content and design of the cards will be determined by Contractor with approval from the DGS State Contract Administrator. Contractor agrees that the card design will include at a minimum:
  - State of California designation

- CAL-Card Logo
  - Statement “For Official Use Only”
- 4) The State will be responsible for furnishing any necessary artwork (digital file) to the Contractor for changes to the standard design during the term of the Participating Addendum.
  - 5) Participating Agency will have the ability to customize standard card stock with verbiage and/or logo embossing.

#### **H. Card Issuance**

Contractor will mail cards issued to Participating Agency’s Program Administrator or designated point of contact.

#### **I. Payment Terms**

- 1) Contractor will be responsible for providing an itemized official invoice (statement) to each Participating Agency after the end of each Billing Cycle as designed for each of the accounts established for the Participating Agency.
- 2) The full amount of each Participating Agency’s monthly balance or Billing Cycle balance, except for disputed transactions or Fraudulent Charges reported by Participating Agency, will be due within forty-five (45) calendar days from the receipt of the Contractor invoice. Disputes and Fraudulent Charges should be reported by Participating Agencies in accordance with card association rules.
- 3) Payment may be made to the Contractor via check, cash warrant, bank wire, automated clearing house, or electronic funds transfer at the Participating Agency’s option.

#### **J. Late Payment Penalties**

Late payment penalties for undisputed payments not received by the Contractor within the specified periods will be determined as follows:

- 1) State Agencies. State agencies will be required to pay late payment penalties based on the California Prompt Payment Act (Government Code Section 927 et seq.). The penalty on any undisputed late payment shall be calculated by such State Agency in accordance with the penalty interest rate factor per day formula provided in the state of California Budget Letter 20-19, Late Payment Penalty Interest Rates (or its successor letter).
- 2) Local Agencies. Local agencies may be subject to late payment penalties as described in Exhibit B, Section 3 (Card Fees), unless Local Agency provides Contractor with codes and/or legal authority which would prohibit Local Agency’s ability to pay penalty fees under this Participating Addendum.

#### **K. Delinquency**

- 1) Suspension. Contractor shall have the right to suspend any account that is delinquent for a period exceeding 90 calendar days from the Billing Cycle

close date. The 90-day period is made up of 45 day payment terms on the agreement, and another 45 day grace period.

- 2) Cancellation. Contractor shall have the right to cancel any account that is delinquent for a period exceeding 180 calendar days from the Billing Cycle close date, which is made up of the 45 day payment terms on the contract, and another 135 day grace period for collection efforts. If an account remains unpaid for more than 180 calendar days after the Billing Cycle close date, Contractor will also "charge off" the entire outstanding balance and deduct it from the Participating Agency's next quarterly rebate.

#### **L. Card Data Management and Reporting System**

Contractor shall provide its online (web-based) system, Access® Online, to designated authorized personnel from the State and Participating Agencies.

#### **M. CAL-Card Program Website and User Instructions**

- 1) The State will administer a website dedicated to the State's CAL-Card Program for program information, participation forms and additional resources available to Participating Agencies. In addition, the DGS State Contract Administrator will administer User Instructions for Participating Agencies.
- 2) Contractor may be required to provide information and/or forms to the DGS State Contract Administrator for public posting on the dedicated CAL-Card Program website and/or User Instructions.

#### **N. Participating Agency Responsibilities**

- 1) All Participating Agencies shall prepare the necessary forms to participate in the CAL-Card Program as described in the Participating Addendum and posted User Instructions.
- 2) All Participating Agencies shall designate an Agency Program Administrator, who will serve as the primary point of contact between the Participating Agency and the Contractor for account management purposes. Participating Agencies should also designate a secondary or back-up Agency Program Administrator to ensure program continuity.
- 3) State agencies participating in the CAL-Card Program shall comply with all applicable procurement laws, regulations, policies, procedures, and best practices, including those discussed in the State Contracting Manuals and User Instructions guide.

#### **O. Customer Support**

- 1) Contractor will provide a dedicated customer service team to support the State's CAL-Card Program throughout the term of the Participating Addendum.
- 2) Within 10 calendar days of Participating Addendum execution, the Contractor shall provide the DGS State Contract Administrator with customer service information including but not limited to:



- Relationship Manager information
  - Account Coordinator information
  - Customer service unit information
  - Any additional Contractor support contacts (i.e. technical support, Cardholder support, etc.) provided for the State's CAL-Card Program.
- 3) Should the customer service information or personnel change during the term of the Participating Addendum, Contractor will provide written notice to the DGS State Contract Administrator 10 calendar days before changes or substitutions take place. Substitutions of personnel will include replacements with similar qualifications.
- 4) The State reserves the right to request additional personnel and/or replacement of current personnel at any time. Contractor will be notified in writing at least 10 calendar days before additional personnel and/or replacement personnel are needed.

**P. Training**

- 1) Contractor will provide ongoing training for all CAL-Card Program participants throughout the term of the Participating Addendum.
- 2) Contractor will work with the DGS State Contract Administrator on a training plan to be offered for the CAL-Card Program including training types, schedule, user reference guides and additional training materials.

**Q. Transaction Data Reporting (for Participating Agencies)**

- 1) Custom Financial Extract Files. Contractor shall provide, at no cost to the Participating Agency, the ability to download data from Access® Online and the automatic creation of batch upload files containing accounting data to Participating Agency's internal accounting systems to include, at a minimum, a custom interface file to any internal system(s) designated by the Participating Agency. Contractor will be required to provide custom extract files at the request of the State and/or Participating Agency. The custom extract file shall be created in such a manner that it can be imported into the Participating Agency's internal accounting/financial system with no special programming or manual entry of transaction data.
- 2) Financial Information System for California ("FI\$Cal"). Contractor will be required to provide custom interface files, at no cost to the State, for the State's financial management system ("FI\$Cal system"). The Contractor will work with state of California, FI\$Cal personnel to design, develop, test and implement the custom financial extract solution for the FI\$Cal system. The custom interface file shall be created in such a manner that it can be imported into the FI\$Cal system with no special programming or manual entry of transaction data. FI\$Cal and Contractor will be responsible for providing necessary items to complete work as determined between the parties including but not limited to tasks, deliverables, schedule, system security and file requirements.

**R. End-of-Life Transition**

Contractor agrees that at the end of the Participating Addendum, should the State conduct another procurement and award a new agreement, the Contractor will work with the DGS State Contract Administrator to ensure that an efficient and effective transition takes place within nine (9) months.

**6. REPORTING**

Contractor will be required to provide the following reports to the State. The DGS State Contract Administrator may request additional reporting information for CAL-Card Program activity during the term of the Participating Addendum. Contractor will work with DGS State Contract Administrator to provide requested reports.

**A. Usage/Rebate Report**

- 1) Contractor shall provide an electronic Usage/Rebate Report to the State on a quarterly basis. The report shall provide incentive share (rebates) for each Participating Agency for the calendar quarter.
- 2) Report must contain at a minimum, but not limited to, the data elements identified below:
  - Participating Agency Name
  - Quarterly Standard Volume Sales
  - Quarterly Non-Standard Volume Sales
  - Quarterly Volume Sales (Standard and Non-Standard)
  - Average Client-Held Days
  - Calculated incentive share (rebates) for each Participating Agency
  - Charge-Offs
  - Total actual incentive share (rebates) paid to Participating Agency
  - Total Number of Transactions
  - Number of Accounts
- 3) Report shall be provided to the DGS State Contract Administrator, in Excel format via email, within 60 days following the last day of the quarter.

**B. Delinquency Report**

- 1) Contractor shall provide an electronic Delinquency Report to the State on a monthly basis.
- 2) The report shall list Participating Agencies with past due balances greater than 45 calendar days.
- 3) Report shall be provided to the DGS State Contract Administrator, in Excel format, within 15 calendar days following the last day of the calendar month.

**C. Agency Program Administrator Contact Report**

- 1) Contractor shall provide an electronic Program Administrator Contact Report to the DGS State Contract Administrator on a quarterly (3 calendar months) basis and/or upon written request.

- 2) The report shall provide Agency Program Administrator information (including at a minimum agency name, contact name, email, and phone number) for each Participating Agency.
- 3) Report shall be provided to the DGS State Contract Administrator, in Excel format, within 60 calendar days following the last day of the quarter or within 15 calendar days of the State's written request.

#### **D. Relationship Hierarchy Report**

- 1) Contractor shall provide an electronic Relationship Hierarchy Report to the DGS State Contract Administrator on a monthly basis and/or upon written request.
- 2) The report shall include, at a minimum, Organization Short Name (OSN), agency name, unique agency identifier, and hierarchy levels.
- 3) Report shall be provided to the DGS State Contract Administrator, in Excel format via email, within 15 calendar days following the last day of the calendar month.

### **7. TERMINATION**

#### **A. Termination (By State or Participating Agency)**

- 1) The State may terminate the Participating Addendum and any Participating Agency may terminate its respective Subsidiary Agreement for cause upon a reasonable and good faith determination that the Contractor failed to perform the material requirements of the agreement at the time and in the manner herein provided. In the event of a breach, the State or Participating Agency will send the Contractor a notice specifying the breach and providing the Contractor an opportunity to cure the breach within a period of time no less than 30 calendar days ("Cure Period"). If the breach is not cured within the Cure Period as stated in the notice, the State will have the right to terminate the Participating Addendum and the Participating Agency will have the right to terminate its respective Subsidiary Agreement by notice to the Contractor.
- 2) The State may terminate the Participating Addendum without cause upon 60 calendar days advance written notice to the Contractor. Participating Agencies may terminate their respective Subsidiary Agreements without cause upon 30 calendar days advance written notice to the Contractor.
- 3) Upon termination of the Participating Addendum and/or Participating Agency's Subsidiary Agreement, each party will assist the other party in orderly termination of the agreement and transfer of all assets, tangible and intangible, as may facilitate the orderly, undisrupted business continuation of each party. Participating Agencies shall be responsible for payment of all amounts owed to Contractor related to charges incurred up until the effective date of termination.

**B. Termination (By Contractor)**

- 1) Contractor has the right to send the Participating Agency a written notice specifying a default in the following section (a) and providing the Participating Agency an opportunity to cure the breach within a period of time no less than 30 calendar days ("Cure Period"). If the breach is not cured within the Cure Period as stated in the notice, then Contractor has the right to terminate any card product and/or ancillary service provided to a Participating Agency, or terminate the Participating Agency's Subsidiary Agreement in its entirety, by written notice to the Participating Agency.
  - a. Material breach of any term or condition by Participating Agency.
- 2) Contractor has the right to terminate a Participating Agency's Subsidiary Agreement, in its entirety and effective immediately if any of the following events occur:
  - a. Dissolution or liquidation of the Participating Agency; or
  - b. 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 Participating Agency, or the Participating Agency enters into any other similar proceeding or arrangement for the general benefit of its creditors.
- 3) Upon termination, all applicable cards, accounts, and/or related services shall be deemed canceled upon a stated termination date as referenced in the termination notification. Upon termination, Participating Agency shall instruct all Cardholders to destroy their cards and/or any records of account numbers and Contractor shall terminate all applicable services thereunder upon a stated termination date. Participating Agency shall remain liable for all debts arising from the use of a card and/or account prior to the termination date.

**8. SPECIAL PROVISIONS****A. Insurance Certificates**

Contractor shall furnish copies of certificates for all required insurance, as specified in the Master Agreement, to the DGS State Contract Administrator within 30 calendar days of the Participating Addendum execution. Copies of renewal certificates for all required insurance shall be furnished within 30 calendar days after renewal date.

**B. Availability of Funds**

This Agreement is valid and enforceable only if sufficient funds are made available by the Budget Act of the appropriate fiscal year for the purposes of this program. In addition, this Agreement is subject to any additional restriction, limitations or conditions enacted by the Legislature, which may affect the provisions, terms, or funding of this Agreement in any manner. In the event sufficient funds are not made available to the State, the State has the option to

terminate the Agreement and Participating Agencies shall remain responsible for payment of all amounts owed to Contractor related to charges incurred up until the effective date of termination.

### **C. Contracts Funded by the Federal Government**

It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the current and/or subsequent years covered by this Agreement for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.

The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds. The State has the option to terminate the Agreement or to amend the Agreement to reflect any reduction in funds. In the event of termination, Participating Agencies shall remain responsible for payment of all amounts owed to Contractor related to charges incurred up until the effective date of termination.

### **D. News Releases**

Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Participating Addendum or the State's CAL-Card Program shall not be made without prior written approval of DGS.

## EXHIBIT B – INCENTIVE REBATES AND FEES

This exhibit identifies the incentive share (rebates) and fees applicable under this Participating Addendum. Incentives will stay in effect for the entire Agreement term including any extension period.

### 1. INCENTIVE SHARE COMPONENTS/PAYMENTS

#### A. Rebate/Incentive Share #1 – Standard Volume Incentive

- 1) Each Participating Agency will receive a basis point (percentage) of their quarterly Standard Sales Volume.
- 2) The formula for calculating the Standard Volume Incentive is:  $(\text{Quarterly Total Volume} - \text{Quarterly Non-Standard Volume}) \times \text{Basis Points} = \text{Quarterly Standard Volume Incentive}$ .
- 3) Standard Volume Basis Points: 135 (or 1.35%).

#### B. Rebate/Incentive Share #2 – Non-Standard Volume Incentive

- 1) Each Participating Agency will receive a Basis Point (percentage) of their quarterly Non-Standard Sales Volume. Non-Standard Sales Volume includes Large Ticket and Merchant Negotiated Interchange Transactions.
- 2) The formula for calculating the Non-Standard Volume Incentive is:  $(\text{Large Ticket Quarterly Volume} \times \text{Large Ticket Basis Points}) + (\text{Merchant Negotiated Interchange Quarterly Volume} \times \text{Merchant Negotiated Interchange Basis Points}) = \text{Quarterly Non-Standard Volume Incentive}$ .
- 3) Large Ticket Basis Points: 135 (or 1.35%).
- 4) Merchant Negotiated Interchange Basis Points: 135 (or 1.35%).

#### C. Rebate/Incentive Share #3 – Prompt Payment Incentive

- 1) Each Participating Agency will receive a Basis Point (percentage) of their Quarterly Total Volume based on the entity's average speed of pay.
- 2) The formula for calculating the Prompt Payment Incentive is:  $\text{Quarterly Total Volume} \times \text{Basis Points for Entity Average Client-Held Days} = \text{Quarterly Prompt Payment Incentive}$ .
- 3) Contractor will calculate the average Client-Held Days by dividing the sum of daily balances during each quarter by the Quarterly Total Volume (plus cash-advances), subtracting 15 from the result, and rounding up to the next whole number.
- 4) Basis Points for Entity Average Client-Held Days are outlined in Table 1.C.1.

**Table 1.C.1 - Prompt Payment Basis Points**

<b>Average Client-Held Days</b>	<b>Basis Points (bps) / Percent (%)</b>
<b>1</b>	44 bps / 0.44%
<b>2</b>	43 bps / 0.43%
<b>3</b>	42 bps / 0.42%
<b>4</b>	41 bps / 0.41%
<b>5</b>	40 bps / 0.40%
<b>6</b>	39 bps / 0.39%
<b>7</b>	38 bps / 0.38%
<b>8</b>	37 bps / 0.37%
<b>9</b>	36 bps / 0.36%
<b>10</b>	35 bps / 0.35%
<b>11</b>	34 bps / 0.34%
<b>12</b>	33 bps / 0.33%
<b>13</b>	32 bps / 0.32%
<b>14</b>	31 bps / 0.31%
<b>15</b>	30 bps / 0.30%
<b>16</b>	29 bps / 0.29%
<b>17</b>	28 bps / 0.28%
<b>18</b>	27 bps / 0.27%
<b>19</b>	26 bps / 0.26%
<b>20</b>	25 bps / 0.25%
<b>21</b>	24 bps / 0.24%
<b>22</b>	23 bps / 0.23%
<b>23</b>	22 bps / 0.22%

<b>Average Client-Held Days</b>	<b>Basis Points (bps) / Percent (%)</b>
<b>24</b>	21 bps / 0.21%
<b>25</b>	20 bps / 0.20%
<b>26</b>	19 bps / 0.19%
<b>27</b>	18 bps / 0.18%
<b>28</b>	17 bps / 0.17%
<b>29</b>	16 bps / 0.16%
<b>30</b>	15 bps / 0.15%
<b>31</b>	14 bps / 0.14%
<b>21</b>	13 bps / 0.13%
<b>33</b>	12 bps / 0.12%
<b>34</b>	11 bps / 0.11%
<b>35</b>	10 bps / 0.10%
<b>36</b>	9 bps / 0.09%
<b>37</b>	8 bps / 0.08%
<b>38</b>	7 bps / 0.07%
<b>39</b>	6 bps / 0.06%
<b>40</b>	5 bps / 0.05%
<b>41</b>	4 bps / 0.04%
<b>42</b>	3 bps / 0.03%
<b>43</b>	2 bps / 0.02%
<b>44</b>	1 bps / 0.01%
<b>45</b>	0 bps / 0.00%

**D. Rebate/Incentive Share #4 – National Volume Incentive**

- 1) For the purposes of this Participating Addendum, the Contractor agrees to pay the National Annual Volume Incentive (Incentive #4) to the State on a quarterly basis.
- 2) The State will receive a Basis Point (percentage) of the total sales (for all Participating Agencies).
- 3) The formula for calculating the National Volume Incentive is: Quarterly Total Volume (all Participating Agencies) x Basis Points = National Volume Incentive.
- 4) National Volume Basis Points: 34.75 (or 0.3475%)

**2. INCENTIVE SHARE PAYMENT SCHEDULE AND TERMS****A. Participating Agency Incentives (Rebate/Incentive Share Components #1-3)**

- 1) To be eligible for a Rebate/Incentive Share, the Participating Agency must not be subject to an uncured default at the time the Rebate/Incentive Share

payment is due for such quarter. If the Participating Agency fails to satisfy the conditions of this section at the time of the scheduled Rebate/Incentive Share payment, the Contractor will not be required to pay the Participating Agency a Rebate/Incentive Share payment for such quarter.

- 2) Rebate/Incentive Share Components #1-3 will be paid quarterly to the Participating Agency within 60 days following the last day of each calendar quarter.

Quarter 1: January 1 - March 31

Quarter 2: April 1 - June 30

Quarter 3: July 1 - September 30

Quarter 4: October 1 - December 31

- 3) Payment made for Rebate/Incentive Share Components #1-3 will be net of accumulated Charge-Offs.
- 4) Any Charge-Offs in excess of the net Rebate/Incentive Share Components #1-3 from one (1) calendar quarter will be subtracted from one (1) or more of the following calendar quarters.
- 5) Any Participating Agency that does not earn a minimum of \$75.00 for combined Incentive Share Components #1-3 per calendar quarter will forfeit its incentive share for that quarter.
- 6) Each Participating Agency may choose to receive payments in one of two separate manners as set forth below:
  - a. By check (Participating Agency must provide Contractor with a W-9); or
  - b. By Automated Clearing House or ACH (Participating Agency must provide Contractor with a contact who will register for such ACH payment)
- 7) In the event that the Participating Agency's Subsidiary Agreement is terminated prior to the completion of any quarter, payment for Rebate/Incentive Share Components #1-3 shall be made to the Participating Agency within 60 days following the last day of the quarter in which the termination occurred for any incentive share earned prior to the termination date.
- 8) If the Participating Agency's final Rebate/Incentive Share is a negative amount, the Participating Agency shall reimburse the Contractor up to the amount of Rebate/Incentive Share Contractor has previously paid to the Participating Agency.

#### **B. State Incentives (Incentive Share Component #4)**

Rebate/Incentive Share Component #4 will be paid quarterly to the DGS, Procurement Division within 60 days following the last day of each calendar quarter. Rebate/Incentive Share Component #4 will be paid via ACH to the DGS Procurement Division, unless the DGS, Procurement Division requires another form of payment.



In the event that the Participating Addendum is terminated prior to the completion of any calendar quarter, payment for Rebate/Incentive Share Component #4 shall be made shall be made to the DGS, Procurement Division 60 days following the last day of the quarter in which the termination occurred for volume sales which occurred prior to the Participating Addendum termination date.

### 3. CARD FEES

Applicable purchase card fees include:

Description	Fee
Annual Card Fee	\$0.00
Logo Embossing Fee	\$0.00
Overnight Delivery Fee	\$0.00
Electronic Statement Attachments	\$0.00
Foreign Transaction Fee, per occurrence	1.00%
Late Fee, Applicable for Local Agencies only per Exhibit A, Section 5.J.2	1.00% per month on the amount overdue starting at 60 days past due and each subsequent Billing Cycle (minimum of \$2)

## **EXHIBIT C – GENERAL TERMS AND CONDITIONS (GTC 04/2017 as modified)**

### **1. APPROVAL**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

### **2. AMENDMENT**

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

### **3. ASSIGNMENT**

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

### **4. AUDIT**

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of six (6) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

### **5. INDEMNIFICATION**

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

### **6. DISPUTES**

Contractor shall continue with the responsibilities under this Agreement during any dispute.

**7. TERMINATION FOR CAUSE (Stricken in its entirety – See Exhibit A, Section 7)****8. INDEPENDENT CONTRACTOR**

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

**9. RECYCLING CERTIFICATION**

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

**10. NON-DISCRIMINATION CLAUSE**

During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding State Agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State Agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

**11. CERTIFICATION CLAUSES**

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 posted on the [DGS Office of Legal Services website](https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language) (<https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>) are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

**12. TIMELINESS**

Time is of the essence in this Agreement.

**13. COMPENSATION**

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

**14. GOVERNING LAW**

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

**15. ANTITRUST CLAIMS**

The Contractor by signing this Agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

- b. The Government Code Chapter on Antitrust claims contains the following definitions:
  - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
  - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- c. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

- d. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- e. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

#### **16. CHILD SUPPORT COMPLIANCE ACT:**

For any Agreement in excess of \$100,000, the Contractor acknowledges in accordance with Public Contract Code §7110, that:

- a. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

#### **17. UNENFORCEABLE PROVISION**

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

#### **18. PRIORITY HIRING CONSIDERATIONS:**

If this Agreement includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code §11200 in accordance with Public Contract Code §10353.

**19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**

- a. If for this Agreement Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) report to the awarding department the actual percentage of small business participation that was achieved. (Government Code §14841.)
- b. If for this Agreement Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Participating (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code §999.5(d); Government Code §14841.)

**20. LOSS LEADER:**

If this Agreement involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (Public Contract Code §10344(e).

## EXHIBIT D – DEFINITIONS

**Access® Online:** Contractor's web-based system for card program management and reporting.

**Account:** Any account number assigned to a Participating Agency to which charges and payments may be posted.

**Agency Program Administrator:** The employee designated by Participating Agency to serve as the primary point of contact between Participating Agency and Contractor and shall be responsible for the Participating Agency's CAL-Card program management and oversight. This includes contract terms, timely payment of invoices, the development and enforcement of agency policy, procedures, and training program. A Purchasing Officer or equivalent normally holds this position.

**Billing Cycle:** A specific recurring time period between the time statements of account/invoices are processed.

**CAL-Card:** The official registered service mark name for the state of California's Purchase Card Program.

**Cardholder:** An individual employee of Participating Agency, that is designated by the Agency Program Administrator to be a CAL-Card card recipient, named as the holder of the Account or using the Account in the name of Participating Agency and make official government purchases.

**Charge:** Any transaction posted to an Account that has a debit value.

**Charge-Off:** The entire amount due and owing to the Contractor by the Participating Agency that remains outstanding on an Account that was left unpaid for 180 calendar days after the Billing Cycle close date or that was left unpaid as a result of a bankruptcy.

**Fraudulent Charges:** Charges which are not initiated, authorized, or otherwise requested by Participating Agency and/or a Cardholder by any means (electronic, telephonic or written) and do not directly or indirectly benefit Participating Agency and/or a Cardholder.

**Incentive Share:** Actual monies paid to the State and/or each Participating Agency based on volume and speed of pay.

**Local Agency:** Any city, county, district, or other local governmental body or corporation empowered to expend public funds for the acquisition of goods, information technology, or services pursuant to Public Contract Code §10298-10299.

**Participating Agency:** A State Agency that has executed a properly completed State Agency Subsidiary Agreement, or a Local Agency that has executed a properly completed Local Agency Subsidiary Agreement and received required credit approval

from the Contractor, for participation in the State's CAL-Card Program under the Participating Addendum.

**Payment Plus:** U.S. Bank Virtual Pay product (Electronic Purchase Card, card-less Accounts to pay supplies in accounts payable, also known as Payment Plus).

**Quarter:** Three (3) month period based on the yearly calendar as follows:

Quarter 1 (Q1) – January, February & March

Quarter 2 (Q2) – April, May & June

Quarter 3 (Q3) – July, August, September

Quarter 4 (Q4) – October, November & December.

**State Agency:** A state of California government agency, department, bureau, board, or commission.

**State Contract Administrator or DGS State Contract Administrator:** Individual designated by the Department of General Services as the primary point of contact for the Participating Addendum and CAL-Card Program.

**Subsidiary Agreement:** Agreement executed by qualified eligible agencies, agreeing to all terms and conditions of the Participating Addendum and participation in the State's CAL-Card Program.