

CONTRACT FOR ENTERPRISE BANKING SERVICES

Contract: 505ENT-M21-ENTBANKING-01

BETWEEN

THE STATE OF WISCONSIN,

DEPARTMENT OF ADMINISTRATION

AND

U.S. BANK NATIONAL ASSOCIATION

This Contract is between the State of Wisconsin (State) as represented by its Wisconsin Department of Administration (State) and U.S. Bank National Association (Contractor).

This Contract and the following documents incorporated by reference into the Contract constitute the entire agreement of the parties and supersedes all prior communications, representations or agreements between the parties, whether oral or written. This Contract may not be modified or amended except by mutual agreement of both parties in writing. Any conflict or inconsistency will be resolved by giving precedence in the following descending order:

- a. The terms of this Contract.
- b. The terms of RFP 28238-BD, including any amendments thereto, except as clarified or modified by Contractor's Proposal.
- c. The terms of Contractor's Proposal, including any exceptions to the RFP.
- d. Contractor's Master Services Agreement, Services Terms and Conditions, and Your Deposit Account Agreement and, for Merchant Processing, the Elavon Master Services Agreement and applicable Schedules with Elavon, Inc., a wholly owned subsidiary of Contractor (the "Elavon Agreement").

The State of Wisconsin's requirements are provided in its Request for Proposal (RFP) 28238-BD including any amendments thereto, and Contractor's response, as, accepted by the State.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have executed this Contract with full knowledge of and agreement with the terms and conditions of this Contract.

State of Wisconsin

Signature:  _____
0B289D75359A430

Agency Name: Department of Administration

Name: Chris Patton

Title: Deputy Secretary

Date: 7/8/2020 | 9:21 PM CDT

Contractor

Signature:  _____

Company Name: U.S. BANK NATIONAL ASSOCIATION

Name: TERESA McBRIDE

Title: SENIOR VICE PRESIDENT

Date: JUNE 30, 2020

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and Enter into a Contract with U.S. Bank National Association and Canon Financial Services, Inc.**

STATE OF WISCONSIN SERVICES CONTRACT

- 1. DEFINITIONS.** Words and terms shall be given their ordinary and usual meanings. Unless negotiated otherwise by the parties, where capitalized, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter.

“Acceptance” means a manifestation of assent by the State to the terms, Services, Deliverables or other items offered by the Contractor under the Contract after Inspection by the State.

“Agency” or **“State Agency”** means an office, department, agency, institution of higher education, association, society or other body in the State of Wisconsin government created or authorized to be created by the State Constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority, as defined in Wis. Stat. s. 16.70(2).

“Business Day” means any day on which the Contracting Agency is open for business.

“Confidential Information” means all tangible and intangible information and materials being disclosed in connection with this Contract, in any form or medium without regard to whether the information is owned by the State or by a third party, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) Proprietary Information; (iii) non-public information related to the State’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information expressly designated as confidential in writing by the State. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law. Confidential information does not include information (i) in the public domain, (ii) already known to the Contractor at the time of disclosure, (iii) subsequently received by the Contractor in good faith from a party not known to the Contractor to be prohibited from transmitting the information, or (iv) independently generated by the Contractor.

“Contracted Personnel” means a Contractor’s employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor specifically to render Services under this Contract.

“Contracting Agency” means the Agency entering into this Contract on behalf of the State.

“Day” means calendar day unless otherwise specified in this Contract.

“Default” means the omission or failure to perform a contractual duty or provide Deliverables or render Services as contractually required.

“Deliverables” means all project materials, including Goods, software licenses, data, and documentation created during the rendering of Services hereunder. Deliverables shall be the property of the State of Wisconsin unless otherwise specified in the Contract. For clarification, Elavon retains all proprietary rights to its services as set forth in section 11 of the Elavon Agreement.

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“Goods” means articles of trade or items of merchandise, supplies, raw materials, or finished products, and may also include incidental or related services as the situation may require.

“Inspection” means an examination of Deliverables or Services provided under this Contract in order to determine their fitness for use.

“Key Personnel” means specifically identified Contracted Personnel that play a lead and critical role in rendering Services during the Contract term.

“Personally Identifiable Information” means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security number; (b) the individual’s driver’s license number or state identification number; (c) the number of the individual’s financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account; (d) the individual’s DNA profile; or (e) the individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

“Proprietary Information” means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

- a. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- b. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

“Properly-submitted Invoice” is one that is submitted in accordance with instructions contained on the State’s Purchase Order, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.

“Purchase Order” means the State’s standard document of a purchase of Deliverables and Services.

“Services” means all work performed, and labor, actions, recommendations, plans, research, customizations, modifications, documentation, and maintenance and support provided by the Contractor necessary to fulfill that which the Contractor is obligated to accomplish under this Contract.

“SOW” means Statement of Work.

“State” means the State of Wisconsin.

“Subcontract” means an agreement, written or oral between the Contractor and any other party to fulfill the requirements and performance obligations of this Contract.

“Subcontractor” means an entity that enters into a Subcontract with the Contractor for the purpose of delivering Deliverables or rendering Services to the State.

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2. **APPLICABLE LAW.** This Contract shall be governed by the laws of the State of Wisconsin. Venue for any action brought under this Contract shall lie in Madison, Dane County, Wisconsin.
3. **TERM.** The initial term of this Contract shall be for five (5) years from the effective date. This Contract is eligible for one (1) mutually agreed upon two (2)-year renewals, unless terminated as provided herein.
4. **TERMINATION FOR CAUSE.** The State may terminate this Contract after providing the Contractor with thirty (30) Days written notice of the Contractor's right to cure a failure of the Contractor to perform under the terms of this Contract.

The Contractor may terminate this Contract after providing the State with thirty (30) Days written notice of the State's right to cure a failure of the State to perform under the terms of this Contract. In addition, the Elavon Agreement may be terminated as set forth in Section 4.2 of that Agreement.

5. **TERMINATION FOR CONVENIENCE.** The State may terminate this Contract at any time, without cause, by providing a written notice to the other party at least sixty (60) Days in advance of the intended date of termination.

Contractor may terminate this Contract at any time, without cause, by providing a written notice to the other party at least ninety (90) Days in advance of the intended date of termination.

In the event of a termination for convenience, the Contractor shall be entitled to receive compensation for any completed or partially completed Services rendered or Deliverables provided under the Contract. Compensation for partially completed Services shall be no more than the percentage of completion of the Services requested, as determined by the State in its sole discretion, multiplied by the corresponding payment for completion of such Services as set forth in the Contract. Alternatively, at the sole discretion of the State, the Contractor may be compensated for the actual Service hours provided. The State shall be entitled to a refund for Deliverables or Services paid for but not received or rendered, such refund to be paid within 30 Days of written notice to the Contractor requesting the refund.

6. CONTRACT CANCELLATION:

- (a) The State reserves the right to cancel this Contract in whole or in part without penalty, and without prior notice, if the Contractor:
 - Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity
 - Makes an assignment for the benefit of creditors
 - Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract;
 - Fails to maintain the confidentiality of the State's information that is considered to be Confidential Information, or
 - Performs in a manner that threatens the health or safety of a State employee, citizen, or customer.

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(b) The State reserves the right to cancel this Contract in whole or in part without penalty, with 30 days' notice, if the Contractor:

- Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes;
- Incurs a delinquent Wisconsin tax liability;
- Fails to submit a non-discrimination or affirmative action plan as required herein.
- Fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or
- Becomes a state or federally debarred contractor.

7. POST CONTRACT OBLIGATIONS. Upon the termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration, including payment of items received post-termination that relate to transactions processed prior to termination (e.g., Chargebacks).

8. CONTRACTOR COMPLIANCE AND RESPONSIBILITY FOR ACTIONS. The Contractor shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations that are in effect during the term of this Contract that may affect the Contractor's work or obligations hereunder.

The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors. Neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

9. DELAY AND REMEDY. If the Contractor fails to remedy any delay or other problem in its performance of its Contract obligations after receiving reasonable notice from the State to do so, the Contractor shall reimburse the State for all reasonable costs incurred as a direct consequence of the Contractor's delay, action, or inaction. In case of failure to deliver Deliverables or Services in accordance with this Contract, the State, upon written notice to the Contractor, may procure such Deliverables or Services from other sources as necessary, and the Contractor shall be responsible for the additional cost, including the cost of re-procurement, purchase price and administrative fees. This remedy shall be in addition to any other legal remedies available to the State.

10. NON-APPROPRIATION. The State reserves the right to cancel this Contract in whole or in part without penalty if the Legislature fails to appropriate funds necessary to complete the Contract, and the State will endeavor to provide Contractor with 60 days' notice in such an event.

11. CONTRACTOR'S INSURANCE RESPONSIBILITY. The Contractor shall maintain the following insurance coverage:

- Worker's compensation insurance, as required under Chapter 102 of the Wisconsin Statutes, for all of the Contractor's employees and Contracted Personnel engaged in the work performed under this Contract;
- Commercial liability, bodily injury and property damage insurance against any claim(s) that may occur in carrying out the terms of this Contract, with a minimum coverage of one

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million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations; and

- Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- Certificate of Insurance, showing up-to-date coverage, shall be on file in the Contracting Agency before the Contract may commence. (if applicable)

12. NONDISCRIMINATION AND AFFIRMATIVE ACTION. The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in § 51.01(5), Wis. Stats., or sexual orientation as defined in §111.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

Unless exempted by workforce size (50 or fewer employees) or Contract amount (\$50,000 or less), the Contractor must submit a written affirmative action plan to the State.

The Contractor shall post a notice provided by the State, setting forth the provisions of the State's nondiscrimination laws, in its workplace, website or conspicuous places in order that the Contractor's employees and applicants for employment are able to read it.

Failure to comply with the conditions of this provision may result in the following consequences:

- termination of this Contract as provided in Section 6, Contract Cancellation herein,
- designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or
- withholding of a payment due under the Contract until the Contractor is in compliance

Effective October 27, 2017, consistent with 2017 Wisconsin Executive Order 261, Contractor agrees it is not engaged in a boycott of the State of Israel and further, Contractor will not during the term of the Contract engage in a boycott of the State of Israel. State agencies may not execute a contract and reserve the right to terminate an existing contract with a business entity that is not compliant with this provision. This provision applies to all contracts of all values.

13. STATE PAYMENT OFFSETS FOR CONTRACTOR'S DELINQUENCY. The State shall offset payments made to the Contractor under this Contract in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State, or to any state or local unit of government. The State also reserves the right to cancel this Contract as provided in Section 6, Contract Cancellation, if the delinquency is not satisfied by the offset or other means during the term of the Contract.

14. CONTRACTOR INDEMNIFICATION. Contractor shall hold the State harmless and shall defend and indemnify the State, its Agencies, officers and employees against any and all third party claims, suits, actions, liabilities and costs of any kind, including attorney's fees, for personal

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injury or damage to tangible personal property arising from the negligent or willfully malicious acts or omissions of the Contractor, its agents, officers, employees or Subcontractors.

15. CONFIDENTIAL INFORMATION.

(a) Disclosures.

In connection with the Contractor's performance hereunder, it may be necessary for the State to disclose to the Contractor Confidential Information. The Contractor shall not use such information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractor shall hold all such information in confidence, and shall not disclose such information to any persons other than its directors, officers, employees, and agents who have a business-related need to have access to such information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract. Notwithstanding the foregoing, the Contractor may disclose Confidential Information without consent: (i) to a bank regulatory agency or Payment Network or in connection with an examination of its records by bank examiners or the Payment Networks, (ii) at the express direction of any other authorized government agency, (iii) pursuant to a subpoena or other court order, or (iv) as may otherwise be required by law.

Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of such information while in its possession or control, including transportation, whether physically or electronically.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of such information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain such information of the State, as directed.

The Contractor shall maintain all such information for a period of at least seven (7) years from the date of disclosure and shall thereafter return or destroy said information in accordance with its records retention schedule.

(b) Equitable Relief; Indemnification in Event of Contractor Breach.

Indemnification: In the event of a breach of this Section by Contractor, Contractor shall indemnify, defend and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims to the extent arising from the negligent or willfully malicious acts or omissions of the Contractor, and its Subcontractors, employees and agents including, but not limited to, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section and, with respect to Personally Identifiable Information, the costs of monitoring the credit of all persons whose Personally Identifiable Information was disclosed for twelve (12) months.

Equitable Relief: The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be

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compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

16. INTELLECTUAL PROPERTY INFRINGEMENT AND LABOR STANDARDS. The Contractor guarantees that any Services provided to the State hereunder were manufactured or produced in accordance with applicable state and federal labor laws, and that the sale or use of said items shall not infringe any United States patent, copyright, or other intellectual property rights of others. The Contractor shall at its own expense indemnify, defend and hold the State harmless from any claims brought against the State for any alleged patent, copyright or other intellectual property right infringement due to the sale or use of such items, provided that the Contractor is promptly notified of such suit, and is given all related documents. The Contractor shall pay all costs, damages, and profits recoverable in any such infringement lawsuit. Notwithstanding the foregoing, Contractor will not be responsible for infringement claims to the extent caused by: (i) access or use of the Services other than as specified under the Contract; (ii) combination or use of the Services with non-Contractor products or services (whether or not provided to the State by Contractor); (iii) any hardware, devices, software, services or other resources not provided by Contractor; (iv) failure or refusal by the State to install, implement or use any update or correction provided by Contractor; (v) modification or alteration of the Services by anyone other than Contractor without Contractor's prior written consent; or (vi) goods or services provided by the State.

17. SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL. During the performance of Services under this Contract, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as "data") belonging to the State. The Contractor shall preserve the safety, security, and the integrity of the personnel, premises, equipment, data and other property of the State, in accordance with the instruction of the State. The Contractor shall be responsible for damage to the State's equipment, workplace, and its contents, or for the loss of data, when such damage or loss is caused by the Contractor, Contracted Personnel, or Subcontractors, and shall reimburse the State accordingly upon demand. This remedy shall be in addition to any other remedies available to the State by law or in equity.

18. RENDERING OF SERVICES. The Contractor shall render Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the State's reasonable satisfaction. The State may inspect, observe and examine the performance of the Services rendered on the State's premises at any time. The State may reasonably inspect, observe and examine the performance of Contractor's Services at reasonable times, upon thirty (30) days' notice, but not more than once per calendar year, at any other premises, subject to Bank's standard security policies, applicable laws, and Payment Network Regulations. The State acknowledges that access to certain highly secure premises of the Contractor may not be deemed reasonable.

If any part of the Services are inadequate or in any way differ from the Contract requirements for any reason other than as a result of the State's Default or negligence, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable time as the State specifies. This remedy shall be in addition to any other remedies available to the State by law or in equity.

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19. CONTRACTOR PERSONNEL.

(a) Identification. If requested by the State, the Contractor shall provide a list of the names and business addresses of all Contractor's employees, Contracted Personnel, or Subcontractor's employees who may at any time require admission to the State's premises in connection with the rendering of Services, specifying each such person's connection to the Contractor, the role the person is to take in the performance of the Contract, and other particulars as the State may require.

The State reserves the right to refuse to admit to the State's premises any person employed or contracted by the Contractor whose admission, in the sole opinion of the State, would be undesirable.

(b) Right to Approve Changes of Contracted Personnel. The State shall have the absolute right to approve or disapprove replacement Key or Contracted Personnel. The Contractor shall provide to the State, in each instance a resume of the proposed replacement Key or Contracted Personnel and an opportunity to interview that person prior to giving its approval or disapproval. The State shall not unreasonably withhold this approval. This provision shall not apply to Merchant Processing.

(c) Contracted Personnel Removal. The State may direct the Contractor to remove or reassign Key or Contracted Personnel at the State's discretion; however, the State's right to do so does not implicate the State as a party to any of the Contractor's obligations in the Contract. The State may request that a Contracted Personnel be replaced within ten (10) Business Days from such removal. This provision shall not apply to Merchant Processing.

(d) Identification of Contracted Personnel. The Contractor shall furnish each Contracted Personnel with a means of identifying themselves as agents, Subcontractors, or employees of the Contractor assigned to perform Services under the Contract, and furnish the State with security credentials on these Contracted Personnel, if requested.

(e) Background or Criminal History Investigation. Unless otherwise prohibited by law, the Contractor will conduct a United States criminal background check at the hiring of any employee performing services and review the background of any employee with any felony, fraud, or violent crime convictions to the extent required by the FDIC and Regulation Z and will deny employment if the employee fails to meet those regulatory requirements or the background presents a history creating an unacceptable level of risk to the Contractor.

20. SHIPPING. Except as otherwise specified herein, Deliverables shall be shipped, F.O.B. Destination, and the State shall accept legal title of Deliverables at the point of delivery. Freight charges shall not be paid by the State, but rather shall be prepaid by the Contractor. Unless otherwise specified, the Contractor shall determine the mode of freight and shall accept responsibility for payment of freight charges and processing of freight claims.

21. RISK OF LOSS. The Contractor shall bear all risks of loss, injury or destruction of the Deliverables ordered herein that occur prior to delivery. Such loss, injury or destruction shall not release the Contractor from any obligation hereunder.

22. IDENTIFICATION. All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting an order hereunder shall contain the applicable State Purchase Order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to an order, indicating the contents therein. Standard commercial packaging, packing and shipping containers shall be used. If requested by the State, all shipping containers

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shall be legibly marked or labeled on the outside with State Purchase Order number, product description, and quantity, or as otherwise directed by the State.

23. LIENS, CLAIMS AND ENCUMBRANCES. The Contractor warrants and represents that all Deliverables ordered hereunder are free and clear of all liens, claims or encumbrances of any kind.

24. WARRANTY OF ITEMS OFFERED. Deliverables and Services rendered shall be strictly in accordance with the order placed and may not deviate in any way from the terms, conditions or specifications of this Contract, without the prior written approval of the State. Deliverables delivered under this Contract are subject to Inspection and testing upon receipt

The Contractor warrants that the Deliverables provided shall conform to the specifications in this Contract, are fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Deliverables (except for replacement equipment) offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. Items shall be equal in quality and performance to the standards indicated herein. Deliverables delivered that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense. The Contractor shall assign to the State its right to recover under any warranties applicable to the Deliverables offered. [Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance, and/or use desired.]

25. RECEIPT OF GOODS. The State's receipt of Deliverables upon delivery is for the sole purpose of identification. Such identification shall not be construed as Acceptance of the Deliverables if they do not conform to contractual requirements. If there are any apparent defects in the Deliverables at the time of delivery, the State shall promptly notify the Contractor of its rejection of said Deliverables. Without limiting any other rights, the State, at its option, may require the Contractor to:

- a. Repair or replace any or all of the defective and rejected Deliverables at Contractor's expense,
- b. Refund the price of any or all of the defective and rejected Deliverables, and
- c. Accept the return of any or all of the defective and rejected Deliverables.

If rejected, the Goods shall remain the property of the Contractor.

26. PERFORMANCE. Services rendered under this Contract shall be performed in a timely, professional and diligent manner by qualified and efficient personnel and in conformity with the strictest quality standards mandated or recommended by all generally recognized organizations establishing quality standards for the type of Services to be rendered hereunder. The Contractor shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its Subcontractors render Services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal requirements and State or Agency work rules.

Without limiting the foregoing, the Contractor shall control the manner and means of the Services rendered so as to do so in a reasonably safe manner and in compliance with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association.

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Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of this Contract shall govern.

- 27. SPECIFICATIONS.** The apparent silence of the State's specifications as to any detail, or the apparent omission of a detailed description concerning any matter, shall be regarded as meaning that only reasonable commercial practice shall be followed and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Contractor shall supply proof of compliance with the specifications. Contractor shall provide written notice of its intent to deliver alternate or substitute Services or Deliverables. Alternate or substitute Services or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes shall be accompanied by Contractor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance shall be equal or superior to the original Services or Deliverables specified.
- 28. TRANSITION SERVICES.** Upon cancellation, termination, or expiration of this Contract for any reason, the Contractor shall provide such reasonable cooperation, assistance and Services, and shall assist the State in the migration of the State's production operations to the State's control or to the control of an alternative contractor upon written notice to the Contractor at least thirty (30) Business Days prior to termination or cancellation, and subject to the terms and conditions set forth herein. This Contract shall automatically be extended by the number of days that training or continued Services are necessary to be performed in order to complete the transition. The Contractor's Services required to complete the transition after the notice set forth herein shall be within this Contract's scope and shall not be the subject of any change order.
- 29. INDEPENDENT CONTRACTOR.** The Contractor shall act as an independent contractor in rendering any and all Services under this Contract and, except as otherwise outlined herein, shall maintain complete control over its employees, Contracted Personnel, and Subcontractors, if any.
- 30. COOPERATION WITH OTHER CONTRACTORS.** In the event that the State enters into a contract with another contractor for additional Services, the Contractor shall ensure that Contracted Personnel reasonably cooperate with such other contractor. Contracted Personnel shall not commit any act that interferes with the rendering of Services by any other contractor or by the State. Contracted Personnel shall cooperate with State personnel, hardware manufacture representatives, system software suppliers, and communications systems suppliers in the provision of Services to the State.
- 31. STATE EMPLOYEES.** The Contractor may not knowingly contract with or employ a State employee or an individual retained as a full-time contractor by the State during the term of this Contract.
- 32. ANTITRUST ASSIGNMENT.** By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the State all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating specifically to that proportionate amount of the particular Deliverables or Services purchased or acquired by the State under this Contract.

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33. REFUND OF CREDITS. Within sixty (60) Days of the State's request, the Contractor shall pay to the State any credits resulting from an order that the State determines cannot be applied to future invoices.

34. OWNERSHIP RIGHTS. Unless an ownership interest is granted or reserved in this Contract, (including Section 11 of the Elavon Agreement), a State Purchase Order issued under this Contract shall allow the State unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the State as part of the performance of the Contract.

35. PROMPT PAYMENT. The State shall pay the Contractor's Properly-submitted Invoices within thirty (30) Days of receipt, provided that the Deliverables or Services to be provided to the State have been delivered, rendered, or installed, and accepted as specified in the solicitation document, Statement of Work (SOW) or this Contract.

If the State fails to pay a Properly-submitted Invoice within thirty (30) Days of receipt, it shall pay a late payment penalty as provided in §16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to §16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and will be exempt from the prompt payment requirement for the disputed portion.

36. STATE TAX EXEMPTION. The State is exempt from payment of Wisconsin sales or use tax on all purchases.

37. PROMOTIONAL ADVERTISING AND NEWS RELEASES. Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Contract shall not be made without prior written approval of the State.

38. NOTICE AND CHANGE OF CONTACT INFORMATION. Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested.

In the event the Contractor moves or updates contact information, the Contractor shall inform the State of such changes in writing within ten (10) Business Days. The State shall not be held responsible for payments on Purchase Orders delayed due to the Contractor's failure to provide such notice

39. RECORDS, RECORDKEEPING AND RECORD RETENTION. Pursuant to §19.36 (3) of the Wisconsin Statutes, all records of the Contractor that are produced or collected under this Contract are subject to disclosure pursuant to a public records request, except for those exempt from disclosure under applicable law, including §19.36(4),(5), and (13) which the State will not disclose. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, State and local laws or ordinances. The Contractor shall retain all records produced or collected under this Contract for six (6) years after creation.

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- 40. EXAMINATION OF RECORDS.** The State shall at any time during normal business hours, upon thirty (30) days' notice, but not more than once per calendar year, have reasonable access to and the right to examine, audit, excerpt, transcribe, and copy, on Contractor's premises, any of the Contractor's records and computer data storage media involving transactions directly pertinent to this Contract, subject to Section 19 above. If the material is on computer data storage media, the Contractor shall provide copies of the data storage media or a computer printout of such if the State so requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the Contractor shall not exceed the actual cost to the Contractor. This provision shall survive the termination, cancellation, or expiration of this Contract.
- 41. BREACH NOT WAIVER.** A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or Default other than the event or Default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under this Contract shall not constitute a waiver of Default, evidence of proper Contractor performance, or Acceptance of any defective item or work furnished by the Contractor.
- 42. ASSIGNMENT OF CONTRACT.** The Contractor shall provide prior written notice to the State before assigning this Contract to another party. Except with respect to assignments arising out of operation of law due to a merger or acquisition of the Contractor, the State reserves the right to withhold approval of any such assignment. The terms and conditions of this Contract as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties.
- 43. SEVERABILITY.** If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.
- 44. CONTRACT DISPUTE RESOLUTION.** In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's Head of Government Banking and the equivalent executive authority within the Contracting Agency, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.
- (a) No Termination or Suspension of Services: If any problem or dispute arises between the parties, in no event nor for any reason and unless and until authorized by a court of competent jurisdiction, shall Contractor interrupt the performance of the Services or any other obligation hereunder, disable any equipment used in the Services, or perform any other action that prevents, slows down, or reduces in any way the performance of the

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Services or the State's ability to conduct its business, except Elavon may exercise the rights provided to it in the Elavon Agreement.

- 45. NO GUARANTEE OF QUANTITY.** The State may obtain related Deliverables and Services from other sources during the term of this Contract. The State makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Deliverables or Services will be procured through this Contract.
- 46. TERMINATION OF PURCHASE ORDER.** The State may terminate a specific Purchase Order issued under this Contract if it determines that the Contractor is unable to render the Services or provide the Deliverables required in a timely manner, in order to meet the business needs of the State.
- 47. FORCE MAJEURE.** Neither party shall be in Default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.
- 48. TIME IS OF THE ESSENCE.** Timely provision of Services or Deliverables required under this Contract shall be of the essence of the Contract, including the provision of Services or Deliverables within the time agreed or on a date specified.
- 49. NO AGENCY RELATIONSHIP.** The Contractor shall not take any action, or make any omission, that may imply, or cause others reasonably to infer that the Contractor is acting as the State's agent in any matter or in any way not expressly authorized by this Contract.
- 50. DISCLOSURE.** If a state public official (as defined in §19.42 (14) of the Wisconsin Statutes) or an organization in which a state public official holds at least a 10% interest is or becomes a party to this Agreement, it shall be voidable by the State unless appropriate disclosure is made to the State of Wisconsin Government Accountability Board, 212 East Washington Avenue, Madison, Wisconsin 53703 (Telephone 608-266-8005).
- 51. OTHER DOCUMENTS.** The parties to this Contract understand and agree that standard forms or templates may be used for various purposes, including but not limited to, purchase orders, invoices, quotes, 'Website Terms and/or Conditions' or 'click to accept' agreement(s), some of which may contain boilerplate or standard terms and conditions ("Other Documents"). However, any use of Other Documents are not a part of this Contract (unless specifically referenced in the Contract) and are deemed to be for administrative convenience only and the terms therein are of no effect, have no force of law and do not modify the terms of this Contract. The parties acknowledge that some third party equipment providers may require the State to agree to their terms and conditions for use of their equipment or software, and the State will negotiate such terms with those providers directly.