

## Focus Card Agreement with County of San Bernardino and U.S. Bank

Whereas, U.S. Bank is a member of National Associations and issues U.S. Bank-branded and National Association-branded debit cards, check cards, prepaid debit cards and other banking cards to cardholders; and

County is an entity seeking to provide payroll or other funds to its employees or other recipients on a prepaid debit card; and

Client wishes to participate in a program involving the issuance of National Association-branded prepaid debit cards to eligible Cardholders; and

U.S. Bank is willing to issue such cards and perform related services to support such a program, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants hereinafter set forth, and payments provided for in this Agreement, the parties agree as follows:

This Prepaid Debit Card Agreement (this "Agreement") is entered into effective July 1, 2014 (the "Effective Date") by and between U.S. Bank National Association, a national banking association ("U.S. Bank"), with its principal place of business at 425 Walnut Street, Cincinnati, OH 45202 and The County of San Bernardino, a political subdivision of the State of California (the "County"), with its principal place of business at 222 W. Hospitality Lane, 3<sup>rd</sup> Floor, San Bernardino, CA 92415-0018.

### ARTICLE I. DEFINITIONS

For the purposes of this Agreement and except as otherwise specifically set forth in this Agreement, the following terms are defined as follows:

"Account" means a prepaid debit card account funded through periodic deposits made by County and accessible through the use of a prepaid debit card issued and serviced by U.S. Bank.

"Account Representative(s)" has the meaning provided in Section 5.4.

"Affiliate" means (i) with respect to County, any person or entity that directly or indirectly Controls, is Controlled by, or is under common Control with County, and (ii) with respect to U.S. Bank, any person or entity that directly or indirectly Controls, is Controlled by, or is under common Control with U.S. Bank, as of the date of this Agreement or after.

"Business Day" means any day (other than a Saturday, Sunday or Federal legal holiday) on which national banks are permitted to be open in the United States.

"Card" means a prepaid debit product which operates off of a centralized funds pool with an individual account set up for each participating Cardholder and which bears U.S. Bank Marks and Visa Service Marks or U.S. Bank Marks and MasterCard Marks.

"Cardholder" means a person or department who receives Disbursements from County and who requests and receives a Card.

"County Marks" means County's name, as well as any other trademark or service mark owned by County.

"Confidential Information" has the meaning set forth in Article X.

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“Control” means the possession, direct or indirect, of the power to vote 50% or more of the securities that have ordinary voting power for the election of directors of any entity, or to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities or by contract or otherwise.

“Disbursement” means funds deposited onto the Card by County.

“Load Value” means the dollar value to be loaded onto a Cardholder’s Account based on the Cardholder’s Disbursement amount, as determined by County.

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

“National Associations” means Visa U.S.A., Inc., Visa International, Inc., and Plus System, Inc.; or MasterCard International Inc., Maestro and Cirrus System, Inc.

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

“Program Launch” means the date mutually agreed to by the parties in writing that County commences offering the Program to Cardholders.

“Requirements of Law” means with respect to any party hereto, 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 such party or to which such party is subject, whether federal, state, county, local or otherwise (including, without limitation, usury laws, the following federal laws and regulations: the Truth-In-Lending Act, the Fair Debt Collection Practices Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Bank Secrecy Act, the Electronic Funds Transfer Act, the National Bank Act, the Gramm-Leach-Bliley Act, the USA PATRIOT Act, the Sarbanes-Oxley Act, the FACT Act, the CARD Act, the Dodd-Frank Act, Section 5 of the Federal Trade Commission Act (UDAP), Regulations B, E, P, and Z of the Consumer Financial Protection Bureau, and Regulation II of Board of Governors of the Federal Reserve System).

“Subsidiary” means any corporation or other entity of which securities or other ownership interests having ordinary voting power for the election of a majority of the board of directors or other persons performing similar functions are owned by a party either directly or through one or more Subsidiaries.

“U.S. Bank Marks” means 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 Service Marks” means the mark “Visa”, the Three Bands Design and all other service marks owned by Visa U.S.A. or Visa International, Inc.

Other terms defined in this Agreement will have the meanings set forth in the contexts of use.

## ARTICLE II. PROGRAM LAUNCH

2.1 Prior to Program Launch. To help the federal government of the United States of America fight the funding of terrorism and money laundering activities, federal law of the United States of America requires all financial institutions to obtain, verify and record information that identifies each person or entity that opens an account. Accordingly, prior to Program Launch, County 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 identify County prior to establishing an Account funded by County. U.S. Bank reserves the right to require that County promptly provide to U.S. Bank sufficient identification documents upon request in connection with USA PATRIOT Act compliance.

2.2 Execution of Program Launch. U.S. Bank and County agree to work together in good faith and use their best efforts to facilitate the launch of the Program as established according to the terms of this Agreement.

## ARTICLE III. USE OF MARKS AND LOGOS

3.1 Use of County Marks. County hereby grants to U.S. Bank a non-exclusive, non-transferable limited license to use any County Marks in connection with the Program, which uses include, without limitation, , advertising and promotional and public relations materials, 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 County, whose written approval will not be unreasonably withheld or delayed, U.S. Bank may use County Marks for other promotional purposes in connection with the Program. County shall be deemed to have approved the proposed use if County fails to disapprove U.S. Bank's request in writing within fifteen (15) Business Days following the date when U.S. Bank's written request for approval was made to County. U.S. Bank hereby accepts such license subject to the terms and conditions provided herein. This limited license will terminate upon termination of this Agreement; provided, that U.S. Bank will be afforded six (6) months following such termination to replace all documentation relating to the Program with documentation that does not bear County Marks in connection with the orderly termination of the Program. U.S. Bank acknowledges that County or its Affiliates are the owners of the County Marks, and U.S. Bank agrees that it will have no right, title or interest in the County Marks other than the license specifically granted in this Section 3.1, and U.S. Bank will do nothing inconsistent with this ownership.

3.2 Use of U.S. Bank Marks. U.S. Bank hereby grants to County a non-exclusive non-transferable limited license to use the U.S. Bank Marks solely in connection with the Program. County agrees 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, whose consent will not be unreasonably withheld or delayed if the proposed use thereof by County 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 County's request in writing within fifteen (15) Business Days following the date when written request for approval was made to U.S. Bank by County. County hereby accepts such license subject to the terms and conditions provided herein. This limited license terminates upon termination of this Agreement. County acknowledges that U.S. Bancorp and/or one or more of its Subsidiaries is the owner of U.S. Bank Marks, and County agrees that it will not have any right, title or interest in the U.S. Bank Marks other than the license specifically granted in this Section 3.2, and County will not do anything inconsistent with such ownership.

3.3 Third Persons' Marks. County has no right, title or interest in and will not use the Visa Service Marks or MasterCard Marks without specific prior written consent of the owner of the mark.

3.4 Additional Mark Provisions. Without limitation of the foregoing, each party hereto may use the other party's name and marks (to the extent such use is permitted hereunder) 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, will not use any other trademark or service mark in combination with such

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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.

3.5 Trade Secrets. The U.S. Bank Processing System (the "System") consists of computer programs, procedures, forms and other related materials that have been acquired or developed by U.S. Bank through the expenditure of a great amount of time, effort and money. County acknowledges that the foregoing are trade secrets which are of great value to U.S. Bank, and disclosure to others of any of the programs, procedures, forms and other related materials with respect to the System will result in loss and irreparable damage to U.S. Bank. County therefore agrees not to disclose to others any information regarding the System, except as required in the proper performance of this Agreement. All specifications, tapes, programs and other related materials developed in connection with this Agreement will be the property of U.S. Bank and shall be destroyed or returned to U.S. Bank upon the termination of this Agreement.

## ARTICLE IV. RESPONSIBILITIES OF U.S. BANK

### 4.1 Card Issuance.

(a) Beginning no later than the Program Launch, County will begin to offer to employees the option of receiving a prepaid debit card as a means of receiving their net payroll deposits. U.S. Bank will offer Cards to employees following County's receipt of employee requests for the issuance of a Card and following U.S. Bank's review and processing in accordance with U.S. Bank's procedures and criteria. Such procedures and criteria will be in U.S. Bank's sole control and discretion. U.S. Bank will issue a Card to an employee who has requested a Card no later than two (2) Business Days following U.S. Bank's receipt of complete and accurate information from County.

(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 Load Value will be rejected and a report will be generated confirming such rejection. U.S. Bank will notify County in writing of any actions taken pursuant to this Section within ten (10) Business Days.

### 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 National Associations.

(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 Cards issued to Cardholders.

### 4.3 Design of Statements and Card Carriers.

(a) U.S. Bank will produce Account statements and Card carriers, subject to Requirements of Law and the regulations of applicable National Associations using a design created by U.S. Bank.

(b) U.S. Bank will bear all costs and expenses for the design, printing and production of the Account statements and Card carriers.

(c) U.S. Bank is responsible for the provision to Cardholders of monthly Account statements that will contain information relating to transactions performed with Cards. U.S. Bank may in its sole discretion provide either electronic statements available on the internet or paper statements.

**4.4 U.S. Bank Operational Responsibilities.** U.S. Bank shall administer and be responsible for all operational aspects of the Program as set forth in Exhibit A and including without limitation, Account set-up, Card plastic issuance, statement rendering, Account reconciliation, Cardholder telephone and internet inquiries, chargeback processing, Disbursement deposit reload processing, interaction with the National Association's system, computer processing, and collections. U.S. Bank is not responsible for any determination of the amount to be paid to each Cardholder with respect to such Cardholder's Disbursement amount.

**4.5 U.S. Bank Customer Service.** U.S. Bank will maintain a trained staff to cooperate with County in servicing of Cardholder inquiries and complaints arising in connection with Cards and other aspects of the Program, in accordance with U.S. Bank's established customer service procedures and Requirements of Law.

**4.6 Additional Card Features.** Without limiting the generality of any other provision of this Agreement, U.S. Bank reserves the right to offer Cardholders optional, additional U.S. Bank-fulfilled and/or third-party-fulfilled features and functionalities tied to the Card and Accounts. These features and functionalities may include, without limitation, savings sub-account, reward features, reload networks, government-benefit-interface, remote check capture and bill payment features. Cardholders may be charged fees in connection with such optional features and functionalities, in addition to other fees described in this Agreement.

## ARTICLE V. RESPONSIBILITIES OF COUNTY

In addition to its other responsibilities set forth in this Agreement and Exhibit A, County shall have the following responsibilities in furtherance of the Program:

**5.1 Enrollment of Employees.** County will ensure that all prospective cardholders and Cardholders, other than Cardholders of companion Cards, enrolled in the Program are bona fide employees of County. County understands that all prospective cardholders or Cardholders that do not pass the initial or ongoing verification and OFAC screening will be denied a Card. The denial of a Card to an employee under any circumstances may not be a cause for termination of this Agreement by County. County understands that U.S. Bank must collect identifying information and verify the identities of all prospective cardholders as required by the USA PATRIOT Act and any other government or industry regulatory requirements. In addition, any prospective cardholder or Cardholder may be required to provide additional documentation to U.S. Bank as required by the USA PATRIOT Act. In the event U.S. Bank requires additional documentation from a prospective cardholder or Cardholder as required by the USA PATRIOT Act, U.S. Bank is required to restrict access to the card under the guidelines of the USA PATRIOT Act. To remove the restricted access, the prospective cardholder or Cardholder must provide, through a means acceptable to U.S. Bank, a copy of all requested documentation to U.S. Bank. Once the prospective cardholder or Cardholder provides the required documentation, the restricted status will be removed by U.S. Bank.

**5.2 County Marketing Responsibilities.** County will arrange for and coordinate the marketing and promotion of the availability of Cards to its employees, through break room posters, take-one brochures and other means available. County will not distribute any such marketing or promotional material unless such material has been reviewed and approved by U.S. Bank prior to distribution to its employees.

**5.3 Transmission of Load Values and Account Representatives.** County will transmit to U.S. Bank the amount to be loaded onto each Cardholder's Account via the ACH system, with amounts sufficient to cover each Cardholder's determined net payroll deposit amount. Such transmission will be made only by authorized County employees ("Account Representatives"). County agrees to provide complete and accurate information to U.S.

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Bank. The Account Representatives will be responsible for the initial transmission of Load Values and any changes to the amount to be loaded in to any Account after the initial transmission of the determined amount for a given Account. County will require its employees who are Cardholders to complete and sign a deposit authorization form and County will retain the form during the period County is transmitting loads to Cardholders.

5.4 Compensation to U.S. Bank. U.S. Bank will charge Cardholders according to the fee schedule set forth in Exhibit B. U.S. Bank reserves the right to change the Cardholder fee schedule at its sole discretion and will provide thirty (30) days' prior written notice to County and Cardholders.

## ARTICLE VI. PROGRAM AND CARD POLICIES AND ATTRIBUTES

U.S. Bank has the authority to control all policies, activities and decisions with respect to all Cards and Accounts, including without limitation all fees and charges, customer service, Card issuance and cancellation, debt collection, access to automated teller machines, and issuance of personal identification numbers, and County shall comply with such all U.S. Bank directives pursuant hereto. County shall not be liable for fraudulent activities on the part of Cardholders except where such activity is due to negligence or willful misconduct by County agents or employees. County will, in a timely manner, refer to U.S. Bank any and all inquiries regarding any aspect of a Card or Account, and any other inquiries regarding any other aspect of U.S. Bank's prepaid debit card operations.

## ARTICLE VII. EXCLUSIVITY

U.S. Bank has the exclusive right to issue prepaid debit cards for the purpose of providing Disbursements to County's employees. County agrees that, during the term of this Agreement, County shall not be a party to any agreement with any issuer of payroll cards, prepaid cards, or debit cards for the purpose of disbursing pay to employees or the functional equivalent thereof. Further, County agrees, during the term of this Agreement, not to share its employee list with any third party (except for third parties or vendors designated by U.S. Bank) for the purpose of soliciting employees for a payroll card, prepaid card, or debit card or related account. County covenants that it will ensure that any Subsidiary or Affiliate of County complies with this Article 7.

## ARTICLE VIII. INDEMNIFICATION

8.1 Indemnification Obligations. From and after the date of this Agreement, each party (the "Indemnifying Party") shall indemnify, defend and hold the other party (the "Indemnified Party"), all its corporate parents, subsidiaries and Affiliates and all of its and their employees, subcontractors, agents, officers, directors and shareholders harmless against: (a) any and all out-of-pocket expenses or losses, liabilities, damages, costs or other direct expenses or claims or counterclaims of third persons or entities directly related or attributable to (i) the Indemnifying Party's or its agent's or employee's violation (or act causing the other party to be in violation) of any state or federal law or regulation, or such parties' willful misconduct; (ii) the Indemnifying Party's breach of any covenant or warranty made by the Indemnifying Party in this Agreement; (iii) any material misrepresentation of Indemnifying Party in this Agreement or any material misrepresentation in or omission from any document, certificate or information furnished or to be furnished by Indemnifying Party under this Agreement; and (iv) any products or services offered, provided, manufactured, marketed, distributed, advertised, promoted or issued by or on behalf of Indemnifying Party (including without limitation the County Cards) or based upon use of the licensed marks by or on behalf of Indemnifying Party; (b) any losses due to any fraudulent activity on the part of any employee or agent of Indemnifying Party; (c) any claims brought by any Indemnified Party's customer, Cardholder, employee or other third party based upon Indemnifying Party's failure to make any payment to such customer, Cardholder, employee or other third party; and (d) any and all actions, suits, proceedings, demands, assessments, judgments, costs and expenses, and any reasonable attorneys' fees, consultant's fees or court costs incident to any of the foregoing, except for any loss due to the gross negligence or willful misconduct of the Indemnified Party or its agents or employees.

8.2 Indemnification Procedures. The Indemnified Party will notify the Indemnifying Party in a reasonably prompt manner of any claim that is asserted and each action or suit that is filed or served (any of the foregoing being a "Claim") for which the Indemnified Party is seeking indemnification pursuant to this Article VIII. The Indemnifying Party may thereafter assume control of such Claim, provided, that the Indemnified Party will have the right to participate in the defense or settlement of such Claim. Neither the Indemnifying Party nor the Indemnified Party may settle such Claim or consent to any judgment with respect thereto without the consent of the other party hereto (which consent may not be unreasonably withheld or delayed). The Indemnified Party will provide the Indemnifying Party with a reasonable amount of assistance in connection with defending or settling any such Claim. In the event the County and/or U.S. Bank are determined to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this agreement, the County and/or U.S. Bank shall indemnify the other to the extent of its comparative fault.

## ARTICLE IX. REPRESENTATIONS AND WARRANTIES

9.1. Obligations. As of the date of this Agreement, U.S. Bank and County represent and warrant to each other as follows as to itself:

(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, Requirement of 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 Requirements of Law applicable to its activities under this Agreement (including such Requirements of Law brought to one party's attention by the other). Each party understands and agrees that it shall be responsible for its own compliance with Requirements of Law and the costs associated therewith. County has the sole responsibility to comply with all payroll/employment Requirements of Law and to determine whether the intended use of the Program, including County's selection of system options and programming to dispense funds or payments, is an appropriate way to dispense such funds, and to determine whether there exists any Requirement of Law that prohibits, affects or otherwise controls the disbursement of such funds using a prepaid or stored value card. County shall, within three (3) 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: (1) complete and accurate responses to any inquiries regarding or related to the Program, and (2) access to all policies, procedures and records retained by the County evidencing the County's compliance with Requirements of Law. If a deficiency is noted or determined, County must promptly correct the identified deficiency and also provide to U.S. Bank, or its independent auditors, and/or any government agency with authority over 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 breach of County's obligations under this section. For avoidance of doubt, in the event that County reasonably believes that U.S. Bank's operation of the Program would result in County's violation of this Section 9.2, County may exercise its rights under Section 11.5 below, provided further that the parties shall promptly discuss alternatives to County exercising such rights.

## ARTICLE X. 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 about or proprietary material of the other party, including, but not limited to: such party's marketing philosophy and objectives, promotions, financial results, technological developments, customer names and addresses and other customer identification information, or prepaid debit card account numbers or account information and other similar confidential and/or proprietary information and materials (hereinafter "Confidential Information"). 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, the terms of this Agreement and the names, addresses, telephone numbers and other Cardholder identification and Account information of Cardholders and Account numbers, and the information provided to County pursuant to this Agreement, are Confidential Information belonging to U.S. Bank.

10.2 Exclusions. Except for Cardholder Data (as defined below), 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 person and shall exercise all necessary precautions to prevent access to such Confidential Information by any third person 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 hereunder. Each party shall inform those agents and employees, officers and employees of its Subsidiaries and Affiliates of the confidentiality obligations hereunder and require their compliance with such obligations. Each party shall not use such Confidential Information for any purpose whatsoever other than those specifically contemplated herein.

10.4 Confidentiality of Agreement Terms. Neither party will disclose to any person (other than as expressly permitted pursuant to this Article X) the terms or conditions of this Agreement or any amendments, supplements or modifications hereto or the business relationship between U.S. Bank and County without the prior written consent of the other party and except as necessary to enforce this Agreement or obtain damages or other relief hereunder. The term "person" as used in this Agreement includes, without limitation, any corporation, company, group, partnership, other entity or individual. County 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 their 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 hereunder. 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. Notwithstanding anything to the contrary in this Agreement, if any party is compelled by Requirements of Law (including, without limitation, the California Public Records Act), 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, to the extent allowed under Requirements of Law, 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.

**10.7 Data Security Policy and Procedures.** Both parties shall establish data security policies and procedures to ensure compliance with this section and that are designed to (a) ensure the security and confidentiality of Cardholder Data; (b) protect against any anticipated threats or hazards to the security or integrity of Cardholder Data; and (c) protect against unauthorized access to or uses of Cardholder Data. In the event a party becomes aware of any unauthorized access to any sensitive Cardholder Data, such party shall take appropriate actions to address such unauthorized access, including but not limited to promptly notifying the other party of any such incident. The term "Cardholder Data" means personally identifiable data about Cardholders (i.e. the plastic Card number, Card expiration date in combination with the plastic Card number, Cardholder name in combination with the plastic Card number, track data/magnetic stripe, verification numbers CVV2, CVC2, CID, and PIN Block).

(a) Each party shall at all times comply with the Payment Card Industry Data Security Standard Requirements ("PCI Data Security Standard Requirements") for Cardholder Data, as they may be amended from time to time. The current PCI Data Security Standard Requirements are available from National Association. A party's failure to comply with PCI Data Security Standard Requirements may result in fines and penalties. Each party is fully liable for and shall indemnify, defend and hold the other party harmless from any fines or penalties imposed on such party due to the indemnifying party's lack of compliance with PCI Data Security Standard Requirements.

(b) Cardholder Data may only be used for enrollment or as required by Requirements of Law. Each party shall maintain appropriate business continuity procedures and systems to ensure availability and security of Cardholder Data in the event of a disruption, disaster or failure of such party's primary data systems.

(c) If there is a breach or intrusion of, or otherwise unauthorized access to, Cardholder Data, the party that first becomes aware of such incident shall immediately notify the other party, in the manner required by the PCI Data Security Standard Requirements, and provide the National Association and its respective designees access to such party's facilities and all pertinent records to conduct an audit of such party's compliance with the PCI Data Security Standard Requirements. Such party shall fully cooperate with any audits of its facilities and records provided for in this paragraph.

(d) The parties' compliance with the PCI Data Security Standard Requirements expressly survives termination or expiration of this Agreement. Violations of the PCI Data Security Standard Requirements may

result in fines. Each party shall indemnify, defend and hold the other party harmless from any fines resulting from the indemnifying party's violation of the PCI Data Security Standard Requirements. Destruction of Cardholder Data must be completed in accordance with the confidentiality provisions of this Agreement.

10.8 Monitoring. County must permit U.S. Bank to monitor and/or audit County's compliance with this Section during regular business hours upon not less than 48 hours' notice to County and provide U.S. Bank copies of audits and system test results acquired by County in relation to the data security policies and procedures designed to meet the requirements set forth above.

## ARTICLE XI. TERM AND TERMINATION

11.1 Term. The term of this Agreement is three (3) years from the Program Launch date (the "Initial Term"). Unless either party gives the other party sixty (60) days written notice prior to the end of the Initial Term, the term of the Program will be automatically extended for successive one (1) year periods (each, a "Renewal Term"). During any Renewal Term, either party may elect to terminate the Agreement by giving written notice ninety (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, if in compliance with its obligations under this Agreement or excused from compliance hereunder, may terminate this Agreement in the event of excusable delay by the other party in the performance of its obligations pursuant to Section 14.14, which delay continues for sixty (60) consecutive days.

11.3 Termination for Material Breach. Either party, if in compliance with its obligations under this Agreement or excused from compliance hereunder may terminate this Agreement if the other party is in default under this Agreement and such default is deemed material by the non-defaulting party in its reasonable judgment. In the event either party wishes to terminate this Agreement for the reasons specified in this Section 11.3, such party ("Sending Party") shall give written notice ("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 forty-five (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 forty-five (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 forty-five (45) day period and the Sending Party does not at the end of such forty-five (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 ("Termination Notice") stating that this Agreement is terminated under the provisions of this Section 11.3. In such event, termination shall be effective upon receipt of the Termination Notice in accordance with Section 14.7.

11.4 Termination for Insolvency; Unique Services. This is an agreement for certain unique services. Either party if in compliance with its obligations hereunder, may 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 thirty (30) days thereafter.

11.5 Termination by Reason of Regulation. Either party may terminate this Agreement or curtail or restrict its operations hereunder (including, without limitation, ceasing the Program in particular jurisdictions) at any

time with fifteen (15) days notice to the other without liability, except for liabilities accrued prior to the termination, upon the issuance of any order, rule or regulation by any regulatory agency, National Association, or administrative body or the decision or order of any court of competent jurisdiction that is controlling or binding on the notifying Party prohibiting any or all of the services contemplated in this Agreement, or if such order, rule or regulation restricts the provision of such services so as to make the continued provision thereof unprofitable or undesirable, or will be unduly restrictive to the business of the notifying Party or will require burdensome capital contributions or expenditures.

**11.6 Termination for Risk.** U.S. Bank may terminate this Agreement or curtail or restrict its operations hereunder (including, without limitation, ceasing the Program in particular jurisdictions) at any time with fifteen (15) days notice to County without liability, except for liabilities accrued prior to the termination, upon U.S. Bank's determination, in its sole discretion, that County's activities relating to the Program may subject U.S. Bank and/or County to legal, regulatory and/or reputational risk. The County may terminate this agreement at any time with fifteen (15) days' notice to U.S. Bank without liability, in its sole discretion if it finds that U.S. Bank's activities relating to the Program may subject County and/or U.S. Bank to legal, regulatory and/or reputational risk.

**11.7 Card Volume Rights.** In the event that on any year-anniversary of this Agreement the total number of active Cards is less than 200, U.S. Bank shall have the right to do any one of the following: (i) terminate this Agreement with fifteen (15) days notice to County, provided such notice is given within thirty (30) days of the applicable year-anniversary of this Agreement or (ii) require that County make such enhancements to its efforts to market the Program as U.S. Bank directs.

## ARTICLE XII. 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 names, addresses, telephone numbers and other Cardholder and Account identifying information. 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 Requirements of 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. U.S. Bank will have the use of County Marks as provided in Section 3.1 for six (6) months following termination of this Agreement to provide U.S. Bank sufficient time to replace all statements and other documentation relating to the Program.

**12.3 Effect of Termination.** If this Agreement is terminated (i) by U.S. Bank pursuant to Section 11.3 or 11.4 or (ii) by County pursuant to Section 11.5, County agrees that it will, for what would have been the remaining term of the Agreement had it not been terminated, 1) not contract with any third party prepaid debit card issuer who is a competitor of U.S. Bank or introduce any similar or competing service to employees, and 2) take no action that may directly or indirectly cause or encourage employees to cancel their Card, or replace their Card with a competing product.

## ARTICLE XIII. DAMAGES AND LIMITATION 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 Requirements of 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, including without limitation reasonable attorneys' fees and expenses, court costs and the fees and expenses of consultants incurred in

connection with any judicial or arbitration proceedings relating to such breach. It is understood and agreed that money damages would not be a sufficient remedy for any breach of Article X of this Agreement by any party or by any other person or entity receiving Confidential Information pursuant to Article X 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.

**13.2 Limitation of Liability.** NEITHER PARTY MAY ASSERT A CLAIM AGAINST THE OTHER PARTY FOUR YEARS FROM THE DATE THE CLAIMING PARTY HAS OR SHOULD HAVE ACTUAL KNOWLEDGE OF THE FACTS GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, ADDITIONAL, OR PUNITIVE DAMAGES OF THE OTHER PARTY ARISING OUT OF PERFORMANCE OR NONPERFORMANCE UNDER, OR OTHERWISE ARISING IN CONNECTION WITH, THIS AGREEMENT.

#### **ARTICLE XIV. 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. U.S. Bank has no relationship to County other than as set forth in this Section 14.1 and this Agreement. County has no right to bind or obligate U.S. Bank in any manner. U.S. Bank has no right to bind or obligate County in any manner. Nothing in this Agreement is intended to create, nor should anything herein be construed as creating, a partnership, joint venture or agency relationship between U.S. Bank and County.

**14.2 Use of Third Party Service Providers.** U.S. Bank may use any subcontractor or vendor to perform its obligations under this Agreement, but such use may not result in the direct control of Program administration residing outside U.S. Bank. U.S. Bank will provide written notice to County of any change in a subcontractor or vendor that has an impact on County's obligations and responsibilities under this Agreement.

**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 assign or delegate this Agreement and any of its rights or obligations hereunder to any Affiliate, Subsidiary, corporate parent, successor by merger, or successor-in-interest which has the authority to operate the Program in the manner operated by U.S. Bank under this Agreement without prior notice to or consent of County.

**14.4 Successor and Assigns.** This Agreement will be binding upon and inure to the benefits of the parties' respective successors and assigns subject to the terms of Section 14.3 above.

**14.5 Survival of Obligations, Rights and Remedies.** The obligations and remedies of the parties set forth in Articles III, VII, VIII, X, XII, XIII, and XIV of this Agreement survive termination of this Agreement.

**14.6 Governing Law and Forum.** This Agreement shall 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 in federal or state court in California. Each party waives any claim that a legal proceeding brought in accordance with this Section 14.6 has been brought in an inconvenient forum or that venue of that proceeding is improper.

**14.7 Notices.** Any notice required or permitted by this Agreement to be given to either party by the other, will be deemed served, given and received when personally delivered to such party, or in lieu of such personal service, when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or sent by commercial courier, prepaid, and received, or upon expiration of three (3) days from the date of mailing or sending, whichever is earlier, addressed to the recipient at the address shown below for the

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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 14.7:

If to County:

County of San Bernardino  
Attn: Auditor-Controller/Treasurer/Tax Collector  
Central Payroll Manager  
222 W. Hospitality Lane, 3<sup>rd</sup> Floor  
San Bernardino, CA 92415-0018

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

14.8 No Implied Waiver. No failure by either party to insist upon strict performance of any term or obligation set forth in this Agreement or to exercise any right or remedy under this Agreement, nor acceptance of full or partial performance during continuance of a default, will constitute a waiver of any such term, obligation, right or remedy, or a waiver of any such default, by the party entitled to rely upon such term or performance of such obligation, to assert such right or remedy, or to act upon such default.

14.9 Severability. Should any provision of this Agreement contravene any law, or valid regulation or rule of any regulatory agency or self-regulatory body having jurisdiction over either party hereto (including without limitation National Association rules) or should any provision of this Agreement otherwise be held invalid or unenforceable by a court or other body of competent jurisdiction, then each such provision will be automatically terminated and performance thereof by both parties waived, and all other provisions of this Agreement will nevertheless remain in full force and effect.

14.10 Amendments. Except as specifically provided elsewhere in this Agreement, no amendment to this Agreement will be effective or bind any party unless set forth in writing and signed by the duly authorized representatives of the parties.

14.11 Compliance with National Association Regulations. In connection with their performance hereunder, U.S. Bank and Client will comply with applicable regulations of the appropriate National Association as in effect from time to time. To the extent any provision of this Agreement conflicts with such regulations at any time, this Agreement will be deemed amended to conform to such regulations.

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

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. Section headings are intended only to assist in the organization of this Agreement and do not in any way limit or otherwise define the rights and liabilities of the parties.

14.14 Excusable Delays and Force Majeure. Any delay hereunder will be excused to the extent approved in writing by the parties. Any delay in the performance by either party hereto of its obligations hereunder will be

excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such party, including without limitation any act of God; any fire, flood or weather condition; any earthquake; any act of a public enemy, war, insurrection, riot, explosion or strike; provided, however, that written notice thereof must be given by such party to the other party within thirty (30) days after the occurrence of such cause or 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 "breaching" party in writing of the occurrence and nature of such breach. In such case, 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, the prevailing party will be entitled to reasonable 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 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 of accounts (the "Program Records") relating to the Program. 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 in Promotional Materials. Client agrees that in U.S. Bank's promotional materials for programs substantially similar to the Program, U.S. Bank may refer to Client as a party with whom U.S. Bank contracts for issuance of prepaid debit cards.

14.20 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. For purposes of execution and delivery, each party may rely upon the faxed signature of the other party.

Focus Card Agreement with County of San Bernardino and U.S. Bank

IN WITNESS WHEREOF, the parties have executed the Agreement in duplicate originals effective as of the day and year first stated above.

COUNTY OF SAN BERNARDINO

► \_\_\_\_\_  
Janice Rutherford, Chair, Board of Supervisors

Dated: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Laura H. Welch  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By \_\_\_\_\_  
*Deputy*

\_\_\_\_\_  
(Print or type name of corporation, company, contractor, etc.)

By \_\_\_\_\_  
(Authorized signature - sign in blue ink)

Name \_\_\_\_\_  
(Print or type name of person signing contract)

Title \_\_\_\_\_  
(Print or Type)

Dated: \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

## Focus Card Agreement with County of San Bernardino and U.S. Bank

### **Exhibit A Program Description**

#### **Core Elements**

The Program will have the following core elements:

- The Card will be National Association-branded, following all National Association “Prepaid Debit Card” regulations and program guidelines
- No general purchase restrictions placed on the Card (other than MCC block on online gambling)
- The Card will have ATM access at National Association-enabled ATMs
- The Card will have point-of-sale access through the National Association network
- The Card will carry U.S. Bank’s name and/or marks, but not Client’s name and/or marks

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

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

- Cardholder transactions and statements will be available via a designated web site
- 24/7 Voice Response Unit access to Cardholders will be available via a dedicated toll free telephone number. Core features will include: lost/stolen account reporting, remaining account balance, last load amount and recent transactions
- Live customer service agents will be available 24 hours per day, 7 days per week to service Cardholders via a dedicated toll free telephone number
- A program manager for the Program will be assigned at U.S. Bank

#### **Client Operational Responsibilities**

Client shall be specifically responsible for the following operational issues:

- Client will open all new Accounts via a secure URL or batch enrollment process
- Client will transmit Load Values as required to U.S. Bank or a designated third party
- A program manager for the Program will be assigned by Client

#### **Timing**

The targeted product rollout will be as follows:

- Contract execution between U.S. Bank and Client
- Product “Friendly User” Testing
- Program Launch

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**Exhibit B**  
**Program Pricing Schedule**

<b>Focus Card™ Fee Schedule</b>			
<b>Activity</b>	<b>Cost</b>		
<b>Monthly Account Maintenance</b>	Free		
<b>Purchases at Point-of-Sale (Domestic)</b>	Free		
<b>Cash Back with Purchases (Domestic)</b>	Free		
<b>ATM Transactions</b>	Cash Withdrawal U.S. Bank ATM MoneyPass® ATM Other ATM International ATM	Declined Withdrawal Free Free \$1.75 \$3.00	Balance Inquiry Free Free \$1.00 \$1.00
The owner of any Non-U.S. Bank or Non-MoneyPass ATM may assess an additional surcharge fee for any ATM transaction that you complete.			
<b>Teller Cash Withdrawal</b>	Free		
<b>Teller Cash Withdrawal Decline</b>	\$0.00		
<b>Customer Service</b>			
Automated Phone Service	Free		
Online	Free		
Live Phone Representative	Free		
<b>Text or Email Alerts*</b>	Free		
<b>Inactivity</b>	\$2.00 Per Month		
After 90 consecutive days. Not assessed if balance is \$0.00.			
<b>Monthly Paper Statement</b>	If requested – \$2.00		
<b>Card Replacement</b>			
Standard	\$5.00		
Expedited	\$15.00		
Overnight	\$25.00		
<b>ChekToday Convenience Checks</b> (If applicable to your program)			
Check Authorization	Free		
Check Order	Free		
Expedited Check Order	\$35.00		
Check Return	\$25.00		
Stop Payment	\$25.00		
Lost/Stolen Check	\$25.00		
Void Check	Free		
Check Reversal	\$25.00		
Check Copy	\$10.00		
<b>Foreign Transaction</b>	Up to 3% of transaction amount		
*Standard messaging charges apply through your mobile carrier and message frequency depends on account settings.			
<b>Transaction Limits</b>	<b>Count</b>	<b>Amount</b>	
Maximum Card Balance	N/A	\$40,000	
Purchases (includes cash back)	20 per day	\$4,000 per day	
Cash Loads (If applicable to your program)	3 per day	\$950 per day	
Teller Cash Withdrawal	5 per day	\$2,525 per day	

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ATM Withdrawal	5 per day	\$1,525 per day \$1,025 max transaction
Loads or Deposits	10 per day	\$20,000 per day
Signature-based POS returns	4 per day	N/A
Pending ACH Credits	5 per day	\$5,000 per day
ACH Loads	5 per day	\$20,000 per day
We reserve the right to change the above fee schedule upon written notification to you as required by applicable law.		