

**STATES' UNCLAIMED RETIREMENT CLEARING HOUSE (SURCH)
PARTICIPATING STATE AGREEMENT**

This States' Unclaimed Retirement Clearing House Participating State Agreement ("Agreement") is entered into as of the date of the last signature affixed hereto, by and between the National Association of State Treasurers, Inc. ("NAST"), a 501(c)(6) organization incorporated in the District of Columbia, whose principal place of business is: 1201 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20004, and the **State of Washington**, acting by and through the Washington Department of Revenue (the "State"), located at 6400 Linderson Way SW, Tumwater, WA 98501 (at times, NAST and the State may individually be referred to herein as a "Party" and collectively, the "Parties").

In consideration of the covenants herein contained, NAST and the State agree as follows:

1. Background. In response to the November 2019 report from the U.S. Department of Labor (the "DOL"), through its Advisory Council on Employee Welfare and Pension Benefit Plans (the "Council"), NAST issued a Request for Proposals dated July 31, 2020 (the "RFP") seeking a contractor to develop and host a website, provide an internet-based unclaimed property reporting system, and perform administrative services associated with NAST's establishment of a national clearing house, the States' Unclaimed Retirement Clearing House (hereinafter, "SURCH"), for use by private sector retirement plan administrators (individual a "Plan" and collectively, the "Plans") to voluntarily transfer uncashed retirement distributions (including specifically, ERISA checks) to state unclaimed property offices. After evaluating all RFP responses, Kelmar Associates, LLC was selected as the successful bidder to serve as the "SURCH Administrator". The term "SURCH Administrator" shall refer not only to the successful bidder but to any and all successor contractors engaged by NAST to perform the services described in the RFP. A copy of the Professional Services Contract with the present SURCH Administrator is attached hereto and incorporated herein by reference at **Exhibit A**. As noted therein, the State, as a participating state in SURCH, is intended, in part, to be a third-party beneficiary to said contract.

In addition to procuring the services of a SURCH Administrator, NAST also identified US Bank National Association, member Federal Deposit Insurance Corporation ("FDIC"), as a Third-Party Banking Custodian (the "TPB"), to provide temporary custodial services in connection with SURCH and the collection and remittance of funds reported by the Plans to states participating in SURCH net of all service fees due to NAST. A copy of the Professional Services Contract with US Bank is attached hereto and incorporated herein by reference at **Exhibit B**.

2. SURCH Contractors. Though NAST has carefully selected the contractors identified in Section 1 and entered into the service contracts attached hereto as **Exhibit A** and **Exhibit B**, prior to transitioning services to the successor contractor, NAST shall notify the State of its decision and provide the State with a copy of the new service agreement with the successor contractor. Should the State find the successor contractor arrangement unsatisfactory, the State may immediately withdraw from SURCH and terminate this Agreement by providing written notice to NAST in accordance with Section 15.9. NAST acknowledges and agrees that it shall be responsible for the acts and/or omissions of its contractors engaged to perform services on its behalf in connection with SURCH.

3. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions under which the State shall participate in SURCH.

4. **Term of Agreement.** This Agreement shall take effect upon execution by all Parties (“Effective Date”) and shall remain in effect for a period of three (3) years, beginning from the Effective Date. This Agreement may be extended for one (1) additional three (3) year period by mutual agreement of the Parties in writing and subject to required approvals. If work in connection with the State’s unclaimed property report(s) is commenced during the term of the Agreement but extends beyond the time for performance, then NAST, through its SURCH Administrator and TPB, shall complete the processing of the report(s) and delivery of property to the State, and NAST shall be compensated according to the terms and conditions of this Agreement.

5. **Responsibilities of NAST.** Throughout the term of this Agreement, and any extension thereof, NAST, on its own accord or through its designated SURCH contractors (including, the SURCH Administrator and the TPB), shall be responsible for the following:

- A. Advocating before the DOL to obtain the agency’s approval of state custody of uncashed private sector retirement plan distribution checks (the “Plan Checks”), assist in the drafting of administrative regulations to effectuate such approval, and seek broadened state participation in resolving unclaimed property issues involving the Plans;
- B. Providing an internet-based, central clearinghouse system (the “System”) for the reporting and processing of Plan Checks due and owing to the State and managing the SURCH Administrator. Fees associated with the SURCH Administrator shall remain the responsibility of NAST and shall be included in the compensation paid by the State thereto;
- C. Generating reports of unclaimed Plan Checks due and owing to the State, and maintaining a permanent archive of all Plan Checks so reported;
- D. Delivering customer service to the Plans and providing guidance to address reporting questions and/or concerns;
- E. Maintaining a Third-Party Banking Custodian (the “TPB”) which shall be used to collect and subsequently remit unclaimed property to the State net of all service fees due to NAST as set forth in Section 10 below. Fees associated with the TPB shall remain the responsibility of NAST and shall be included in the compensation paid by the State thereto.
- F. Facilitating communication between the State and the SURCH Administrator concerning the collection, processing, and reporting of information pertaining to unclaimed retirement distributions from the Plans inclusive of ensuring delivery to the State of a monthly work in progress report identifying all report processing performed by the SURCH Administrator for the benefit of the State. To this end, the State shall be provided with a designated contact for the SURCH Administrator to whom the State may correspond directly.

Commented [WH(1)]: DOL in this document is the US Dept of Labor, not the Wa State Dept of Licensing.

- G. Facilitating communication between the State and the TPB to address matters concerning the remittal of Plan Checks reported to the SURCH and collected by the TPB in trust for the State to the State or its designated custodian.
- H. Providing the State, through the SURCH Administrator, with access to all files, records, reports, documents, and data that NAST has access to from the Plans and/or created by the SURCH Administrator that relate directly to the State and the performance of services by the SURCH Administrator in connection therewith (collectively, "State Data" and as more fully defined in Section 8 below).
- I. Coordinating required submissions to the DOL concerning the State's fulfillment of minimum state standards to assume custody of Plan Checks (the "DOL Minimum Standards"), as well as State owner return statistics for such checks.
- J. Developing procedures and approaches to assist state unclaimed property programs in maximizing the return of Plan Checks to missing rightful owners.
- K. Using its best judgment to identify and solicit Plan participation in SURCH from NAST Corporate Affiliates performing record keeping or related services to the retirement plan industry. In so doing, NAST shall contact all such Corporate Affiliates and provide educational and instructional materials concerning, amongst other things, SURCH, proposed reporting guidelines and policies, DOL communications and updates regarding SURCH. NAST shall additionally use its best efforts to educate retirement plans and their reporting agents not currently Corporate Affiliates of NAST about SURCH and shall encourage participation in the same. The State shall be advised of such efforts during meetings of NAST. NAST shall additionally develop educational materials for use by the State to inform the Plans and their record keepers about SURCH and to encourage its use.
- L. Coordinating with the State, through the SURCH Administrator, the optimal means of data transfer from the SURCH Administrator to the State, including the submission of unclaimed property reports as well as documentation necessary for the State to identify and reconcile Plan Checks collected by SURCH and subsequently remitted to the State by the TPB. All states participating in SURCH will, at minimum, receive fully conforming reports transmitted electronically in the NAUPA II and/or NAUPA III format.
- M. Coordinating with the State, through the TPB and the SURCH Administrator, the optimal means of remitting funds collected by SURCH in trust for the State from the TPB to the State. Collected funds will be timely reconciled and thereafter maintained on a segregated basis in an FDIC insured account on the name of and for the benefit of the State. Disbursements will occur on a monthly schedule provided the distribution coincides with the submission of the NAUPA reports and the reconciliation statement delivered to the State by the SURCH Administrator. In the event of an erroneous transfer, NAST will work with the State, TPB, and SURCH Administrator to establish a procedure for the claw back of the erroneous funds.

- N. NAST will contract with a SURCH Administrator who will be responsible for securing and maintaining the website and all related information systems utilized in connection with SURCH and the related administrative services. NAST shall specifically require that the SURCH Administrator utilize security measures that meet and/or exceed the ISO/IEC 27002:2013 information security controls standard throughout the duration of this Agreement. With respect to its current SURCH Administrator, NAST shall require adherence to the information security practices described in **Exhibit 1 to Exhibit A** throughout the duration of the Professional Services Contract attached at Exhibit A. NAST shall also require that any successor contractor engaged as the SURCH Administrator implement similar information security practices that meet and/or exceed the security standards set forth in Exhibit 1 to Exhibit A. In all instances, NAST shall require its SURCH Administrator to employ industry best practices with respect to all systems used to store and process State Data (as such term is defined in Sections 6 and 8 below), including appropriate administrative, physical, and technical safeguards to secure all State Data from unauthorized access, disclosure, alteration, and use. Such measures shall be no less protective than those used to secure the SURCH Administrator's own data of a similar type, and in no event less than commercially reasonable in view of the type and nature of the data involved and as described in **Exhibit 1 to Exhibit A**. Without limiting the foregoing, NAST warrants and represents that its SURCH Administrator shall encrypt all State Data in transmission (including via web interface) and store the State Data at no less than AES256 level encryption with SHA256 or SHA2 hashing. NAST shall provide the State with its SURCH Administrator's non-proprietary security and technical information to ensure adequate protection and flexibility can be attained between the Parties. Upon request, NAST shall annually provide the State with a copy of its SURCH Administrator's: (i) ISO Assessment/Certification; (ii) SOC 2 Type 2 Compliance Report; and (iii) SOC 2 Type 2 Compliance Report for all data centers housing the SURCH Administrator's servers and/or utilized in connection with the SURCH. Likewise, upon request, NAST shall provide the State with records demonstrating its SURCH Administrator's internal security testing including system scans, penetration tests and other similar reports.
- O. Recognizing that the State provides essential services in times of natural or man-made disasters, except as so mandated by Federal disaster response requirements, NAST shall ensure that its SURCH Administrator provides the State with priority restoration services for the System in the event of a natural or man-made disaster. In furtherance thereof, NAST shall require the SURCH Administrator to maintain a comprehensive Business Continuity & Disaster Recovery Plan providing for the restoration of critical business functions without undue delay. At the State's request, NAST, through the SURCH Administrator, shall provide the State with a copy of the Business Continuity & Disaster Recovery Plan.
- P. Making its books and records and the non-proprietary books and records of the SURCH Administrator and the TPB available for review or audit by the State. For purposes of this subsection, "non-proprietary books and records of the SURCH Administrator and the TPB" shall include all State Data and related

records concerning the operations of SURCH in connection with the State such as TPB account information, transaction confirmations, and account statements.

- Q. Providing SURCH and related services in compliance with 1) all requirements of any federal or state law, rule, or regulation applicable to the reporting, processing, and collection of the Plan Checks, 2) any advisory opinion issued by the DOL concerning the Plan Checks; and 3) any judicial judgment, decree, injunction, writ, order or administrative ruling, order or determination by Governmental Authority which is applicable to the Program (collectively, the "Applicable Legal Requirements"). For the purposes of this Agreement, the term "Governmental Authority" shall mean any federal, state, or other governmental department, commission, district, board, bureau, agency, regulatory body, court, tribunal, or other instrumentality (or any officer or representative thereof) of competent jurisdiction.

6. Responsibilities of the State. Throughout the term of this Agreement, and any extension thereof, the State shall be responsible for the following:

- A. Supporting NAST in its efforts involving the U.S. Department of Labor ("DOL") to determine which checks (plan type, date of issues, etc.) will be reportable to state unclaimed property programs; educating the DOL on the SURCH initiative and providing updates on the same inclusive of promoting SURCH, the associated website and reporting system, providing pro forma reports, assisting in the development of the DOL's minimum standards, and the development of uniform state reporting parameters under DOL Administrative Rules.
- B. Using its best efforts to promote SURCH including, without limitation, providing materials (including materials created for the State by NAST, pursuant to Section 5(K) of this Agreement) concerning reporting requirements to educate the Plans and their reporting agents as part of the State's holder education and outreach efforts, adding a link to the SURCH website on the State's unclaimed property website page, and making NAST aware of opportunities for Plan education in which NAST or the SURCH Administrator might participate.
- C. Coordinating with NAST and its SURCH Administrator to ensure the optimal means of data transfer from the SURCH Administrator to the State, inclusive of identifying documentation necessary for the State to identify and reconcile Plan Checks collected by SURCH and subsequently remitted to the State by the TPB and State specific unclaimed property report requirements.
- D. Coordinating with NAST, the TPB, and the SURCH Administrator to ensure the optimal means of remitting funds collected by SURCH to the State and identifying required documentation and related delivery instructions.
- E. Communicating directly with the SURCH Administrator regarding the collection, processing, and reporting of unclaimed retirement Plan Checks related to the State. The State shall be responsible for addressing inquiries from the SURCH Administrator regarding the State Data and/or communications and/or

interactions with retirement plan holders or claimants pertaining to the State.

- F. Permitting the release of certain “State Data” (as defined in Section 8 below) from the SURCH Administrator to NAST via the production of periodic status and management reports which may be presented at NAST and NAUPA Executive Committee meetings and additionally provided to the DOL. The release and use of certain State Data to NAST shall not include the disclosure of any personally identifiable information of any natural citizen of the State. In receiving such State Data, NAST shall safeguard and protect all such information as confidential and shall utilize the same exclusively for the assessment of SURCH, the SURCH Administrator, and the TPB, and to promote participation in SURCH.
- G. Timely informing NAST of any changes in law or unclaimed property program policy that might impact the State’s conformity with the DOL’s Minimum Standards and/or which may impact the SURCH Administrator’s or TPB’s respective services being provided for the benefit of the State.

7. Confidentiality.

7.1 Definitions. The Parties acknowledge and agree that in connection with this Agreement, each Party (acting by or through its employees, directors, members, consultants, and agents (collectively “Representatives”) may disclose to the other Party and its Representatives certain Trade Secrets, Confidential Information, and/or Proprietary Information. As used in this Agreement, (i) “Trade Secrets” means information including a formula, pattern, compilation, program, device, method, technique or process, that: (a) 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; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Trade Secrets specifically includes the source code and related programming and software development information concerning the Proprietary Systems (as defined in Section 9 below); (ii) “Confidential Information” means (a) State Data (as such term is defined in Sections 6 and 8) including specifically information received from the Plans relating to the State in connection with the reporting of Plan Checks; and (b) the information security reports, policies, procedures, testing information, disaster recovery documentation, and other similar security information concerning SURCH, the System, the SURCH Administrator, and/or the TPB; and (iii) “Proprietary Information” is used to collectively refer to Trade Secrets and Confidential Information.

7.2 Requirement of Confidentiality. To the extent permitted by law, each Party agrees to: a) hold the Proprietary Information disclosed by the other Party in strictest confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information to any third party (unless permitted by this Agreement or agreed to in writing by the Party who made the original disclosure); or (b) utilize any Proprietary Information provided by the Disclosing Party for any purpose whatsoever other than as expressly contemplated by the Agreement. The foregoing obligations of confidentiality shall not apply if and to the extent that:

(a) the Party receiving the information (the "Receiving Party") establishes through verifiable documentation that, at time the Proprietary Information was received, it was already known to the Receiving Party, without obligation to keep such information confidential; (b) the Receiving Party establishes that the information communicated was received in good faith by the Receiving Party from a third party lawfully in possession thereof and having no obligation to keep such information confidential; (c) Receiving Party establishes the information communicated was publicly known at the time of receipt or has become publicly known other than by a breach of the Agreement; or (d) Receiving Party is required to disclose the information communicated pursuant to the law (including the State's open records act / freedom of information act) and/or a court order.

7.3 Disclosure of the Other Party's Confidential Information. In the event either Party receives a subpoena, validly issued administrative or judicial process, or public records request seeking the disclosure of any Proprietary Information of the other Party, said Party shall promptly (and not more than two (2) business days after receipt of the request) notify the other Party of such request along with any responsive deadline so that the Party and/or its Representative whose Proprietary Information is being sought may timely object to the disclosure or seek a protective order as the case may be in its sole and absolute discretion. The Party receiving a subpoena, validly issued administrative or judicial process, or public records request further agrees to reasonably cooperate with the other Party and/or its Representatives to the extent that the other Party and/or its Representative seeks a protective order or to otherwise object to the requested disclosure of its Proprietary Information.

7.4 Unauthorized Access, Use, or Disclosure. The Receiving Party agrees to promptly notify the other Party of any unauthorized access, use, or disclosure of said Party's Proprietary Information and to cooperate with and assist the other Party in every reasonable way to stop or minimize such unauthorized use, access, or disclosure.

8. Treatment of State Data.

The State is the owner of all information and data made available by, received on behalf of, or expressly created for the State under this Agreement (collectively, "State Data"). State Data specifically includes that portion of the Record Keeping Data (as such term is defined in Exhibit A) related directly to the State. NAST shall require that neither the SURCH Administrator nor its Personnel shall use the State's Data for any purpose other than SURCH and related administrative services, nor will any part of the State's Data be disclosed, sold, assigned, leased, or otherwise disposed of to the general public or commercially exploited by or on behalf of NAST or the SURCH Administrator with respect to marketing to the general public.

NAST and its SURCH Administrator shall ensure the State's Data is held in the strictest confidence and limits knowledge of the State's Data to those representatives having a need to know in connection with the performance of the services contemplated under this Agreement. NAST and its SURCH Administrator shall protect the State's Data in the same manner applied to its/their own confidential or proprietary information and materials of a similar nature. NAST further agrees that neither it nor its SURCH Administrator shall use the State's Data for its/their own benefit, except as specifically and expressly required by law or as expressly permitted by this Agreement. All State Data shall be encrypted both at rest and in transit during the term of

the Agreement. NAST shall require that the SURCH Administrator complies at all times with all laws and regulations applicable to the State's Data including specifically, personally identifiable information contained therein.

8.1 Retention / Return of Record Keeping & State Data. NAST shall require the SURCH Administrator to return all State Data to the State's custody upon termination or expiration in accordance with section 12.3 below.

8.2 Handling Breaches of State Data. NAST, through its SURCH Administrator, shall immediately upon becoming aware of a data compromise or of circumstances that could have resulted in unauthorized access to, disclosure of, alternation of, or use of the State's Data including specifically personally identifiable information (hereinafter a "Data Compromise"), notify the State, fully investigate the incident, and cooperate fully with the State's investigation of, analysis of, and response to the incident. As a condition to contracting with the SURCH Administrator, NAST shall require the SURCH Administrator to utilize a licensed forensics company to assist in the investigation, preserve all evidence including but not limited to communications, documents, and logs, and provide reports of the same to the State. Where reasonably necessary and appropriate, NAST shall ensure its SURCH Administrator engages additional advisors, public relations firms, and/or legal counsel to aid the SURCH Administrator in addressing and remediating the Data Compromise. In addition, NAST shall ensure that the SURCH Administrator informs both NAST and the State of all actions that shall be undertaken to reduce and prevent the risk of further loss to the State.

9. Proprietary Systems. The SURCH Administrator will utilize certain applications, methodologies, tools, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements, proprietary data, and software programs (hereinafter "Proprietary Systems") in connection with SURCH and the related administrative services (including specifically, the operation of the website used for SURCH and the collection, processing, and reporting of information received from the Plans to the State). As a condition to participating in SURCH and utilizing the associated services performed by the SURCH Administrator on behalf of NAST, the State acknowledges and agrees that the SURCH Administrator shall retain title and all ownership rights to its Proprietary Systems and that nothing herein shall be construed otherwise. Proprietary Systems shall specifically include, without limitation, the SURCH Administrator's online unclaimed property reporting system inclusive of the software used to perform manipulations and conversions of data received from the Plans, the website associated with SURCH including information relating to its underlying code and programming, and any and all patents, copyrights, trademarks, trade secrets and all derivatives thereof. Neither NAST nor the State shall acquire any licenses or other residual rights to the Proprietary Systems. NAST and the State each recognize that all proprietary software and associated documentation, including but not limited to any software upgrades, modifications, and customizations, provided in connection with SURCH and this Agreement (if any) will at all times remain the sole and exclusive property of the SURCH Administrator.

10. Insurance

A. NAST shall maintain the following insurance during the term of this Agreement:

- (i) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
 - (ii) Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
 - (iii) Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others
 - (iv) Professional Liability including errors and omissions - \$1,000,000 per person/\$3,000,000 per occurrence
- B. NAST shall ensure that the SURCH Administrator maintains the following insurance during the term of this Agreement:
- (i) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
 - (ii) Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
 - (iii) Professional Liability - \$1,000,000.00 per person/ \$3,000,000 per occurrence; **and**
 - (iv) Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
 - (v) Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others; and
 - (vi) Cyber Insurance / Security Breach Insurance - \$5,000,000
- C. NAST shall require that the TPB maintain the following insurance during the term of this Agreement:
- (i) FDIC Insurance - \$250,000 per account
 - (ii) Financial Institution Bond

(iii) Professional Liability (Errors and Omissions) - Exceeding \$25,000,000

- D. NAST shall require the SURCH Administrator and the TPB to each provide thirty (30) days written notice of cancellation or material change of any of their respective insurance policies.
- E. Prior to the SURCH Administrator and the TPB commencing services in connection with this Agreement, NAST shall obtain a Certificate of Insurance from the SURCH Administrator and TPB evidencing compliance with this Section 10 and listing NAST as an additional insured on their respective General Liability and Professional Liability policies. NAST shall provide the State with evidence thereof. To the extent the State requires a separate Certificate of Insurance along with the designation of the State as an additional insured on said certificates, NAST shall require the SURCH Administrator and the TPB to comply with the same.

11. Payment & Invoicing.

11.1. Compensation. In exchange for the State's participation in the SURCH, the State shall pay a fee of eight percent (8%) of the gross amount of the unclaimed retirement plan distributions reported to the State through SURCH and remitted to NAST by the Plans. ~~Said fee shall be deducted directly from the property collected by the TPB.~~

~~**11.2. Taxes.** The State is a sovereign entity and shall not be liable for the payment of federal, state, and local sales, use, and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.~~

~~**11.3, 11.2. Invoicing.** TPB shall remit 100% of collections to the State and NAST shall submit invoices to the State for services rendered hereunder. The State shall review and approve invoices in a reasonable amount of time and shall remit fees in the amount of 8.0% (eight percent) of collections directly to NAST. Each invoice shall detail the unclaimed property remitted to the State including, but not limited to, the date and amount of each remittance and the calculation of the fees assessed in said invoice as set forth in Section 11.1 above. All payments due to NAST shall be paid by the State to NAST in a manner not prohibited by Washington law. NAST shall not be required to invoice payment for the services hereunder. All payments due NAST shall be calculated by the TPB and paid by the TPB to NAST (and the SURCH Administrator) contemporaneous with the property remittances made by the TPB to the State. The report of unclaimed property delivered to the State by the SURCH Administrator shall include a statement and reconciliation of the Fee paid to NAST as set forth in Section 11.1 above.~~

~~**11.4, 11.3. State Audit of Invoices.** NAST shall retain all records related to fee charges and payment hereunder for a period of not less than seven (7) years and shall fully cooperate in any State requests for billing records and audits thereof.~~

12. Termination.

1

12.1. Termination By State.

12.1.1 **For Convenience.** After the first twelve months of the Term, and upon ninety (90) days written notice, the State may terminate this Agreement in whole or in part for

DRAFT

convenience without the payment of any penalty or incurring any further obligation or liability to NAST. Termination for convenience may be for any reason or no reason at all.

12.1.2. Termination Resulting from a Lack of Funding. The Parties acknowledge and agree that the validity and enforcement of this Agreement is subject to appropriations by the Legislature of the State of the funds necessary for performance of the State's obligations hereunder. Should such funds not be so appropriated the State may immediately terminate this Agreement, and any obligation of the State requiring the expenditure of money for which no specific appropriation is available, shall terminate as of the end of the last fiscal year for which an appropriation is available or upon the exhaustion of funds.

12.1.2 For Cause. Any one or more of the following acts or omissions by NAST (individually or through the acts or omissions of the SURCH Administrator) shall constitute an Event of Default hereunder ("Event of Default"): (a) failure to perform SURCH administrative services in the manner set forth in this Agreement and specifically, as outlined in Exhibit A; and/or; (b) failure to perform any other covenant, term, or condition of the Agreement including specifically, a breach of confidentiality.

In the Event of a Default, the State shall provide NAST written notice of default and require it to be remedied within thirty (30) days from the date of notice (hereinafter the "Cure Period"). If NAST fails to cure the default within the Cure Period, the State may terminate this Agreement effective two (2) days thereafter by giving NAST notice of termination and, at its sole discretion, treat the Agreement as breached and pursue its remedies at law or in equity or both.

If termination for an Event of Default is elected by the State, any payments due to NAST at the time of termination may be adjusted to cover any additional costs to the State as a result of NAST's Event of Default. If, after the State terminates for an Event of Default it is determined that NAST was not at fault, then NAST shall be paid for all eligible services rendered and expenses incurred up to the date of termination.

12.2. Termination by NAST. NAST shall provide the State with written notice of Default, and the State shall cure such Default within thirty (30) days of notice from NAST. In the event the State fails to cure the Default within thirty (30) days of notice from NAST, NAST may thereafter provide the State with a "Notice to Terminate the Agreement", which notice shall be effective thirty (30) days thereafter. A "Default" under this Section 12.2 shall be construed to mean any failure by the State to perform any covenant, term, or condition of this Agreement.

12.3. Return of Data. Unless otherwise agreed in a writing signed by both Parties, within sixty (60) days of the expiration or termination of this Agreement, NAST shall cause all files, records, reports, documents, and data received from the Plans and/or created by the SURCH Administrator that relate directly to the State and the performance of services by the SURCH Administrator in connection therewith to be returned to the State. All such information shall be provided in a form that is reasonably requested by the State.

13. **Dispute Resolution.**

13.1. Informal Resolution. The Parties shall endeavor to amicably resolve any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, in accordance with the provisions of this Section 13. To this effect, they shall meet as often as the Parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at issue which the Parties believe to be appropriate and germane in connection with its resolution. The Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties.

13.2. Continued Performance. Each Party agrees to continue performing its obligations under this Agreement while a dispute is being resolved pursuant to this Section 13 except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either Party's right to terminate the Agreement as provided in Section 13, as the case may be.

14. **Indemnification.**

NAST shall indemnify, defend, and hold the State, its officers, and employees, harmless from and against any and all liabilities, obligations, losses and damages, plus costs and expenses, including reasonable attorney's fees, disbursements, and litigation costs, arising out of or resulting from any claim, damage, loss, liability, suit, or action brought against the State by any third party as a result of the willful misconduct or grossly negligent acts or omissions of NAST, its employees, or its agents (including specifically, the SURCH Administrator and TPB) in connection with this Agreement.

The foregoing indemnification obligations apply only if each of the following conditions are met: a) the State gives NAST prompt written notice of such suit or claim, and b) the State reasonably cooperates with NAST in the defense or settlement of the suit or claim including, without limitation, providing NAST with all necessary information, authority, and assistance reasonably needed to defend against or settle the claim. NAST acknowledges and agrees that counsel for the State may participate in any claim to the extent the State seeks to assert any immunities or defenses. Under no circumstances shall NAST be responsible for any cost, expense, or compromise made by the State in connection with any third-party claim without NAST's prior written consent.

Notwithstanding anything to the contrary, neither Party shall be liable to the other for any consequential, incidental, punitive, special, exemplary, or indirect damages arising out of this Agreement, even if the Party is advised of the possibility of such damages. Furthermore, NAST and its agents (including specifically, the SURCH Administrator) shall have no liability or indemnification obligation for acts undertaken by NAST and its agents in reliance on instruction or information provided by the State, its employees, agents, or contractors or knowing omissions of the State's respective employees, contractors, or agents.

15. Miscellaneous Provisions.

15.1. Relationship of the Parties. In connection with this Agreement, each Party is acting independently and, as such, will not have any authority to bind or commit the other Party, except as explicitly set forth herein. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, or agency relationship between the Parties for any purpose.

15.2. Applicable Law, Rules of Construction, and Venue. The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the District of Columbia, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the South Dakota shall have jurisdiction over this Agreement and the Parties.

15.3. Entire Agreement / Assignment. This Agreement (including all Exhibits attached hereto and incorporated herein by reference) constitutes the entire understanding and agreement between the Parties and supersedes any prior agreements, written or oral, concerning the subject matter hereof that are not specifically referenced and incorporated herein. This Agreement shall be binding on the Parties and each Party’s successors and assigns. Any assignment of the Agreement by the State without the prior written consent of NAST shall be void.

15.4. Modification. This Agreement may be modified upon written notice from NAST to the State served in accordance with Section 15.9 where such modification is (a) incidental and/or supplemental to the administration of the SURCH and the services related thereto; and (b) does not result in a material change to the State and/or its obligations hereunder. The Parties acknowledge and agree that *no* modification to the terms of this Agreement shall be made that would materially alter the delivery of service unless such modification is mutually agreed upon by the Parties and incorporated in a written amendment to this Agreement.

15.5. Compliance with Laws / Nondiscrimination. NAST shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

15.6. Sovereign Immunity. The Treasurer and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

15.7. No Waiver. The Parties acknowledge and agree that the State has not waived any defense, right, immunity or other protection under law, including any statutory provision, by entering into this Agreement.

15.8 Force Majeure. Neither Party will be liable for any failure or delay in the performance of its obligations under this Agreement, if any, to the extent such failure is caused, directly or indirectly, without fault by such Party by: pandemic, health/disease related quarantines, health/disease related shutdowns including, without limitation, those relating to COVID-19; fire, flood, earthquake, elements of nature or acts of God; labor disruptions or strikes; acts of war, terrorism, and other governmental action; or any other cause beyond the reasonable control of such party (collectively, “Force Majeure”). The non-performing Party will

be excused from any further performance or observance of the affected obligation(s) for as long as such Force Majeure circumstances prevail; provided said non-performing Party makes every reasonable attempt to minimize the delay of performance and continues to attempt to recommence performance or observance whenever and to whatever extent possible without delay.

15.9. Notices. All notices or other communications required or permitted hereunder shall be sufficient if sent in writing: (i) by facsimile or electronic communication with confirmed delivery; or (ii) by personal delivery; or (iii) by U.S. Postal Service Express Mail, UPS or Federal Express or other nationally recognized overnight delivery service with signature required on delivery; or (iv) by registered or certified mail, return receipt requested, postage prepaid, as follows (or to any other address as shall be set forth in a notice given in the same manner):

Notices to the State:

Name: Lori Gartland, Procurement and Contract Manager

Address: PO Box 47462

Olympia, WA 98504-7462

Telephone: 360-704-5765

Email: LoriG@dor.wa.gov and DORDLProcurement&Contracts@dor.wa.gov

Notices to NAST:

Jeremy Dawson

National Association of State Treasurers, Inc.

1201 Pennsylvania Ave., NW, Suite 800

Washington, DC 20004

Telephone: (202) 630-1405

Email: jeremy@statetreasurers.org

The Parties agree that when electronic communications are used, they are the equivalent of written and signed documents. Further, either Party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this **Section 15.9** for giving notice.

15.10. Severability. If any term, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same will not affect the other terms, conditions and provisions hereof or the whole of this Agreement, but such term, condition or provision will be deemed modified to the extent necessary in the court's opinion to render such term, condition or provision enforceable, and the rights and obligations of the Parties will be construed and enforced accordingly, preserving to the fullest permissible extent the Parties' intent and agreements set forth herein.

15.11. Headings. The section and subsection headings in the Agreement are inserted solely as a matter of convenience, and for reference, and shall not be considered in the construction or interpretation of any section and/or subsection contained within the Agreement.

15.12. Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the Parties hereto, any rights

or remedies by reason of the Agreement; provided, however, that the SURCH Administrator and TPB shall be a third party beneficiary to this Agreement as applied to the payment of fees for services performed on behalf of the State as described hereunder and the protection of information set forth in Section 8.

15.13. Separate Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original and all of which shall constitute a single instrument. The Parties agree that a fax or electronically transmitted valid and authorized original signature shall be deemed an original, provided the original copies are promptly delivered.

The undersigned acknowledge they have read and understand all terms set forth herein. By fixing their signature below, the Parties evidence their intent to be bound hereto.

STATE OF WASHINGTON,
WASHINGTON DEPARTMENT OF REVENUE

By: _____
Name: _____
Its: _____
Date: _____

NATIONAL ASSOCIATION OF STATE TREASURERS INC.

By: _____
Name: _____
Its: _____
Date: _____