

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number  
14-541 A-1

SAP Number

## Auditor-Controller/Treasurer/Tax Collector

Department Contract Representative  
Telephone Number

Michael Alexander  
(909) 382-3166

Contractor  
Contractor Representative  
Telephone Number

U.S. Bank National Association  
Keith Kienholz  
Office (612) 973-2892  
Cell (651) 470-8138

Contract Term  
Original Contract Amount  
Amendment Amount  
Total Contract Amount  
Cost Center

Successive One-Year Terms  
\$0  
N/A  
\$0  
3404201000

Briefly describe the general nature of the contract: *This amendment adds a Federal Deposit Insurance Corporation required Regulatory Records Addendum and allows the County to continue its participation with U.S. Bank in its Pay Card Program using its Focus pay card solution (Focus Card).*

### FOR COUNTY USE ONLY

Approved as to Legal Form

Robert F. Messinger, Chief Assistant County Counsel

Date

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Eisen Mason, Auditor-Controller/Treasurer/Tax Collector

Date

## **PREPAID DEBIT CARD AGREEMENT**

This Prepaid Debit Card Agreement (this “Agreement”) is dated the 27th day of July, 2021 between U.S. BANK NATIONAL ASSOCIATION, a national banking association (“U.S. Bank”), and SAN BERNARDINO COUNTY, a political subdivision of the State of California (the “Client”).

U.S. Bank is a member of Card Networks and issues Card Network-branded debit cards, check cards, prepaid debit cards and other banking cards to cardholders; and

Client is seeking to provide its employees with the option of receiving payment of their wages or other compensation in a Card Network-branded prepaid debit card account; and

U.S. Bank is willing to issue prepaid debit cards and perform related services to support the Client’s payroll card program, subject to the terms and conditions set forth in this Agreement.

THEREFORE, in consideration of the mutual promises set forth in this Agreement, U.S. Bank and Client agree as follows:

### **Article 1 DEFINITIONS**

For the purposes of this Agreement, the following definitions will apply:

“Account” means a prepaid debit card account operating through a centralized pool or funds, with an individual sub-account set up for each participating Cardholder, funded through periodic deposits made by Client, and accessible using a prepaid debit card issued by U.S. Bank.

“ACH” means the Automated Clearing House consisting of a collection of electronic interbank networks used to process transactions electronically.

“Administrative Web Portal” means the proprietary web-based prepaid administrative portal hosted by U.S. Bank that Client may use to enroll Cardholders, load and activate Cards, manage Card inventory, and view reports regarding the Program.

“Affiliate” means, with respect to a party, any Person that is directly or indirectly in Control of, is under the Control of, or is under common Control with that party, as of the date of this Agreement or thereafter.

“Applicable Law” means with respect to any party, any law, ordinance, statute, treaty, rule, judgment, regulation or other determination or finding of or agreement with any arbitrator, court or other governmental authority applicable to or binding upon a party or to which a party is subject, whether federal, state, county, local, municipal, or otherwise.

“ATM” means an automated teller machine.

“Business Day” means any day other than a Saturday, Sunday or federal legal holiday.

“Card” means a prepaid debit product bearing U.S. Bank Marks and either Visa Marks or MasterCard Marks.

“Card Collateral” refers to the Cardholder Agreements, promotional materials, and any other documents, disclaimers, notices, and disclosures provided by U.S. Bank for delivery to Cardholders in the manner directed by U.S. Bank.

“Cardholder” means a Person who requests and receives a Card under the Program.

“Cardholder Agreement” means the written agreement between U.S. Bank and each Cardholder that will govern the terms and conditions of each Card and the related Account.

“Cardholder Data” has the same meaning for the same term as defined in the Payment Card Industry - Data Security Standards, as promulgated by the Card Networks from time to time.

“Card Network” refers to Visa U.S.A., Inc., Visa International, Inc., Plus System, Inc., MasterCard International Inc., Maestro, or Cirrus System, Inc.

“Card Security Guidelines” refer to the written instructions provided to Client by U.S. Bank describing the way Client must securely store any Card stock in its possession and control, as the same may be modified from time to time. U.S. Bank’s current Card Security Guidelines are attached as Exhibit D to this Agreement.

“Client Guidelines” refer to the written guidelines provided to Client by U.S. Bank describing the way Client must offer Cards to its employees, as the same may be modified by U.S. Bank from time to time. U.S. Bank’s current Client Guidelines are attached as Exhibit C to this Agreement.

“Client Marks” refers to the Client’s name, as well as any other logo, trademark, or service mark owned by Client.

“Client Representatives” mean those Persons that Client has authorized to transmit information to U.S. Bank or to whom Client has granted access to the Administrative Web Portal. Client may assign differing levels of authority to its Client Representatives from the menu of options offered in the System.

“Confidential Information” means proprietary information belong to a party, including but not limited to, its marketing philosophies and objectives, promotional materials and efforts, financial results, technological developments, customer names, addresses, and other identification information, prepaid debit card account numbers, account information, and other similar confidential or proprietary information and materials.

“Control” means the possession, directly or indirectly, of 50% or more of the voting power for the election of directors of any entity, or the power to direct or cause the direction of the management and policies of that entity, whether through ownership of voting rights, by contract, or otherwise.

“Disbursement” means the loading of funds onto an individual Card by Client.

“Disbursement Amount” refers to the dollar value to be loaded onto a Cardholder’s Account.

“Fee Schedule” refers to the schedule of fees and costs set forth in Exhibit B to this Agreement.

“FII Card” means a non-personalized payroll instant issue Card issued pursuant to the Program.

“FII Cardholder” means a Person who requests and receives an FII Card.

“Force Majeure Event” means any cause or event of any nature whatsoever beyond the reasonable control of a party, including strikes, riots, earthquakes, epidemics, terrorist actions, wars, fires, floods, weather, power failure, telecommunications outage, acts of God or other failures, interruptions or errors not directly caused by that party.

“Funding Account” means a centralized pool of funds held at U.S. Bank with a digitally segregated sub-account set up for Client that is funded through periodic deposits with U.S. Bank by Client (by means of ACH transfers or otherwise) and which is accessible through the use of a (real or virtual) prepaid debit card issued and serviced by U.S. Bank. The Funding Account will only be used by Client to make Disbursements to Cards.

“MasterCard Marks” means all names, logos, trademarks, and service marks owned by MasterCard Worldwide and its subsidiaries in the United States.

“Network Rules” means the applicable by-laws and operating rules of any electronic funds payment network, including rules promulgated by any Card Network or the National Automated Clearinghouse Association.

“Person” means any corporation, company, group, partnership, other entity, or individual.

“Personalized Card” means a Card issued pursuant the Program for a particular Cardholder that bears the respective Cardholder’s name.

“POC” means that individual designated by a party to serve as that party’s primary point-of-contact with respect the implementation and administration of the Program.

“Program” means the program between U.S. Bank and Client for the issuance of Cards to Cardholders, according to the terms of this Agreement.

“Program Description” means the description of certain features of Client’s Program and the duties of the parties in relation to the Program found in Exhibit A to the Agreement.

“Program Launch” means the date the first Disbursement is made onto a Card under the Program other than loads made to any test cards.

“Subcontractor” means any subcontractor, vendor, or third party retained by U.S. Bank to perform some or all of its obligations under this Agreement.

“Subsidiary” means any corporation or other entity under the Control of a party, either directly or through one or more of its Subsidiaries.

“System” refers to the U.S. Bank Processing System. The System consists of digital applications, procedures, forms and other related materials that have been acquired or developed by U.S. Bank.

“U.S. Bank Marks” refers to the names “US Bank” and “US Bancorp” and the US Bank and shield design, U.S. Trademark Registration No. 2,247,139, registered on May 25, 1999, which are owned by U.S. Bancorp or one or more of its Subsidiaries, as well as any other trademark or service marks owned by U.S. Bancorp that include the terms “US Bank” (“UBANK,” “US,” “U”) or “US Bancorp,” however these terms may be capitalized or punctuated.

“Visa Marks” refers to the “Visa” service mark and the Three Bands Design, along with all other logos, trademarks and service marks owned by Visa U.S.A. or Visa International, Inc.

## Article 2 PROGRAM LAUNCH

2.1 Prior to Program Launch. To assist the federal government of the United States of America in preventing the funding of terrorism and money launderings, the law of the United States of America requires all financial institutions to obtain, verify and record information that identifies each Person that opens an account, and to screen such Person before opening an account. Accordingly, prior to Program Launch, Client shall provide to U.S. Bank its legal entity name, street address, taxpayer identification number and other information that will allow U.S. Bank to adequately identify Client prior to establishing an Account funded by Client. U.S. Bank may, upon request, require Client to promptly provide U.S. Bank with any additional documentation regarding the identity of Client, or any Person affiliated with the Client, that U.S. Bank believes is necessary for U.S. Bank to meet its obligations to comply with all Applicable Laws. Client acknowledges that the Program may not be launched, or may be

terminated following launch, if the Client, or any Person affiliated with the Client, fails to pass the required screening to the satisfaction of U.S. Bank.

2.2 Program Launch. U.S. Bank and Client will use commercially reasonable efforts to cooperate in the timely implementation of the Program according to the terms of this Agreement.

### Article 3 MARKS AND LOGOS

3.1 Use of Client Marks. Client hereby grants to U.S. Bank a non-exclusive, non-transferable limited license to use any Client Marks in connection with the Program, which uses include, without limitation, advertising, promotional and public relations materials, Card Collateral and any other item reasonably necessary to the establishment, operation or advancement of the Program. If desired by U.S. Bank, subject to the prior written approval of Client, whose written approval will not be unreasonably withheld or delayed, U.S. Bank may use Client Marks for other promotional purposes in connection with the Program. Client shall be deemed to have approved the proposed use if Client fails to disapprove U.S. Bank's request in writing within 15 Business Days following the date when U.S. Bank's written request for approval was made to Client. U.S. Bank hereby accepts this license subject to the terms and conditions provided in this section. This limited license will terminate upon termination of this Agreement; provided, that U.S. Bank will be afforded six months following the termination of this Agreement to replace all documentation relating to the Program with documentation that does not bear Client Marks in connection with the orderly termination of the Program. U.S. Bank acknowledges that Client or its Affiliates are the owners of the Client Marks, and U.S. Bank will have no right, title or interest in the Client Marks other than the license specifically granted in this section, and U.S. Bank will do nothing inconsistent with such ownership.

3.2 Use of U.S. Bank Marks. U.S. Bank hereby grants to Client a non-exclusive non-transferable limited license to use the U.S. Bank Marks solely in connection with the Program. Client acknowledges that it has no right, title or interest in and will not use the U.S. Bank Marks without U.S. Bank's specific prior written consent, which consent will not be unreasonably withheld or delayed if the proposed use thereof by Client is for advertisements or promotions in connection with the Program. U.S. Bank will be deemed to have approved the proposed use if U.S. Bank fails to disapprove Client's request in writing within 15 Business Days following the date when written request for approval was made to U.S. Bank by Client. Client hereby accepts this license subject to the terms and conditions provided in this section. This limited license terminates upon termination of this Agreement. Client acknowledges that U.S. Bancorp, or one or more of its Affiliates or Subsidiaries, is the owner of the U.S. Bank Marks. Client will have no right, title or interest in the U.S. Bank Marks other than the license specifically granted in this section, and Client will not do anything inconsistent with such ownership.

3.3 Third Party Marks. Client has no right, title or interest in, nor will Client use, any Visa Marks or MasterCard Marks without specific prior written consent of the owner of the mark.

3.4 Additional Mark Provisions. To the extent such use is permitted under this Agreement, a party may only use the other party's name and marks only in the form and manner and with appropriate legends as prescribed from time to time by the proprietor of such name or mark, and except as otherwise set forth in this Agreement, a party will not use any other trademark or service mark in combination with such other party's name or mark without the prior written approval of the owner of such name or trademark. Each party will promptly notify the other party of any unauthorized use by others of such other party's name or mark, which may come to such other party's attention. Each party has the sole right and discretion to bring infringement or unfair competition proceedings involving its own name or mark.

Article 4  
RESPONSIBILITIES OF U.S. BANK

4.1 Card Issuance.

(a) U.S. Bank will issue a Card to an employee of Client following Client's notification to U.S. Bank of Client's receipt of the employee's request for a Card, but only after U.S. Bank completes its review and processing of that employee's request in accordance with U.S. Bank's internal procedures and eligibility criteria, as the same may be adopted from time to time by U.S. Bank in its sole discretion.

(b) U.S. Bank may, in its sole discretion, undertake periodic reviews of Cardholders and their Accounts to manage risks associated with fraudulent card use and other Account activity which has the potential of exposing U.S. Bank to financial loss. U.S. Bank reserves the right to take any necessary actions to stop such activity on the Account. For any Account closed pursuant to this section, subsequent transmission of Disbursement to the Card will be rejected and a report will be generated confirming such rejection. U.S. Bank will notify Client in writing of any actions taken pursuant to this section within ten Business Days.

(c) With respect to FII Cards, U.S. Bank shall provide Client with access to the Administrative Web Portal which will allow Client to enroll, register and load FII Cards on a near-instantaneous basis for distribution to FII Cardholders. FII Cardholders who receive FII Cards shall receive them from Client in a pre-activated status or ready to activate status, and with or without funds loaded by Client in Client's discretion. U.S. Bank shall ensure each such FII Card may continue to be used for such purpose until FII Card expiration or depletion of funds on the FII Card. U.S. Bank shall record the issuance of each FII Card and track FII Card issuance, usage, fee collection and closure. FII Card inventory shall be distributed to Client (if Client utilizes multiple FII issuance locations, FII Card stock delivery charges will be paid by Client, per a method acceptable to U.S. Bank in its discretion), who shall be responsible for the security and distribution of FII Cards. To the extent there is any conflict between a term referring to "FII Cards" and any other term referring to "Cards" in general, the term referring specifically to "FII Cards" shall control with respect to FII Cards.

(d) With respect to Personalized Cards, U.S. Bank will place Personalized Cards in the mail to each employee of Client who elects to receive a Personalized Card no later than three Business Days following U.S. Bank's receipt from Client of a request for same containing complete and accurate information regarding the Cardholder as required by U.S. Bank. Also, upon the request of an FII Cardholder, U.S. Bank will issue to such FII Cardholder a Personalized Card as a replacement Card. The FII Card being replaced will remain active until the Cardholder activates the new Personalized Card. The new Personalized Card will access the same Account tied to such FII Card.

(e) Client may opt to offer its employees (i) only FII Cards, (ii) only Personalized Cards, or (iii) both FII Cards and Personalized Cards under the Program.

(f) Notwithstanding anything in this Agreement to the contrary, U.S. Bank may refuse to issue a Card to any Person if U.S. Bank determines that the issuance or use of the Card would violate a Network Rule or any Applicable Law, or would otherwise pose an undue level of risk to U.S. Bank.

4.2 Design and Manufacture of Cards.

(a) U.S. Bank will purchase plastic stock and be responsible for ordering, embossing, encoding and delivering Cards. U.S. Bank will provide a standard card design. Each Card will bear the U.S. Bank Marks and the marks of the appropriate Card Network.

(b) Unless specifically stated otherwise in the price tables contained in the Exhibits to this Agreement, U.S. Bank will bear the expense of manufacturing standard-issue Cards issued to Cardholders.

4.3 Design of Statements and Card Collateral.

(a) U.S. Bank will produce Account statements and Card Collateral, subject to all Applicable Laws and Network Rules, using designs created by U.S. Bank. U.S. Bank will bear all costs and expenses for the design, printing and production of the Account statements and Card Collateral.

(b) U.S. Bank will be responsible for the provision to Cardholders of monthly Account statements that will contain information relating to transactions performed with their Cards. U.S. Bank may, in its discretion, provide Cardholders with electronic statements accessible via the internet or paper statements.

4.4 U.S. Bank Operational Responsibilities. U.S. Bank shall administer the Program in accordance with the Program Description. U.S. Bank is also responsible for Account set-up, Card fulfilment, Account reconciliation, responding to Cardholder inquiries, chargeback processing, Disbursement processing, interaction with Card Network systems, transaction processing, and collections. U.S. Bank will not be responsible for determining the amounts to be paid to Cardholders or the calculation of Cardholder Disbursement Amounts.

4.5 U.S. Bank Customer Service. U.S. Bank will maintain a trained staff to assist Client with Cardholder inquiries or complaints regarding the Program.

4.6 Provision of Program Information.

(a) U.S. Bank shall provide information to Client for each month in which Cards are issued and outstanding, including but not limited to Card registration, order and load verification reports.

(b) Any and all information Client receives from U.S. Bank regarding the Program shall be deemed to be Confidential Information of U.S. Bank, and may only be used by Client in connection with the Program.

(c) In no event will U.S. Bank be obligated to provide any information to Client in violation of any Applicable Law, Network Rule, or policy adopted by U.S. Bank.

Article 5  
RESPONSIBILITIES OF CLIENT

5.1 Enrollment of Employees. Client will ensure that all Cardholders enrolled in the Program, other than companion Cardholders, are bona fide employees of Client. Client acknowledges that Applicable Law requires U.S. Bank to collect identifying information and verify the identities of all Cardholders. Client acknowledges that any Cardholders who do not pass initial or ongoing identity verification or OFAC screening will be denied a Card or have their Card suspended. U.S. Bank retains sole discretion in determining whether to deny or suspend a Cardholder. Cardholders may be required to provide additional documentation to U.S. Bank at any time. Client acknowledges that if U.S. Bank determines that Applicable Law requires U.S. Bank to obtain additional documentation from a Cardholder, then U.S. Bank must also restrict access to the Card until such time as the Cardholder has provided U.S. Bank with the requested documentation in a form and manner acceptable to U.S. Bank.

5.2 Client Program Offering. Beginning no later than the Program Launch, Client will begin to offer to its employees the option of receiving payment of their wages or other compensation in an Account. Client shall comply at all times and in all respects with U.S. Bank's Client Guidelines in the

offering of Cards under the Program. Client will arrange for and coordinate the marketing and promotion of the availability of Cards to its employees through break room posters, brochures, and other means. Client will not distribute any marketing or promotional materials regarding the Program unless those materials have been reviewed and approved by U.S. Bank prior to its distribution to its employees. Client will require each employee who elects to become a Cardholder to complete and sign a deposit authorization form and Client will retain that employee's deposit authorization form at all times during which Client is making Disbursements to that Cardholder.

5.3 Funding of Accounts. Client shall utilize a good funds method of settlement and must have a sufficient amount of immediately available funds on deposit in the Funding Account to fund any Disbursement to a Card. U.S. Bank will not be liable to Client for, and Client will hold U.S. Bank harmless from, any claims arising from the refusal by U.S. Bank to load a Disbursement onto a Card if there are insufficient funds available in the Funding Account to cover the Disbursement Amount.

5.4 Transmission of Disbursements. Client Representatives may use a batch process or the Administrative Web Portal to process Disbursements. Client shall provide complete and accurate information to U.S. Bank regarding each Disbursement. Client Representatives will be responsible for the accuracy of Disbursement Amounts transmitted to U.S. Bank, and any changes thereto.

5.5 Erroneous Disbursements. Client may seek to reverse any Disbursement loaded onto a Card in error, provided that sufficient funds remain available on the applicable Card to recover the erroneous Disbursement. Client will be responsible for all Disbursements, including those made in error. U.S. Bank will not be obligated to assist Client in collecting erroneous Disbursements.

5.6 Compensation to U.S. Bank. U.S. Bank will be permitted to charge Cardholders the fees set forth in the Fee Schedule. U.S. Bank may change the Fee Schedule at any time. In the event of an increase to any fee or the introduction of a new fee, U.S. Bank will provide Cardholders notice thereof in a manner that complies with all Applicable Laws. U.S. Bank will also provide a corresponding email notice of an increase to any fee or the introduction of a new fee to Client's POC.

5.7 Training. Client shall be responsible for identifying Client locations that will be used to enroll, load and activate Cards. U.S. Bank shall provide Client with its standard initial "train-the-trainer" approach, and will provide Client with a support number that Client Representatives can call for assistance regarding the Program. Client is solely responsible for training its Client Representatives on how to administer the Program and answer employee questions regarding the Program.

5.8 Cardholder Enrollment. At the time of each Card enrollment, Client shall provide U.S. Bank with the Cardholder enrollment information set forth in the Program Description. Data entry of Card identification numbers and Cardholder information may only be made by Client Representatives. Client will be liable for any errors in transmission made by its employees or Client Representatives. Unless otherwise agreed to in advance and in writing by U.S. Bank, Client may only enroll and register FII Cardholders who are physically present at a designated Client location at the time of enrollment. Client shall distribute FII Cards, FII Card Collateral, and all U.S. Bank designated disclosure documents to FII Cardholders in the form and manner prescribed in the Program Description and Client Guidelines.

5.9 Card Security and Inventory Control. Client shall securely store any Card stock in its possession and control and maintain its FII Card inventory in accordance with the Card Security Guidelines. Client shall bear all risk of loss and any associated liability for Cards lost or stolen while under its control. Client will permit U.S. Bank to monitor and audit Client's compliance with the Card Security Guidelines during regular business hours upon two Business Days' advance notice to Client. Client shall provide U.S. Bank copies of any applicable audits and test results acquired by Client in relation to its obligations under this section.



Article 6  
PROGRAM POLICIES AND ACCOUNT ATTRIBUTES

6.1 Card Account Policies. U.S. Bank retains full authority to control all policies and operational aspects relating to the Program, including fees and charges, customer service, Card issuance and cancellation, debt collection, access to ATMs, and the issuance of personal identification numbers. Client shall comply with all U.S. Bank directives regarding the Program. Client will not be liable for fraudulent activities on the part of Cardholders unless such activity arises from or is abetted by the negligence or willful misconduct by Client, or its agents or employees. Client shall, in a timely manner, refer to U.S. Bank any and all inquiries regarding any aspect of the Program, any Card or Account, or U.S. Bank's prepaid debit card operations.

6.2 Card Account Attributes. The use by Cardholders of the Cards will, in all instances, be governed by the terms and conditions contained in the Cardholder Agreement. The Cardholder Agreement may be changed by U.S. Bank from time to time. Cardholder Accounts will be maintained at all times in a manner ensuring that each Cardholder is eligible for "pass through" deposit insurance from the Federal Deposit Insurance Corporation ("FDIC"). All funds on deposit in a Cardholder's Account will be held for the sole benefit of the Cardholder. Client shall have no right, title or interest in a Cardholder's Account. No interest will be paid on funds held in a Cardholder's Account.

6.3 FDIC Record Keeping Requirements. In order to facilitate the offering of deposit insurance to Cardholders, Client agrees to fully cooperate in arranging to retain and sharing of Cardholder information with U.S. Bank in a manner consistent with its FDIC-mandated record-keeping obligations, including (i) through April 1, 2021, those required by 12 C.F.R. § 360.9, which provide for a standard data format for generating deposit account and customer data for the FDIC; and (ii) starting April 1, 2021, those required by 12 C.F.R. § 370, which mandate that Client be able to provide the required information in the required format ("FDIC Information") to the FDIC within 24 hours of the failure of U.S. Bank. The FDIC Information that is compatible with U.S. Bank's information technology systems are outlined in the Deposit Broker's Processing Guide ("Guide") published by the FDIC, including alternative recordkeeping requirements in Section VII of the Guide, which describes the process to follow and the FDIC Information Client will need to provide in the event U.S. Bank fails. That information can be accessed on the FDIC's website at <https://www.fdic.gov/deposit/deposits/brokers/>. Client acknowledges that, following the appointment of the FDIC as receiver of U.S. Bank, the FDIC may place a hold on Cardholder's Accounts and that Client and Cardholders may not have access to deposits in the deposit account until Client delivers the FDIC Information. Upon request, U.S. Bank will provide Client with the opportunity to validate its capability to deliver the FDIC Information so that a timely calculation of deposit insurance coverage can be made.

6.4 Funding Account. The Funding Account is, at all times, subject to the terms of this Agreement. Funds deposited in the Funding Account are Client-owned deposits with U.S. Bank and may only be used solely for the purpose of making Disbursements to individual Cards. Funds loaded onto a Card will not be returned to the Client, even if the Card in question has expired with a balance remaining on the Card. U.S. Bank will be deemed to be the holder of the funds held in Card Accounts and U.S. Bank will be responsible for escheating any unclaimed funds remaining in those Accounts in accordance with Applicable Law. Upon termination of this Agreement, U.S. Bank shall refund to Client any funds remaining in the Funding Account that have not been applied or loaded to a Card or otherwise held for the purpose of paying any other obligation owed by Client under this Agreement. No interest will be paid on funds held in the Funding Account.

6.5 New Card Features. U.S. Bank may, from time to time, offer Cardholders new or improved Card features and benefits and impose new or additional fees in connection therewith.

6.6 ACH Transfers. Client warrants to U.S. Bank that Client will not make any ACH transfer with respect to the Program for any purpose that is not permitted under Applicable Law or the terms of this Agreement. Client will, with respect to all ACH transfers, comply with the Network Rules that govern the applicable funds transfer system. Client acknowledges that U.S. Bank must make certain warranties with respect to ACH transfers initiated by Client and Client will, therefore, reimburse U.S. Bank for any losses that U.S. Bank incurs, including attorneys' fees and legal expenses, as the result of any such breach of warranty arising out of an ACH transfer initiated by Client. Client hereby waives its right to be notified whenever an electronic funds transfer has been deposited in the Client's Funding Account.

#### Article 7 EXCLUSIVITY

U.S. Bank will have the exclusive right to issue prepaid debit cards for the purpose of disbursing wages and payroll funds to Client's employees during the term of this Agreement. Client shall not become a party to any agreement with any issuer of payroll cards, prepaid cards, or debit cards for the purpose of disbursing wages and payroll funds to its employees or the functional equivalent thereof. Client will not use or share its employee list with any third party for the purpose of soliciting employees for a payroll card, prepaid card, or debit card or related account. Client shall further ensure that each Subsidiary or Affiliate of Client complies with this Article 7.

#### Article 8 INDEMNIFICATION

8.1 Indemnification Obligations. U.S. Bank agrees to indemnify, defend and hold harmless the Client and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from the errors or omissions of U.S. Bank and for any costs or expenses incurred by the Client on account of any such claim except where such indemnification is prohibited by law.

8.2 Indemnification Procedures. The Indemnified Party will notify the Indemnifying Party in a reasonably prompt manner of any Third-Party Claim that is asserted for which the Indemnified Party is seeking indemnification pursuant to this Article 8. The Indemnifying Party may thereafter assume control of such Third-Party Claim, provided, that the Indemnified Party will have the right to participate in the defense or settlement of such Third-Party Claim. The Indemnified Party will provide the Indemnifying Party with a reasonable amount of assistance in connection with defending or settling any such Third-Party Claim. Neither the Indemnifying Party nor the Indemnified Party may settle such Third-Party Claim or consent to any judgment with respect thereto without the consent of the other party (which consent may not be unreasonably withheld or delayed).

#### 8.3 Insurance.

8.3.1 Additional Insured. The General Liability, and Automobile Liability policies shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by

the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85, CG 2010 26, or equivalent.

8.3.2 Waiver of Subrogation Rights. U.S. Bank shall require the carriers of required General Liability, and Automobile Liability coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit U.S. Bank and U.S. Bank's employees or agents from waiving the right of subrogation prior to a loss or claim.

8.3.2 Policies Primary and Non-Contributory. All General Liability, Cyber Liability, and Automobile Liability policies required herein are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the County.

8.3.4 Severability of Interests In regard to the General Liability, Cyber Liability, and Automobile Liability policies, U.S. Bank agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between U.S. Bank and the County or between the County and any other insured or additional insured under the policy.

8.3.5 Proof of Coverage. U.S. Bank shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such General Liability, Automobile Liability, and Workers Compensation insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and U.S. Bank shall maintain such insurance from the time U.S. Bank commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, U.S. Bank shall furnish certificates of insurance evidencing the required coverage..

8.3.6 Acceptability of Insurance Carrier. Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

8.3.7 Deductibles and Self-Insured Retention. Any and all deductibles or self-insured retentions are the sole responsibility of U.S. Bank.

8.3.8 Failure to Procure Coverage. In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract.

8.3.9 Insurance Review. Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or

designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Client, inflation, or any other item reasonably related to the Client's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by a mutually agreed upon amendment to this contract. U.S. Bank agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the Client to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Client.

U.S. Bank agrees to provide insurance set forth in accordance with the requirements herein. If U.S. Bank uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, U.S. Bank agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, U.S. Bank shall maintain throughout the contract term the following types of insurance with limits as shown in this section 8.3.

**8.3.10 Workers' Compensation/Employers Liability.** A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the U.S. Bank and all risks to such persons under this contract.

If U.S. Bank has no employees, it may certify or warrant to the Client that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Client's Director of Risk Management.

With respect to U.S. Banks that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

**8.3.11 Commercial/General Liability Insurance.** U.S. Bank shall carry General Liability Insurance covering operations performed by or on behalf of U.S. Bank providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

**8.3.12 Automobile Liability Insurance.** Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If U.S. Bank is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If U.S. Bank owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

8.3.13 **Umbrella Liability Insurance.** An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

8.3.14 **Cyber Liability Insurance.** Cyber Liability Insurance appropriate to the Consultant’s profession with limits not less than one million (\$1,000,000) per occurrence or claim and two million (\$2,000,000) aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this agreement and shall include, but not limited to, claims involving invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

## Article 9

### REPRESENTATIONS AND WARRANTIES

9.1. **Representations and Warranties.** As of the date of this Agreement, each party hereby represents and warrants to the other party as follows:

(a) It has full right, power and authority to enter into and perform this Agreement in accordance with all of the terms and provisions hereof, and that the execution and delivery of this Agreement has been duly authorized, and the individuals signing this Agreement on behalf of it are duly authorized to execute this Agreement in the capacity of his or her office, and to obligate and bind it, and/or its Subsidiaries and Affiliates, in the manner described;

(b) The execution and performance of this Agreement will not violate the organizational documents or bylaws or any material contract or other instrument, Applicable Law, or order to which it has been named a party or by which it is bound. The execution and performance of this Agreement does not require the approval or consent of any other Person or government agency;

(c) There are no material actions, suits or proceedings pending or threatened against it or its Affiliates or Subsidiaries which would adversely affect its ability to perform this Agreement; and

(d) It or one of its Subsidiaries or Affiliates owns all right, title and interest in its marks and it or one of its Subsidiaries or Affiliates has all necessary authority to permit use of its marks as contemplated by this Agreement.

9.2 **Legal Compliance.** Each party is now in compliance and will remain in compliance at all times with all Applicable Laws governing its activities under this Agreement (including any Applicable Law brought to one party’s attention by the other). Each party acknowledges that it will be responsible for its own compliance with Applicable Law and the costs associated therewith. Client has the sole

responsibility to comply with all Applicable Laws relating to its payroll and employment practices and for determining whether the intended use of the Program, including Client's selection of System options and programming to dispense funds or payments, is an appropriate way to dispense such funds. Client is also responsible for determining whether Applicable Law prohibits, affects, or otherwise controls the disbursement of such funds using a prepaid or stored value card. Client shall, within three Business Days following receipt of any such request, provide U.S. Bank, or its independent auditors, and/or any government agency with authority over U.S. Bank, with a complete and accurate response to any inquiry regarding or related to the Program, and access to all policies, procedures and records retained by the Client evidencing the Client's compliance with Applicable Law. If a deficiency is noted or determined, Client must promptly correct the identified deficiency and also provide to U.S. Bank any and all documentation related to resolution of the deficiency, including the corrective actions implemented to prevent recurrence of such deficiency. U.S. Bank may terminate this Agreement immediately for any failure by Client to meet its obligations under this section 9.2.

9.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, U.S. BANK DISCLAIMS ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## Article 10 CONFIDENTIALITY

10.1 Confidential Information. In performing its obligations pursuant to this Agreement, each party may have access to or receive disclosure of certain Confidential Information of the other party. All Program specifications, materials, plans and other Program attributes developed or utilized by U.S. Bank in connection with the Program and related services, and all related software and other documentation, are and will remain the proprietary property of U.S. Bank, and will constitute Confidential Information belonging to U.S. Bank. Without limitation, during the term of this Agreement and thereafter, all Cardholder Data and Card Account information, including all records relating thereto retained in U.S. Bank's System, along with any information provided to Client pursuant to this Agreement relating to the System or the Program, shall remain Confidential Information belonging to U.S. Bank.

10.2 Exclusions. Except for Cardholder Data, the term Confidential Information does not include (i) information which is now in or hereafter enters the public domain (and is not subject to a confidentiality agreement with the entity obtaining the same) through no action on the part of either party in violation of the terms of this Agreement, (ii) information that is independently developed by or for a party, (iii) information that is received from a third party (subject to such third party not having violated the terms of any confidentiality agreement), or (iv) information that was already in the possession of the receiving party and not obtained in violation of any confidentiality agreement.

10.3 Confidentiality Obligation. Each party shall at all times maintain, and cause its agents, employees, corporate parents, Subsidiaries and Affiliates to maintain the confidentiality of all Confidential Information belonging to the other party. Neither party shall sell or otherwise convey any of such Confidential Information to any third party and shall exercise all necessary precautions to prevent access to such Confidential Information by any third party other than agents, officers or employees who have a need to know or who must access such Confidential Information in order for such party to fulfill its obligations under this Agreement. Each party shall inform those agents and employees, officers and employees of its Subsidiaries and Affiliates of the confidentiality obligations under this Agreement and require their compliance with such obligations. Each party shall not use such

Confidential Information for any purpose whatsoever other than those specifically contemplated in this Agreement.

10.4 Confidentiality of Agreement Terms. Neither party will disclose to any Person (other than as expressly permitted pursuant to this Article 10) the terms or conditions of this Agreement (or any amendments, supplements or modifications thereto) or the business relationship between U.S. Bank and Client without the prior written consent of the other party and except as necessary to enforce, obtain damages, or seek other relief under this Agreement. Client will not use U.S. Bank's identity, directly or indirectly, in any advertisements, metatag, news releases or releases to any professional or trade publications or media source without U.S. Bank's prior written approval, which approval may be withheld in U.S. Bank's sole and complete discretion.

10.5 Additional Confidentiality Obligations. During the term of this Agreement and thereafter, Confidential Information is to be used solely in connection with satisfying each party's obligations pursuant to this Agreement, and shall be held in confidence. Neither party will disclose such Confidential Information to any third party, without the written consent of the other party, except that either party may disclose Confidential Information during the course of any independent or regulatory audit in which information disclosed remains non-public. The parties may mark documents containing Confidential Information with applicable language or stamps, such as "Confidential" or "Proprietary". All Confidential Information furnished by the parties to each other in connection with this Agreement is the exclusive property of the furnishing party, and, at the request of that party or upon termination of this Agreement, the other party shall promptly return to the furnishing party all such information without copying such information. Without the prior written consent of the other party, neither party will disclose, furnish, or use Confidential Information in any way whatsoever not specifically contemplated under this Agreement. Each party shall take measures to prevent its agents, employees, and Subcontractors from using, any Confidential Information to which it becomes privy.

10.6 Compelled Disclosure. Each party may disclose Confidential Information to any regulatory authority having jurisdiction over it without prior notification to the other party. With respect to any other disclosures of Confidential Information, if any party is compelled by Applicable Law, in the written opinion of counsel, to disclose any portion of the other party's Confidential Information, the party so compelled may comply with such law, provided, that such party timely notifies the proprietor of the Confidential Information and reasonably cooperates in any of the proprietors' efforts to maintain the confidentiality of such Confidential Information.

## Article 11 TERM AND TERMINATION

11.1 Term. The term of this Agreement is three years from the Program Launch date (the "Initial Term"). Unless either party gives the other party 60 days written notice prior to the end of the Initial Term, the term of the Program will be automatically extended for successive one-year periods (each, a "Renewal Term"). During any Renewal Term, either party may elect to terminate the Agreement by giving written notice 90 days prior to the end of the then current Renewal Term. If such notice is given, the Agreement will terminate effective on the last day of the then current term. Notwithstanding the termination of this Agreement, the terms and conditions of all agreements between U.S. Bank and Cardholders will remain in effect.

11.2 Termination for Excusable Delay. Either party may terminate this Agreement if the other party has been excused, pursuant to section 14.14 of this Agreement, from the performance of the other party's obligations under this Agreement for 60 consecutive days or more.

**11.3 Termination for Material Breach.** Either party may, if in compliance or excused from compliance with its obligations under this Agreement, terminate this Agreement if the other party is in breach of its obligations under this Agreement and such breach is deemed material by the non-breaching party, in its reasonable judgment. In the event either party wishes to terminate this Agreement for a reason specified in this section, such party ("Sending Party") shall give written notice, in accordance with section 14.10 ("Remedy Notice"), to the other party ("Other Party"). The Remedy Notice must specifically state the reason or reasons why the Sending Party believes the Other Party is in material default under this Agreement and wishes to terminate this Agreement, and must request such Other Party to specify the act or acts which it will accomplish to cure the cited material defaults. The Other Party will have a period of 45 days from its receipt of the Remedy Notice to cure the cited material default, or if such material default cannot be cured in such 45-day period, specify to the Sending Party the act or acts which such Other Party will accomplish in order to cure the cited material default. In the event the default is not cured by the end of such 45-day period and the Sending Party does not at the end of such 45-day period approve the acts, if any, proposed by the Other Party as curing the cited material default, which approval will not be unreasonably withheld, the Sending Party may then immediately terminate this Agreement by giving the Other Party another written notice, in accordance with section 14.10 ("Termination Notice"), stating that this Agreement is being terminated under the provisions of this section effective upon receipt of the Termination Notice by the Other Party.

**11.4 Termination for Insolvency; Unique Services.** This is an agreement for certain unique services. Either party may, if in compliance or excused from compliance with its obligations under this Agreement, terminate this Agreement immediately in the event of the other party's (a) insolvency, receivership, or voluntary or involuntary bankruptcy or institution of proceedings therefore; (b) assignment for the benefit of creditors a substantial part of that party's property; or (c) a substantial part of the other party's property becoming subject to any levy seizure, assignment, or sale for or by any creditor or governmental agency without being released or satisfied within 30 days thereafter.

**11.5 Termination by Reason of Regulation.** U.S. Bank may terminate or curtail or restrict its operations under this Agreement (including the cessation of the Program in particular jurisdictions) at any time upon 15 days' advance written notice to the Client without liability to Client in the event of (a) the establishment of any Applicable Law or Network Rule, or (b) the decision or order of any court, agency, or tribunal that is controlling or binding on the parties, if U.S. Bank determines, in its sole discretion, that the order, rule or regulation would (x) prohibit any or all of the services contemplated in this Agreement, (y) restrict the provision of such services so as to make the continued provision thereof unprofitable or undesirable, or (z) be unduly restrictive to the business of U.S. Bank or require burdensome capital expenditures by U.S. Bank to continue its performance of such services.

**11.6 Termination for Risk.** U.S. Bank may terminate this Agreement or curtail or restrict its operations under this Agreement (including the cessation of the Program in particular jurisdictions) at any time with 30 days' notice to Client without liability, except for liabilities accrued prior to the termination, upon U.S. Bank's determination, in its sole discretion, that Client's activities relating to the Program may subject U.S. Bank to undue financial, legal, regulatory, or reputational risk.

**11.7 Card Volume Rights.** If, at any time after the first anniversary of this Agreement, the total number of active Cards issued under the Program is less than 25, U.S. Bank may: (i) terminate this Agreement with 30 days' notice to Client, or (ii) require that Client make such enhancements to its efforts to market the Program as U.S. Bank directs.

Article 12  
POST-TERMINATION PROVISIONS



12.1 Account Ownership. Upon termination of this Agreement, U.S. Bank retains all right, title and interest in all Accounts and Cards and in all Cardholder Data and Card Account information, including all records relating thereto retained in U.S. Bank's System. Without limitation of the foregoing, upon and following termination of this Agreement, U.S. Bank shall have the right to solicit any Cardholder or convert any Card and related Account to any other card or account issued by U.S. Bank or any Affiliate of U.S. Bank, and to exercise all rights of ownership with respect thereto, subject to Applicable Law. U.S. Bank will have no obligation to assign new account numbers to replacement Cards.

12.2 Wind-down of Operations. Following termination of this Agreement, U.S. Bank will not accept requests to issue a Card and will not reload existing Accounts with Disbursements.

#### Article 13

##### DAMAGES AND LIMITATIONS OF LIABILITY

13.1 Damages. In the event that any party defaults in any of its obligations under this Agreement, in addition to any other remedies provided pursuant to this Agreement or Applicable Law, including without limitation termination, the non-breaching party shall be entitled to recover from the breaching party the actual damages which the non-breaching party may incur on account of such breach.

13.2 Injunctive Relief. The parties acknowledge that money damages would not be a sufficient remedy for any breach of Article 10 of this Agreement by any party or by any other Person receiving Confidential Information pursuant to Article 10 and that the party whose Confidential Information is disclosed or used in violation of this Agreement shall be entitled to claim injunctive or equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement, but shall be in addition to all other remedies available to such party at law or equity.

13.3 Limitation of Liability. EXCEPT FOR LIABILITIES ARISING UNDER SECTION 8.1 IN THE CASE OF THIRD PARTY CLAIMS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, ADDITIONAL, OR PUNITIVE DAMAGES ARISING OUT OF PERFORMANCE OR NONPERFORMANCE UNDER, OR OTHERWISE ARISING IN CONNECTION WITH, THIS AGREEMENT.

13.4 Time Limit for Claims. Neither party may assert a claim against the other party more than one year from the date the claiming party has or should have actual knowledge of the facts giving rise to such claim.

#### Article 14

##### ADDITIONAL PROVISIONS

14.1 Relationship of the Parties. In performing their responsibilities pursuant to this Agreement, the parties are in the position of independent contractors. Neither party has the right to bind or obligate the other party in any manner. Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the parties.

14.2 Subcontractors. U.S. Bank may use one or more Subcontractors to perform its obligations under this Agreement. To the extent that U.S. Bank engages a Subcontractor, U.S. Bank shall remain solely responsible for the performance of the work of that Subcontractor as if the work were performed by U.S. Bank. Client will have no recourse, nor assert any claim, against any Subcontractor.

14.3 Assignment. Neither party may assign or delegate any of its rights or obligations under this Agreement without the other party's prior written consent, except that U.S. Bank may, without

prior notice to or consent of Client, assign or delegate this Agreement and any of its rights or obligations under this Agreement to any Affiliate, Subsidiary, corporate parent, successor-in-interest, or successor by merger having the authority to operate the Program in the same manner as U.S. Bank.

14.4 Successor and Assigns. Subject to the terms of section 14.3, this Agreement will be binding upon and inure to the benefits of the parties' respective successors and assigns.

14.5 Survival of Terms. The obligations and remedies of the parties set forth in Articles 3, 8, 10, 12, 13, and 14 of this Agreement survive termination of this Agreement.

14.6 Governing Law and Forum. This Agreement will be governed by and construed in accordance with the substantive laws of the State of California, without giving effect to conflict of laws principles thereof. Any action brought to enforce any rights under this Agreement shall be brought exclusively in federal or state court in San Bernardino County, California. Each party waives any claim that a legal proceeding brought in accordance with this section has been brought in an inconvenient forum or that venue of that proceeding is improper.

14.7 Severability. Should any provision of this Agreement contravene any Applicable Law or Network Rule, or should any provision of this Agreement otherwise be held invalid or unenforceable by a court of competent jurisdiction, then each such provision will be automatically terminated and performance thereof by both parties waived; nevertheless, all other provisions of this Agreement will remain in full force and effect.

14.8 Amendments. Except as specifically provided elsewhere in this Agreement, this Agreement may only be modified by a written document signed by both parties.

14.9 Incorporation by Reference. Each Exhibit referred to in this Agreement is hereby expressly incorporated into this Agreement in its entirety and made a part of this Agreement. All defined terms used in this Agreement will have the same meaning when used in the Exhibits.

14.10 Notices. Any notice required or permitted by this Agreement to be given to either party by the other must be in writing and shall be delivered: (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by a commercial overnight courier that provides a confirmation of delivery. Any notice so given shall be effective upon delivery or three days from the date of mailing or sending, whichever is earlier. All notices must be addressed to the recipient at the address shown below for the party to whom such notice is given, or addressed to any other Person or address of which the party to receive such notice has notified the other party, pursuant to the provisions of this section:

If to Client:

San Bernardino County  
Auditor-Controller/Treasurer/Tax Collector  
268 W. Hospitality Lane, 4th Floor  
San Bernardino, CA 92415-0018  
Attn: Auditor-Controller/Treasurer/Tax Collector

If to U.S. Bank:

U.S. Bank National Association  
200 South 6<sup>th</sup> Street, EP-MN-L16C  
Minneapolis, MN 55402  
Attn: SVP – Prepaid Debit Products

Copy to:

U.S. Bancorp Corporate Counsel  
800 Nicollet Mall, BC-MN-H21N  
Minneapolis, MN 55402  
Attn: Retail Payment Solutions Counsel

14.11 No Implied Waiver. No waiver of any provisions of the Agreement and no consent to any default under the Agreement shall be effective unless in writing and signed by the party against whom such waiver or consent is claimed. No course of dealing or failure to strictly enforce any provision

of the Agreement shall be construed as a waiver of such provision for any party's rights. Waiver by a party of any default by the other party shall not be deemed a waiver of any other.

14.12 Compliance with Network Rules. In connection with their performance under this Agreement, U.S. Bank and Client will comply with all applicable Network Rules in effect from time to time. To the extent any provision of this Agreement conflicts with any Network Rule, this Agreement will be deemed amended to the extent necessary in order to conform to such Network Rule.

14.13 Construction. This Agreement must be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either party. The headings that appear in this Agreement are inserted for convenience only and do not limit or extend its scope.

14.14 Excusable Delay. Any delay in the performance of a party's obligations under this Agreement will be excused to the extent approved in writing by the parties. Any delay in the performance by a party of its obligations under this Agreement will also be excused when such delay in performance is due to the occurrence of a Force Majeure Event; provided, however, that written notice thereof must be given by the party whose performance was delayed to the other party no more than 30 days after the occurrence of that Force Majeure Event.

14.15 Immaterial Breach. From time to time, one party to this Agreement may determine that the other party is in breach of the Agreement, but that such breach is immaterial. In such case, the party making such determination may, at its option, notify the other party in writing of the occurrence and nature of such breach. In such case, and the parties will work together in a good faith effort to resolve any issues relating to the alleged immaterial breach.

14.16 Attorneys' Fees. If any litigation or alternative dispute resolution proceeding arises between the parties regarding rights or obligations under this Agreement, each party, including the prevailing party, will bear its own attorneys' fees, costs, expert witness fees, consultant's fees and court costs incurred in connection with such litigation or proceeding.

14.17 Entire Agreement. Each party hereto has read this Agreement, understands it and agrees to be bound by its terms and conditions. This Agreement supersedes all prior verbal or written agreements (including the Focus Card Agreement between Client and U.S. Bank with the effective date of July 1, 2014) between the parties and now constitutes the complete and exclusive statement of the terms and conditions between the parties covering the performance hereof.

14.18 Program Records and Audit Rights. U.S. Bank shall maintain true and complete books and records relating to Disbursements under the Program (the "Program Records"). The Program Records will be maintained in accordance with good accounting practices and in sufficient detail to enable an audit trail to be established. U.S. Bank will afford Client and any mutually acceptable independent auditor reasonable access to the Program Records, upon reasonable notice and during normal business hours, for purposes of inspecting, auditing, analyzing, and copying such Program Records. Any inspection or audit of the Program Records will be at Client's sole cost and expense.

14.19 Use of Client Name. U.S. Bank may refer to Client as a party to whom U.S. Bank provides payroll cards in its promotional materials or in its responses to requests for proposals to provide services substantially similar to those provided under this Agreement.

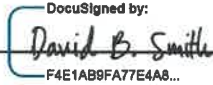
14.20 Waiver of Jury Trial. To the extent permitted by Applicable Law, each party hereby knowingly, willingly and voluntarily waives its right to a trial by jury in any action or proceeding arising out of, connected with, related to, or incidental to this Agreement.

14.21 Counterparts. This Agreement may be executed simultaneously in multiple counterparts, each of which is deemed an original, but all of which taken together constitute one and

the same instrument. Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.

The undersigned are signing this Agreement as of the date stated in the introductory clause.

U.S. BANK NATIONAL ASSOCIATION

By:  \_\_\_\_\_  
Name: David B. Smith  
Title: SVP

SAN BERNARDINO COUNTY

By:  \_\_\_\_\_  
Name: Curt Hagman  
Title: Chairman, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD  
LYNNA MCNEEL  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By:  \_\_\_\_\_  
Deputy  


## **EXHIBIT A PROGRAM DESCRIPTION**

### **Core Elements**

The Program will have the following core elements:

- ☐ All Cards will be Card Network-branded, following all Card Network "Prepaid Debit Card" regulations and program guidelines.
- ☐ No general purchase restrictions will be placed on the Cards (other than MCC block on online gambling).
- ☐ The Cards will have teller cash withdrawal access.
- ☐ The Cards will have ATM access at Card Network-enabled ATMs.
- ☐ The Cards will have point-of-sale access through the Card Network.
- ☐ The Cards will be standard-issue Cards carrying U.S. Bank's name and/or marks, but not Client's name and/or marks.

### **U.S. Bank Responsibilities**

U.S. Bank shall be specifically responsible for the following:

- ☐ Providing Client with continual access to the Administrative Web Portal.
- ☐ Providing initial training (train-the-trainer) of designated Client Representatives.
- ☐ Providing all Card Collateral needed to support the delivery of Cards to the Cardholders at the agreed-upon cost.
- ☐ Setting up Accounts, processing chargebacks in accordance with the rules of the applicable Card Network, and providing all related transaction processing.
- ☐ Managing Account settlement for loading of Disbursements to Cards and processing transactions performed on Cards through the applicable Card Network.
- ☐ Providing Cardholders with transaction histories and statements via a designated web site.
- ☐ Providing access to its Continual Voice Response Unit ("VRU") which will be made available via a dedicated toll-free telephone number. VRU features will include: Card activation lost/stolen account reporting, remaining account balance, last load amount, and recent transactions.
- ☐ Providing Cardholders with continual access to live-agent customer service representatives via a dedicated toll-free telephone number.
- ☐ Designating a POC for the Program.

### **Client Responsibilities**

Client shall be responsible for the following:

- ☐ Actively promoting the Cards to its employees as a means of receiving payment of wages.
- ☐ Assisting U.S. Bank in the training of Client Representatives.
- ☐ Managing Card inventory using the System and following procedures set by U.S. Bank.
- ☐ Complying with the Client Guidelines set forth in Exhibit C.
- ☐ Complying with the Card Security Guidelines set forth in Exhibit D.
- ☐ Presenting all Card Collateral, enrollment information, and Program disclosures to Cardholders in the form and manner prescribed by U.S. Bank using only materials provided to Client by U.S. Bank.
- ☐ Opening all new Accounts via the Administrative Web Portal or through U.S. Bank's batch enrollment process.
- ☐ Providing complete and accurate information regarding Cardholders required by U.S. Bank for initial enrollment, the scope of which is subject to change from time to time.
  - As of the date of this Agreement, the Cardholder information required for initial enrollment for an FII Card is: First Name, Last Name, Full Address, Date of Birth (if selected methodology for Card activation), Cardholder's State of Employment, and the Card ID from the FII Card Collateral.
  - As of the date of this Agreement, the Cardholder information required for initial enrollment for a Personalized Card is: First Name, Last Name, Full Address, Date of Birth, and Cardholder's State of Employment.
- ☐ Client will transmit Disbursement Amounts in the manner required by U.S. Bank.
- ☐ Client will designate its POC for the Program.

### **Timing**

The targeted product rollout will be as follows:

- ☐ Kick-off meeting between U.S. Bank and Client
- ☐ Product "Friendly User" Testing
- ☐ Program Launch

**EXHIBIT B  
FEE SCHEDULE**

All fees	Amount	Details
<b>Add money</b>		
Check Reload	5%	This is not our fee and is subject to change. Fee of up to 5% of check value may apply when cashing a check to load your card at Ingo Money. Money in Minutes - 2% (pre-printed payroll or gov't checks) or 5% (all other checks), minimum \$5.00. Money in 10 Days - no fee. Fee is deducted from check value. Go to <a href="http://ingomoney.com">ingomoney.com</a> for more information.
Cash Reload	Varies by retailer	Third party fee may apply when reloading your card at a Visa Readylink network. Fee is paid to third party at the time of reload. Go to <a href="http://usa.visa.com/pay-with-visa/cards/services-locator.html">usa.visa.com/pay-with-visa/cards/services-locator.html</a> for locations.
<b>Get cash</b>		
ATM Withdrawal (in-network)	\$0	This is our fee per withdrawal. "In-network" refers to the U.S. Bank or MoneyPass® ATM networks. Locations can be found at <a href="http://usbank.com/locations">usbank.com/locations</a> or <a href="http://moneypass.com/atm-locator">moneypass.com/atm-locator</a> .
ATM Withdrawal (out-of-network)	\$1.75	This is our fee per withdrawal. "Out-of-network" refers to all the ATMs outside of the U.S. Bank or MoneyPass ATM networks. You may also be charged a fee by the ATM operator even if you do not complete a transaction.
Teller Cash Withdrawal	\$0	This is our fee for when you withdraw cash from your card from a teller at a bank or credit union that accepts Visa®.
<b>Information</b>		
ATM Balance Inquiry (in-network)	\$0	This is our fee per inquiry. "In-network" refers to the U.S. Bank or MoneyPass ATM networks. Locations can be found at <a href="http://usbank.com/locations">usbank.com/locations</a> or <a href="http://moneypass.com/atm-locator">moneypass.com/atm-locator</a> .
ATM Balance Inquiry (out-of-network)	\$1.00	This is our fee per inquiry. "Out-of-network" refers to all the ATMs outside of the U.S. Bank or MoneyPass ATM networks. You may also be charged a fee by the ATM operator.
<b>Using your card outside the U.S.</b>		

International Transaction	3%	This is our fee which applies when you use your card for purchases at foreign merchants and for cash withdrawals from foreign ATMs and is a percentage of the transaction dollar amount, after any currency conversion. Some merchant and ATM transactions, even if you and/or the merchant or ATM are located in the United States, are considered foreign transactions under the applicable network rules, and we do not control how these merchants, ATMs and transactions are classified for this purpose. For Connecticut, Illinois and Pennsylvania workers, all international purchase fees are waived.
International ATM Withdrawal	\$3.00	This is our fee per withdrawal. You may also be charged a fee by the ATM operator even if you do not complete a transaction.
International ATM Balance Inquiry	\$1.00	This is our fee per inquiry. You may also be charged a fee by the ATM operator.
<b>Other</b>		
Card Replacement	\$5.00	This is our fee per replacement of a lost card mailed to you with standard delivery (up to 10 business days). This fee is waived for your first card replacement in a 12-month period. For Connecticut, Hawaii and Pennsylvania workers, this fee is waived. This fee will be charged for each additional replacement during the same 12 months.
Card Replacement Expedited Delivery	\$10.00	This is our fee for expedited delivery (up to 3 business days) charged in addition to any Card Replacement fee.
Card Replacement Overnight Delivery	\$20.00	This is our fee for overnight delivery charged in addition to any Card Replacement fee.
Inactivity	\$2.00	This is our fee charged each month after you have not completed a transaction using your card for 90 consecutive days. For Connecticut, Illinois, and Pennsylvania workers, this fee will be waived for the first 12 months of inactivity (based on cardholder-initiated or balance changing transactions) For Texas residents, this fee will not be charged after one year of inactivity. For Minnesota and Montana workers this fee is waived. For Hawaii workers, accounts with a balance of \$0.00 and no activity for more than 6 months may be closed.

Your funds are eligible for FDIC insurance up to \$250,000. FDIC insurance protects deposits from loss due to bank insolvency. See [fdic.gov/deposit/deposits/prepaid.html](https://www.fdic.gov/deposit/deposits/prepaid.html) for details.

No overdraft/credit feature.

Contact Cardholder Services by calling **1-877-474-0010**, by mail at P.O. Box 551617, Jacksonville, FL 32255 or visit [usbankfocus.com](https://usbankfocus.com).

For general information about prepaid accounts, visit [cfpb.gov/prepaid](https://cfpb.gov/prepaid). If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit [cfpb.gov/complaint](https://cfpb.gov/complaint).

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Important information: Fee waivers for workers of a particular state are applied based on information from the sponsoring employer regarding your state of employment.

**EXHIBIT C**  
**CLIENT GUIDELINES**

Client shall comply with the following guidelines at all times:

- 1) Client will never offer the payroll card to any employee as the sole and only means of receiving the employee's wages (at a minimum, direct deposit must also be offered, and state laws may require additional options be available). Client must promptly honor an employee's wage payment method choice and any post-card-issuance request by an employee to change wage payment methods.
- 2) Prior to an employee choosing any payment method, Client must provide the employee with both the applicable "Pre-Acquisition Disclosure and Fee Schedule" document in written or an approved electronic form, as well as access to the applicable Cardholder Agreement in written or electronic form.
- 3) Client will provide to U.S. Bank, for each Cardholder, the identity of each such employee-Cardholder's state of employment. Client shall promptly provide U.S. Bank with any change to a Cardholder's state of employment.
- 4) Client will not engage in any unfair, deceptive or abusive acts/practices in dealing with its employees in connection with the Program, including without limitation: (i) conditioning the hiring or continued employment of an employee on participation in the Program, (ii) using intimidation, coercion, or fear of discharge or reprisal (including withholding wages) against an employee for refusal to participate in the Program, or (iii) engaging in payday loan transactions with employees.
- 5) Client will not charge any initiation, participation, loading or other fees to Cardholders in connection with the Program.
- 6) Client has provided and will provide all payroll option forms (including applicable opt-out forms), statements of earnings/deductions/withholdings, paystubs and wage statements and related disclosures as required under applicable state law.
- 7) Client will maintain accurate and complete records regarding its compliance with these Guidelines and the laws applicable to Client's conduct in connection with the Agreement.
- 8) Client will comply with any collective bargaining agreement commitments that establish employee protections greater than those contemplated in these Guidelines.
- 9) Client must inform U.S. Bank if its employee onboarding process, including that relating to the selection of wage payment methods, includes materials in a language other than English or if Client normally communicates to employees in a language other than English.

## **EXHIBIT D CARD SECURITY GUIDELINES**

These Card Security Guidelines are based on policies and guidelines development by the Card Networks and industry best practices. These requirements are to be implemented and followed by Client at all locations that store and distribute Cards whenever Client has Card stock on hand at its locations or under its control.

### Card Stock Ordering

Card stock orders will be placed as bulk orders to the card manufacturer by U.S. Bank. The fulfilled Card stock orders will be shipped to the designated Client locations by the card manufacturer by an approved carrier. Shipments will be traceable. Card stock orders must be signed for upon arrival. If intermediate stops are made during the shipment, the shipment must remain secure and inaccessible to unauthorized personnel.

### Card Stock Storage

All Card stock must be placed at the time of receipt into inventory in a secured storage area. An Account Representative designated by Client management should be appointed to ensure that physical and procedural security policies are implemented. Physical security of Card stock inventory must be maintained at all times. Client shall use commercially reasonable controls to ensure the protection of the Card stock. At minimum, Card stock must be stored in a locked area such as a back office with limited access when not actively being distributed to Cardholders. FII Card stock, which will be provided by U.S. Bank in tamper-evident sealed envelopes, may not to be opened by anyone other than the applicable Cardholders.

### Card Stock Inventory

An inventory log must account for Card stock received, used, spoiled (Card stock that cannot be used due to damage, tampering or expiration), and remaining. Card stock remaining in inventory in the inventory log should balance to the number of Card stock on hand at any time. U.S. Bank's System will allow Client to maintain an inventory log automatically in the ordinary course of business, but Client shall immediately report to U.S. Bank, through a channel approved by U.S. Bank, any spoilage or theft of any Card stock that Client has detected. Client shall utilize U.S. Bank's Administrative Web Portal to log such exceptions and provide an explanation of spoilage. Client shall conduct monthly self-audit Card stock inventory true-ups.

### Card Stock Destruction

U.S. Bank may request return of unused Card stock in inventory for destruction for any of the reasons listed below:

- Card stock compromised or tampered with,
- Card stock expired,
- Card stock damaged or defective, or
- Program is terminated.

Any Card stock returned to U.S. Bank must be securely packaged.