



ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VA 22201

AGREEMENT NO. 17-028-R

THIS RIDER AGREEMENT (hereinafter "Agreement") is made, on the date of its execution by the County, between JPMorgan Chase Bank, N.A., 10 S. Dearborn, 6<sup>th</sup> Floor, Mail Code IL1-0286, Chicago, IL 60603-2300 ("Contractor") authorized to transact business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration and quantities specified herein or specified in a County Purchase Order referencing this Agreement, agree as follows:

**1. CONTRACT DOCUMENTS**

The following documents are incorporated by reference into this Agreement, which shall be collectively referred to as "Contract Documents" or "Contract"):

1. Participation Agreement between Arlington County, Virginia and JP Morgan Chase Bank, N.A.
2. Fairfax County, Virginia, Contract No. 4400007090, Master Commercial Card Agreement and all Exhibits and Schedules entered into July 8, 2016 and made effective August 14, 2016 (the "Master Agreement")

This Agreement shall take precedence over all the documents referenced above. In the event of a conflict between the Contract Documents, the order of precedence shall be as enumerated above.

This Agreement rides a competitive procurement process conducted by Fairfax County, Virginia. The Contractor desires to extend to the County the same terms and conditions, to include pricing, as the Contractor's agreement with Fairfax County, Virginia.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents.

**2. CONTRACT TERM**

The Contractor's provision of goods for the County ("Work") shall commence on the date of execution of this Agreement by the County and shall be completed no later than August 14, 2020 ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents.

Upon satisfactory performance by the Contractor, and with the concurrence of the Contractor, if Fairfax County, Virginia, renews their agreement identified in the Master Agreement, the County may elect to renew this Agreement under the same contract unit prices for not more than three (3) additional two (2) year periods from August 15, 2020 until August 14, 2026 ("Subsequent Contract Term"). However, if Fairfax County does NOT renew their Master Agreement, this Agreement shall expire on the date of Fairfax County's contract expiration date, subject to the County submitting a termination request in accordance with the termination provisions of this Agreement.

### **3. CONTRACT PRICING**

The County will pay the Contractor in accordance with the terms of the Payment paragraph below, at the unit prices set forth in the Master Agreement for Work provided by the Contractor, as described and required in the Contract Documents.

### **4. SCOPE OF WORK**

The Contractor agrees to provide the goods described in the Contract Documents. The primary purpose of the Work is to provide purchasing card services.

The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific Work set forth in the Contract Documents sufficient to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

### **5. PROJECT OFFICER**

The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer"), who shall be appointed by the Director of the Arlington County department or agency requesting the work under the Contract Documents, subject to the terms of the Contract Documents. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

### **6. PAYMENT TERMS**

The County will make payment as reflected on a periodic statement no later than the payment date reflected on the statement (the "Payment Date"). Any amount due which is not received by the Payment Date shall be subject to the late fees and delinquency fees under the Master Agreement.

### **7. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.

- e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that these provisions will apply to each subcontractor or vendor.

**8. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

**9. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**10. TERMINATION**

Reference Master Agreement Section 8

**12. INDEMNIFICATION**

Reference Master Agreement Section 9.C

**13. CONFIDENTIAL INFORMATION**

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a results of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

Furthermore, all information properly designated in accordance with Va. Code Ann. § 2.2-4342(F) or otherwise exempt from the Virginia Freedom of Information Act, furnished by either Party in connection with the Agreement, the Program or Transactions shall be kept confidential. The foregoing obligation shall not apply to information that: (A) is already lawfully known when received without an obligation of confidentiality other than under this Agreement, (B) is or becomes lawfully obtainable from other sources who are not under a duty of confidentiality, (C) is in the public domain when received or thereafter enters the public domain through no breach of this Section; (D) is developed independently by the receiving

Party without use of the disclosing Party's confidential information; (E) is in an aggregate form non-attributable to the disclosing Party; (F) is required to be disclosed to, or in any document filed with, the U.S. Securities and Exchange Commission (or any analogous body or any registrar of companies or other organizations in any relevant jurisdiction), banking regulator, or any other governmental agencies, (G) is required by Applicable Law to be disclosed and notice of such disclosure is given (when legally permissible) to the disclosing Party, or (H) may be disclosed as provided in the Cardholder Agreement or other Cardholder-related documentation. Notice under (G), when practicable, shall be given sufficiently in advance of the disclosure to permit the other Party to take legal action to prevent disclosure. Contractor may exchange (and County insofar as necessary hereby consents to such exchange) County and (to the extent authorized) Cardholder confidential information with Affiliates. Contractor may also disclose confidential information to service providers in connection with Bank's provision of Program services; provided that the service providers comply with the terms of this Section.

#### **14. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference sections of Article 9 of the Arlington County Purchasing Resolution that are applicable to the services contemplated under this Agreement, as well as any applicable Virginia or federal law related to ethics, conflicts of interest, or bribery. The Contractor certifies that as of the effective date of this Agreement, its offer to the County was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

#### **15. COUNTY EMPLOYEES**

No employee of the County shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

#### **16. FORCE MAJEURE**

Reference Master Agreement Page 13.J

#### **17. AUTHORITY TO TRANSACT BUSINESS**

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract.

#### **18. RELATION TO THE COUNTY**

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

**19. AUDIT**

Reference Master Agreement Section 11

**20. ASSIGNMENT**

Reference Master Agreement Section 13.E

**21. AMENDMENTS**

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County; provided, however, that the Contractor may unilaterally change the terms of this Agreement upon prior written notice to the County, for valid business reasons, to be determined in Contractor's sole discretion, provided that the effective date shall not be less than sixty (60) days from the date of the written notice provided by Contractor pursuant to this paragraph. The County shall be deemed to have accepted such change if the County continues to use the Program following the effective date of such change.

**22. DISPUTE RESOLUTION**

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

**23. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION**

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

**24. ARBITRATION**

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

**25. NONEXCLUSIVITY OF REMEDIES**

All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

**26. NO WAIVER**

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

**27. SEVERABILITY**

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

**28. SURVIVAL OF TERMS**

In addition to the numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; AUDIT; WARRANTY; AND CONFIDENTIAL INFORMATION.

**29. HEADINGS**

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

**30. AMBIGUITIES**

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**31. NOTICES**

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

**TO THE CONTRACTOR:**

Commercial Card Contracts Manager  
JP Morgan Chase Bank, NA  
10 S. Dearborn, 6<sup>th</sup> Floor  
Mail Code IL1-0286  
Chicago, IL 60603-2300

**TO THE COUNTY:**

Barbara Wiley, Project Officer  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**AND**

Michael E. Bevis, Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**32. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

**33. INSURANCE REQUIREMENTS**

Reference Master Agreement Section 12.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

JPMORGAN CHASE BANK, N.A.

AUTHORIZED  
SIGNATURE: \_\_\_\_\_



NAME AND TITLE: MICHAEL E. BEVIS  
PURCHASING AGENT

DATE: 1/18/18

AUTHORIZED  
SIGNATURE: \_\_\_\_\_



NAME AND TITLE: Nik Quinn  
Executive Director  
Commercial Card

DATE: January 16, 2018



# PARTICIPATION AGREEMENT

This Participation Agreement (the "Participation Agreement") is made and entered into as of January 16, 2018 (the "Effective Date") by and between Arlington County, Virginia ("Participant") and JPMorgan Chase Bank, N.A. or one or more of its Affiliates ("Bank").

## WITNESSETH:

WHEREAS, pursuant to that certain Master Commercial Card Agreement dated as of July 8, 2016 and made effective August 14, 2016, (the "Master Agreement") between County of Fairfax, Virginia (the "Client") and Bank, Bank has agreed to provide commercial card services to Client (the "Program") on the terms and conditions of the Master Agreement, attached hereto and incorporated herein as Attachment A; and

WHEREAS, Participant desires to participate in the Program, subject to the terms and conditions of the Master Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

- 1. Definitions.** Except as otherwise provided herein, all capitalized terms used herein and not otherwise defined and which are defined in the Master Agreement shall be used herein as so defined in the Master Agreement.
- 2. Mutual Obligations.** By their execution of this Participation Agreement, Participant and Bank hereby agree to be bound by all the terms and conditions of the Master Agreement as may be amended, supplemented, restated, or replaced from time to time, attached hereto as Attachment A (County of Fairfax, VA Master Commercial Card Agreement via separate electronic document). In the event of a conflict between the provisions of this Participation Agreement and the provisions of the Master Agreement, the provisions of this Participation Agreement will prevail. This Participation Agreement shall remain in effect according to its terms without regard to the continued existence or enforceability of the Master Agreement with respect to the original parties thereto. With the exception of Exhibit 1 to the Master Agreement, all references to "Client" in the Master Agreement shall be deemed to constitute references to Participant hereunder.
- 3. Without limiting the generality of the foregoing,** Participant further agrees that it shall be responsible only for Transactions and for fees, charges and other amounts due under the Master Agreement related to the use of Accounts or Cards of Participant pursuant to the Master Agreement and that Client shall not be liable for any such Transactions and for any such fees, charges and other amounts.
- 4. Information Sharing.** Participant acknowledges and agrees that Bank may share Participant's information with the County of Fairfax, Virginia to include, but not limited to, commercial card Program transaction spending volumes, average transaction size, purchase limit data and any other information deemed necessary by the Bank to facilitate the rebate incentives calculations based upon all participants' charge volume under the Fairfax County Consortium.
- 5. One Card Settlement Terms Election:** Pursuant to Exhibit 1, Section 6 to the Master Agreement, the Participant hereby elects Settlement Terms of 30 & 25 for Participant's One Card Program. For purposes of this section, "Settlement Terms" means the combination of the number of calendar days in a billing cycle and the number of calendar days following the end of a billing cycle to the date the payment is due. Settlement Terms are expressed as X & Y, where X is the number of calendar days in the billing cycle and Y is the number of calendar days following the end of a billing cycle to the date the payment is due.
- 6. Notices.** Notwithstanding the provisions of the Master Agreement, all notices and other communications required or permitted to be given under this Participation Agreement shall be in writing and shall be effective on the date on which such notice is actually received by the party to which it is addressed. All notices shall be sent to the address set forth below or such other address as specified in a written form from one party to the other.

To Bank: JPMorgan Chase Bank, N.A.  
10 S. Dearborn, 6<sup>th</sup> FL, IL1-0286  
Chicago, IL 60603-2300  
UNITED STATES  
Attn: Commercial Card Legal

To Participant: Arlington County, Virginia  
2100 Clarendon Blvd., Ste 511  
Arlington, VA 22201  
Attn: Maria Meredith

7. **Miscellaneous.** This Participation Agreement supersedes all prior understandings, representations, negotiations, and agreements of any kind relating to the subject matter thereof and shall be governed by and construed in accordance with the substantive laws of the state of Virginia, and as applicable, federal law. The headings, captions, and arrangements used in this Participation Agreement are for convenience only and shall not affect the interpretation of this Participation Agreement. This Participation Agreement may be executed in any number of counterparts, all of which, when taken together shall constitute one and the same document, and each party hereto may execute this Participation Agreement by signing any of such counterparts. Facsimile signatures shall have the same force and effect as the original.


IN WITNESS WHEREOF, the parties have caused this Participation Agreement to be duly executed as of the Effective Date.

**JPMORGAN CHASE BANK, N.A.**

By   
Name Nik Quinn  
Title Executive Director  
~~Commercial Card~~


**Participant Authorization:** The undersigned is an officer, member, manager, director, managing partner, or general partner (or person authorized to represent the foregoing), as applicable, of Participant, authorized to bind Participant to enter into and to perform its obligations under this Participation Agreement. The undersigned certifies to Bank that the governing body of Participant has adopted resolutions or other appropriate and binding measures authorizing Participant to enter into and perform its obligations under this Participation Agreement and that those resolutions or other appropriate and binding measures were: (a) adopted in accordance with, as applicable, all requirements of law and Participant's organizational or constituent documents, (b) have been entered into the minute books or company records of Participant, and (c) are now in full force and effect. Participant shall provide to Bank immediately upon demand conclusive evidence of the authorizations described above.

**PARTICIPANT**

By   
Name Michael Davis  
Title Purchasing Agent

Note: The legal name of any member, managing member or general partner who is signing but is not an individual person must appear in the signature block.

**Participant Attestation:** The undersigned officer, member, manager, director, managing partner, or general partner (or person authorized to represent the foregoing) of Participant, hereby certifies that the individual signing above on behalf of Participant has been duly authorized to bind Participant and to enter into and perform its obligations under this Participation Agreement and that the person signing above on behalf of Participant, whose execution of this Participation Agreement was witnessed by the undersigned, is an officer, member, manager, director, managing partner, or general partner (or person authorized to represent the foregoing) of Participant possessing authority to execute this Participation Agreement. Participant shall provide to Bank immediately upon demand conclusive evidence of the authorizations described above.

By   
Name Rebecca Lee  
Title Asst Purchasing Agent

Note: The person signing the attestation shall be someone different from the person signing above on behalf of Participant.

# MASTER COMMERCIAL CARD AGREEMENT

Version 2.0

This Master Commercial Card Agreement, which is comprised of the Master Terms together with any exhibits and Local Schedules attached thereto, as amended, supplemented or replaced from time to time (the "Master Agreement"), is made and entered into as of July 8, 2016 and made effective August 14, 2016 (the "Effective Date") and sets forth the terms and conditions under which JPMorgan Chase Bank, N.A. or one or more of its Affiliates ("Bank") shall provide commercial card services to County of Fairfax, Virginia ("Client") who executes this Master Agreement and/or one or more of such Client's Affiliates. Client and Bank may be referred to in this Master Agreement individually as "Party" and collectively as the "Parties". For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Client and Bank hereby agree as follows:

## MASTER TERMS

### 1. Definitions

Each capitalized term used in this Master Agreement shall have the following defined meanings set forth below or as otherwise set forth herein.

**Access Code** means the user identification code and password assigned to Authorized Users.

**Account** means each account established in the name of Client pursuant to the Master Agreement.

**Affiliate** means an entity controlling, controlled by, or under common control with, directly or indirectly, a Party to these Master Terms. For this purpose, one entity "controls" another entity if it has the power to direct the management and policies of the other entity (for example, through the ownership of voting securities or other equity interest, representation on its board of directors or other governing body, or by contract).

**Applicable Law** means for any country, all federal, state, provincial and local laws, statutes, regulations, rules, executive orders, supervisory requirements, licensing requirements, export requirements, directives, circulars, decrees, interpretive letters, guidance or other official releases of or by any government, any authority, department or agency thereof, or any regulatory or self-regulatory organization such as the European Union, that apply to a Party's obligations under the Master Agreement.

**Authorized Approver or Authorized Signer** means an individual(s) designated by Client to have authority over the Program.

**Authorized User** means an individual designated by Client to access Account and Transaction data and reports.

**Business Day** means a day on which Bank is open for business as identified in the applicable Local Schedule.

**Card** means a Network-branded card that is issued to Cardholders by the Bank upon the request of the Client and approval by the Bank, and includes any plastic card bearing a card number and accounts and card numbers with no associated plastic card, which includes Single-Use Accounts.

**Card Request** means a written or electronic transmittal from Client, requesting Bank to issue a Card(s).

**Cardholder** means: (A) an individual in whose name a Card is issued, and (B) any person or entity authorized by Client or named Cardholder to use a Card.

**Cardholder Agreement** means documentation provided by Bank to Client or Cardholder governing use of a Card by such Cardholder.

**Cardholder Credit Limit** means the maximum spending limit established in relation to a Cardholder.

**Corporate Liability** means Client is solely liable for the Transactions, subject to the Master Agreement and any Cardholder Agreement.

**Credit Card Network or Network** means either MasterCard International, Inc. or Visa U.S.A., Inc.

**Credit Limit** means the maximum spending limit established for Client in connection with the Program.

**Cycle** means the monthly period ending on the same day each month or, if that day is not a Business Day, then the following Business Day or preceding Business Day, as systems may require, or such other period as Bank may specify.

**Effective Date** means the date indicated as such on the introductory paragraph.

**Fraudulent Transactions** means transactions made on a Card by a person, other than Client or Cardholder, who does not have actual, implied or apparent authority for such use, and which Cardholder or Client receives no direct or indirect benefit.

**Joint and Several Liability** means Client and Cardholder are jointly and severally liable for the Transactions, subject to the Master Agreement, and the Cardholder Agreement.

**Local Schedule** means a schedule to these Master Terms which sets forth the terms and conditions applicable to the commercial card Programs provided to Client in a particular geographic region or country.

**Marks** means the name, trade name, and all registered or unregistered service marks of Client, the Network and Bank.

**Program** means the commercial card system composed of Accounts, Card-use controls, reports to facilitate purchases of and payments for business goods and services, and related services, all as established in connection with the Master Agreement.

**Program Administrator** means an individual or individuals authorized by Client to perform administrative and security functions in connection with the Program and System.

**Single-Use Account** means a one-time virtual card number generated for a single transaction.

**Systems** means the systems through which Client can access Account and Transaction data and reports.

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest).

**Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under the Master Agreement.

**Transaction** means a purchase, a cash advance, fees, charges or any other activity charged to an Account in respect of a Card.

## 2. Certain Bank Services

- A. Subject to prior financial, risk management and compliance approvals by Bank, Bank shall establish Accounts in the name of Client and, where applicable, issue Cards to employees and authorized representatives of Client who are approved by Bank and are designated and authorized by Client to incur legitimate business expenses on Client's behalf. Any balance outstanding associated with an Account for which a corporate liability waiver is requested shall become immediately due and payable.
- B. **Extension of Program.** Upon Client's submission of a request from time to time in the form required by Bank and following Bank's agreement to do so, Bank will extend Program to Client's Affiliates. Client is responsible as principal obligor for all obligations under the Master Agreement (including, without limitation, as principal obligor with respect to all payment and other obligations as the same relate to its Affiliates and their respective Cardholders and waives any defences or offsets available to such Affiliates). Client shall cause each of its Affiliates and their respective Cardholders to comply with the Master Agreement.
- C. **Use of Master Agreement.** Client may extend this Master Agreement to the members of the Mid-Atlantic Purchasing Team, as well as all other public entities under the jurisdiction of the United States and its territories. Acceptance and approval for any jurisdiction or entity wishing to enter into this Master Agreement will be at the sole and absolute discretion of the Bank and such entity may be required to enter into Bank's form of participation agreement or other similar agreement with the Bank.
- D. Notwithstanding the foregoing, Bank shall not be obligated to provide any Account to Client or any Client Affiliate or any Card to an employee or authorized representative of Client or any Client Affiliate or to process any transactions in violation of any limitation or prohibition imposed by Applicable Law, including, but not limited to, the regulations issued by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC").
- E. **Grandfathering of Participant Agreements.** Client and Bank mutually agree that the Participation Agreements executed and in effect between the Bank and each of the respective Participants, granting participation under the Client's Commercial Card Agreement dated August 14, 2006, as amended from time to time, will henceforth continue to be valid and effective under the terms and conditions of this Master Agreement.
- F. **Supplier Recruitment.** Supplier recruitment is an optional recruitment campaign comprising of certain services provided by Bank (such services collectively, "Supplier Recruitment") in connection with certain products. Should Supplier Recruitment be requested, Client shall be deemed to have accepted and agreed to the following terms of use. Client will follow Bank suggested best practices in effect including, but not limited to, requiring or strongly suggesting supplier participation; reaching out to strategic suppliers to encourage recruitment; considering payment acceleration for participants and extending payment terms for non-participants; having internal resources available to address weekly recruitment needs; providing complete and accurate supplier information such as supplier name, remittance address, contact name, phone number, and email addresses. "Supplier Data Enrichment" is a particular Supplier Recruitment service provided by Bank should Client not have contact information available to provide to Bank. Supplier Data Enrichment entails Bank utilizing internal and external tools to obtain supplier contact information to provide to Client throughout Supplier Recruitment. Bank will use commercially reasonable efforts to validate supplier contact with supplier information provided by Client. Client is solely responsible for validating Bank obtained supplier contact information prior to issuing payment to that supplier. Client acknowledges that supplier contact information is accurate once payment has been issued. Bank reserves the right to refuse or discontinue recruitment and/or data enrichment services at any time. Furthermore, Client, on its behalf and on behalf of each of its affiliates and related persons, (i) releases and forever discharges Bank and each of its affiliates and related persons, from any and all past, present and future claims, losses, liabilities, obligations, expenses, attorney or other fees, suits, debts, liens, contracts, agreements, promises, demands and damages, of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent (collectively, "Claims") that Client or any of its and each of its affiliates and related persons ever had, now has, or hereafter may have against Bank and each of its affiliates and related persons, arising out of or related to, Supplier Data Enrichment.
- G. **Receipt Image Services.** For purposes of this section, "Receipt Image Services" means the services provided by Bank to allow Client the ability to fax and/or upload and maintain image(s) of receipt(s) on the System, and "Receipt Image(s)" means an image of a receipt produced by a Transaction through use of Accounts and maintained on the System by Bank. Bank will receive, store, and make Receipt Images available to Client through use of the System. In order for Bank to make Receipt Images available through the System, Client shall

first fax and/or upload to the System images of Client's receipts through use of its own devices. Client is responsible for verifying the accuracy of the image of its receipts and any other information uploaded and entered into the System. Client shall ensure that the information contained in the image of the receipt accurately reflects the applicable Transaction. Bank will then make the Receipt Image available online through the System for a maximum of twenty-four (24) months ("System Image Accessibility Period"). The System Image Accessibility Period includes the month of the Transaction Date. Bank may, in its sole and absolute discretion, reject Receipt Images provided by Client to be posted on the System. In addition, Bank may suspend Client's use of the Receipt Image Service at any time without prior notice to Client.

### 3. Obligations of Client

In connection with the Program, Client shall:

- A. Submit Card Requests in the form and via the method required by Bank. Client shall not give, nor cause or permit to be given, any Card to a Cardholder before the Cardholder application process defined by Bank is completed.
- B. Notify each Cardholder at the earliest opportunity: (i) that Cards are to be used only for Client's business purposes; (ii) of the Cardholder Credit Limit and any other applicable limit; (iii) of Bank suspending a Card or refusing to issue any further Cards, closing an Account, or ending the Cardholder Agreement; (iv) of revisions to any guide to the use of Cards (if applicable); and (v) of the extent, if any, to which Bank will provide Transaction and Account information to third parties at Client's request.
- C. Use commercially reasonable efforts: (i) to safeguard Accounts using reasonable security procedures; (ii) where applicable, to maintain, a process ensuring timely and accurate reimbursement of all Transactions to its Cardholders; (iii) not to exceed the Credit Limit; (iv) to collect and destroy any Cards which are no longer required; and (v) to the extent that Cardholder Agreements and Cardholder documentation are provided, cause Cardholders to comply with the Cardholder Agreements and Cardholder documentation.
- D. If not previously provided by Bank, provide to each actual and prospective Cardholder, in accordance with Bank's Instructions, Cardholder documentation supplied by Bank.
- E. Immediately notify Bank: (i) of any Card or any Account which is no longer required; and (ii) by phone of any Card that Client knows or suspects has been lost, stolen, misappropriated, improperly used or compromised. In connection with Client's notifications obligations described herein and notwithstanding anything to the contrary contained in these Master Terms:
  - i. Liability for Fraudulent Transactions Following Notification. Client shall not be liable for any Fraudulent Transactions made on a Card under any Account after the effective time of such notification to Bank of such Fraudulent Transaction.
  - ii. Liability for Fraudulent Transactions Prior to Notification. Subject to the terms and conditions contained in subsection (iii) below, Client shall not be liable for Fraudulent Transactions made on a Card under any Account prior to the effective time of such notification to Bank of such Fraudulent Transactions.
  - iii. Bank reserves the right, in its sole and absolute discretion, to hold Client liable for Fraudulent Transactions should Bank determine that, subsequent to implementation of Client's Program and at the time that the Fraudulent Transaction occurred, Client failed to operate its Program in accordance with the following fraud reduction requirements:
    - a. Client must block required high risk merchant category codes ("MCC's") identified by Bank and presented to Client;
    - b. Client must maintain reasonable security precautions and controls regarding the dissemination, use and storage of Account and Transaction data; and
    - c. Client must comply with all other requirements as Bank may reasonably require from time to time.If Client fails to comply with its obligations described in this subsection (iii), and Bank determines Client to be liable for Fraudulent Transactions, Bank will either: (1) invoice Client for the amount of such Fraudulent Transaction minus any amounts collected, or (2) deduct the amount of such Fraudulent Transaction amount from Client's rebate.
- F. Notify Bank of any Transaction that Client disputes as soon as practicable after the last day of the Cycle during which such Transaction is charged to Client, and in any event within sixty (60) days of such day. Client shall use commercially reasonable efforts to assist in obtaining reimbursement from a merchant. Client or, subject to any Cardholder Agreement and in the case of Cards under any Joint and Several Liability Accounts, the Cardholder, shall not be relieved of liability for any disputed Transaction if the charge-back is rejected in accordance with the applicable Network's charge-back policy. Bank shall not be liable to Client where notice is received after such sixty (60) day period unless specified in a Local Schedule. Client shall not make a claim against Bank or refuse to pay any amount because Client or the person using the Card may have a dispute with any merchant.
- G. Provide any required notification or obtain authorization under applicable privacy or data protection legislation.
- H. Unless previously provided to Bank, obtain and provide to Bank such information as Bank may reasonably request, for the purposes of investigating the identity of an actual or prospective Cardholder or Client or the identity or financial condition of Client, evidencing authority for Card issuance requests, and assisting in any review of Bank by a regulator with relevant jurisdiction. Any information provided by Client to Bank shall be, to the best of Client's knowledge, information and belief, accurate and complete in all material respects.

- I. Make payments for all Transactions posted to Accounts no later than the payment date (the Payment Date), as specified in the periodic statement. In the event that Client makes payments other than as contemplated by the periodic statement, Bank may require, and Client shall provide, such documentation as reasonably required by Bank to reconcile such payments to the amounts stated as due in the periodic statement by the Payment Date. Any amount due which is not received by the Payment Date shall be subject to the late fees and delinquency fees as set out on Exhibit 1 to the Master Terms.
- J. In the case of Corporate Liability Programs, be solely liable for all Transactions and Client's obligations shall be enforceable regardless of the validity or enforceability of a Cardholder's obligations. In the case of any Joint and Several Liability Account, Client shall pay Bank, within ten (10) days of written notice, for any Transactions not paid by a Cardholder within one hundred and twenty (120) days of the first billing in respect of the relevant Transaction.
- K. Unless otherwise provided to Bank, provide Bank with such financial statements and other related information annually, or as otherwise requested by Bank in form and in such detail as Bank may reasonably request.
- L. Use commercially reasonable efforts to ensure that such applicants to whom it requests Bank to issue Cards and whom Client authorizes to use the Cards are not identified on a prohibited government sanctions list, or otherwise subject to a sanctions program applicable to Client.

#### 4. Credit Limits and Certain Bank Rights

- A. Bank may establish a Credit Limit and Cardholder Credit Limit and may establish other limits from time-to-time. The establishment of a limit does not prevent such limit from being exceeded and, subject to the Master Agreement, Client is responsible for all amounts including such amounts that exceed a limit.
- B. Bank may at any time: (i) increase or decrease any Credit Limit or the Cardholder Credit Limit or any other limit in connection with any Card or any Account or the Program; (ii) refuse to authorize Transactions; (iii) vary the payment terms, or require the provision of security or additional security; (iv) suspend or terminate any Card or any Account; (v) decline to open any Account; or Issue any Card or (vi) require MCC authorization restrictions in connection with a Program; (vii) apply or offset any credit balance hereunder to the payment when due of any amount owing under this Master Agreement; (viii) offset any obligation of Client to Bank under this Master Agreement or otherwise against any obligation Bank owes to Client.

#### 5. System Access

- A. Bank shall provide Client with password-protected access to Systems through use of an Access Code. Bank shall assign an Initial Access Code to the Program Administrator who shall create and disseminate Access Codes to Authorized Users.
- B. Client shall adhere to security procedures, terms and conditions provided by Bank regarding the System as set forth herein. Client agrees that any access, Transaction or business conducted using an Access Code is presumed by Bank to have been in Client's name for Client's benefit.
- C. Except for unauthorized use by a Bank employee, Client is solely responsible for the genuineness and accuracy of all instructions, messages and other communications received by Bank via the System. Bank may rely and act upon all instructions and messages which are issued with Access Codes, without making any further verification or inquiry.
- D. Bank is authorized to rely upon any written instruction that designates an Authorized Signer until the authority of any such Authorized Signer is revoked by Client by written instruction to Bank, and Bank has reasonable opportunity to act on such instruction.
- E. From time to time, Bank may suspend the System when Bank considers it necessary to do so (including, without limitation, for maintenance or security purposes). Bank will use reasonable efforts to provide Client with notice prior to the suspension.

#### 6. Representations and Warranties

Each Party represents, warrants and covenants that it will comply with Applicable Laws in connection with the performance of its obligations under the Master Agreement. Each Party represents and warrants that this Master Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms, and that execution and performance of the Master Agreement: (A) does not breach any agreement of such Party with any third party, (B) does not violate any law, rule, or regulation, or any duty arising in law or equity applicable to it, (C) are within its organizational powers, and (D) has been authorized by all necessary organizational action of such Party and validly executed by a person(s) authorized to act on behalf of such Party. Client also represents, warrants and covenants that it will use its commercially reasonable efforts to ensure that the Accounts and the Cards shall only be used for Client's business purposes. Client also represents and warrants that it will use commercially reasonable efforts to ensure that such applicants to whom it requests Bank to issue Cards to and whom Client authorizes to use the Cards/Accounts are not identified on a prohibited government sanctions list, are not located or resident in a sanctioned country, or otherwise subject to a sanctions program applicable to Client. Bank reserves the right to terminate the Master Agreement and/or cancel any of the Accounts at any time if Bank determines that a Card has been issued to a person residing in a sanctioned jurisdiction or where the Cardholder's name, or the name of an individual authorized to use a Card/Account, appears on a government sanctions list applicable to Client or Bank. EXCEPT AS SET FORTH IN THESE MASTER TERMS OR IN ANY LOCAL SCHEDULE, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS AND WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 7. Fees and Charges

Bank may change the fees and charges payable by Client at any time, provided that Bank notifies Client at least thirty (30) days prior to the effective date of the change or such other period as is specified in the applicable Local Schedule. Bank's periodic statements represent the official record of amounts due and owing by Client to Bank regardless of the method(s) by which Client elects to receive invoice information from Bank (e.g., in electronic form, mappers or other methods). Client acknowledges that it has an obligation to verify and reconcile its payment obligations to Bank's periodic statements.

## 8. Term and Termination

- A. Pursuant to the Fairfax County Contract #4400007045, this Master Agreement shall commence as of the Effective Date and continue in full force and effect for a period of four (4) years unless otherwise terminated in accordance with the terms of this Section 8. Thereafter this Master Agreement may renew for three (3) two-year terms unless earlier terminated as set forth herein and shall not extend past August 14, 2026.
- B. Either Party may terminate this Master Agreement for any or no reason upon sixty (60) days prior written notice to the other Party.
- C. Either Party may terminate this Master Agreement immediately upon the occurrence of one or more of the following events: (i) the other Party's violation of Applicable Law, (ii) the liquidation, insolvency or dissolution of the other Party, (iii) the voluntary or involuntary filing of bankruptcy proceedings or similar proceedings with respect to the business of the other Party, or (iv) with the exception of a payment obligation, a Party's breach of a material obligation under this Master Agreement that is not cured within thirty (30) days following receipt of notice of the breach from the non-breaching Party.
- D. In addition, Bank may immediately (a) terminate this Master Agreement, (b) terminate one or more services provided for in this Master Agreement, and/or (c) terminate one or more Cards upon the occurrence of one or more of the following events: (i) Client fails to remit any payment in accordance with the terms of this Master Agreement, (ii) there is a default by Client or its parent, subsidiary or affiliate in the payment of any debt owed to Bank or a Bank-related entity under any other agreement, (iii) there is a material adverse change in the business, operations or financial condition of Client, or (iv) any representation or warranty made by the Client or any financial statement or certificate furnished to Bank, shall prove to be inaccurate, false or misleading in any material respect when made.
- E. This Master Agreement shall terminate immediately upon the termination of all Accounts issued pursuant to this Master Agreement.
- F. In the event of termination of this Master Agreement by Bank in accordance with Section 8.C or Section 8.D above, Client shall immediately pay all amounts owing under the Master Agreement, without set-off or deduction.
- G. In the event of termination of this Master Agreement for any reason other than by Bank in accordance with Section 8.C or 8.D above, Client shall pay all amounts due and owing under this Master Agreement in accordance with the settlement terms of the Program, without set-off or deduction.
- H. Upon termination of this Master Agreement for any reason, Client shall promptly destroy all physical Cards furnished to Cardholders.
- I. Client (upon notice to Bank) may suspend or terminate any Account or any Card under any Account at any time and for any reason.
- J. Sections 3, 4, 5, 6, 8.D, 9, 10, and 11 of these Master Terms shall survive the termination of the Master Agreement or any Local Schedule. Notwithstanding anything to the contrary contained in this Section 8, the provisions of these Master Terms shall remain in effect until all Cards and Accounts have been cancelled.

## 9. Limitation of Liability and Indemnification

### Limitation of Liability

- A. Subject to Section 9.B below, Bank shall be liable only for Client's actual damages which Client suffers or incurs as a direct result of Bank's negligence or willful misconduct and shall not be liable for any other loss or damage of any nature. For purposes of clarification, Bank's liability to Client for direct damages resulting from Bank's negligence or willful misconduct shall be unlimited.
- B. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR THE LIKE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EACH OF WHICH ARE EXPRESSLY EXCLUDED BY AGREEMENT OF THE PARTIES HEREIN REGARDLESS OF WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### Indemnification

- C. Bank shall indemnify, keep and save harmless the Client, its agents, officials, and employees for direct damages arising from claims by third parties for injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, costs and expenses which may otherwise accrue against the Client in consequence of this Agreement, if it shall be determined that the act was caused through negligence or willful misconduct of the Bank or its employees, or that of the subcontractor or its' employees, if any ("Indemnified Claims"); and the Bank shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in

connection therewith; and if any judgment shall be rendered against the Client in any such action, the Bank shall, at its own expense, satisfy and discharge the same. Bank expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by the Bank, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Client as herein provided. Notwithstanding the foregoing, with respect to Indemnified Claims Bank shall be liable in an amount not to exceed in the aggregate, the amount of \$300,000 during the initial four-year term and any subsequent two-year renewal term except for Indemnified Claims resulting from Bank's gross negligence or fraudulent conduct, which shall not be subject to any limitation.

## 10. Confidentiality

Except as expressly provided in the Master Agreement, all information properly designated in accordance with Va. Code Ann. § 2.2-4342(F) or otherwise exempt from the Virginia Freedom of Information Act, furnished by either Party in connection with the Master Agreement, the Program or Transactions shall be kept confidential. The foregoing obligation shall not apply to information that: (A) is already lawfully known when received without an obligation of confidentiality other than under this Master Agreement, (B) is or becomes lawfully obtainable from other sources who are not under a duty of confidentiality, (C) is in the public domain when received or thereafter enters the public domain through no breach of this Section; (D) is developed independently by the receiving Party without use of the disclosing Party's confidential information; (E) is in an aggregate form non-attributable to the disclosing Party; (F) is required to be disclosed to, or in any document filed with, the U.S. Securities and Exchange Commission (or any analogous body or any registrar of companies or other organizations in any relevant jurisdiction), banking regulator, or any other governmental agencies, (G) is required by Applicable Law to be disclosed and notice of such disclosure is given (when legally permissible) to the disclosing Party, or (H) may be disclosed as provided in the Cardholder Agreement or other Cardholder-related documentation. Notice under (G), when practicable, shall be given sufficiently in advance of the disclosure to permit the other Party to take legal action to prevent disclosure. Bank may exchange (and Client insofar as necessary hereby consents to such exchange) Client and (to the extent authorized) Cardholder confidential information with Affiliates. Bank may also disclose confidential information to service providers in connection with Bank's provision of Program services; provided that the service providers comply with the terms of this Section 10.

## 11. Audit Rights

Upon reasonable notice and at no expense to Bank, Client has the right to access and examine such directly pertinent records of Bank directly related to Client's transactions performed under the Master Agreement that Bank may retain in accordance with its data retention policies and practices as may be applicable from time to time until the expiration of the applicable statute of limitations, but in no event beyond six (6) years from the date of the relevant transaction. Notwithstanding the foregoing or anything to the contrary in the Master Agreement, the Client acknowledges that Bank does not permit general inspections or general third party audits due to the confidentiality and security obligations related to financial and customer data required of financial institutions and that the Client shall not be entitled to access any examination reports or filings made by or to the Bank's regulators or other applicable supervisory authorities or any other data or information that the Bank is precluded by contractual commitment, regulation, or other applicable law from disclosing to third parties.

## 12. Insurance

12.1 The Bank is responsible for its work and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the project, whether owned by the Bank or by the Client. The Bank assumes all risks of direct damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Agreement, or in connection in any way whatsoever with the contracted work.

12.2 The Bank shall, during the continuance of all work under the Agreement provide the following:

a. Maintain statutory Worker's Compensation and Employer's Liability Insurance in limits of not less than \$100,000 to protect the Bank from any liability or damages for any injuries (including death and disability) to any and all of its employees including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.

b. The Bank agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Bank and the interest of the Client, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Agreement or in connection with contracted work.

c. The Bank agrees to maintain Business Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned borrowed, leased, or rented vehicles operated by the Bank in the performance of its operations under the Agreement.

d. The Bank agrees to maintain Bankers Professional Liability insurance in the amount of \$1,000,000 per wrongful act/aggregate to cover the Bank and its employees while acting in the scope of their duties.

e. Liability Insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

f. Rating Requirements:

1. The Bank agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia or is a captive insurer that meets the statutory requirements of its domiciled state, with the Best's Key Rating of at least A-: VI.



2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the Bank's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A-.VI or better.

g. Subject to Section 9.C. of this Agreement, Indemnification shall apply.

h. The Bank will provide a signed Certificate of Insurance citing the Agreement number, and shall have it filed with the Fairfax County Purchasing Agent and/or Risk Manager before any work is started.

i. If the Bank delivers services from a Client-leased facility, the Bank is required to carry property insurance on all equipment, to include Client-owned installed and maintained equipment used by the Bank while in their care, custody and control for use under this Agreement.

12.3. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

12.4 The Client, its officers and employees shall be named as an "additional insured" as their interests may appear in the Automobile and General Liability policies relative to claims of bodily injury or property damage which arise from Bank's negligent acts or omissions in connection with the performance of this Agreement and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the Client may possess.

### 13. Miscellaneous

A. Except as otherwise mutually agreed, neither Party shall use the Marks of the other Party without its prior written consent. If Client elects to have its Marks embossed on the Cards or provide them to Bank for other uses, Client hereby grants Bank a non-exclusive limited licence to use the Marks for the foregoing purposes.

B. If any provision of this Master Agreement is found by an arbitrator or court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the Parties set forth in this Master Agreement. The failure of either Party hereto to enforce any right or pursue any remedy hereunder shall not be construed to be a waiver thereof.

C. Bank and Client will at all times be independent contractors. In furtherance thereof and of the parties' mutual interests in this Master Agreement, no third party will be deemed an intended or unintended beneficiary of this Master Agreement. This Master Agreement is enforceable only between the parties hereto and shall not be subject to any actual or implied right or obligations of, or commitment to, any third party without the prior written consent of Bank.

D. In the regular course of business, Bank may monitor, record and retain telephone conversations made or initiated to or by Bank from or to Client or Cardholders.

E. This Master Agreement shall be binding upon and inure to the benefit of Client and Bank and their respective successors and permitted assigns. This Master Agreement or any of the rights or obligations hereunder, may not be assigned by either party without the prior written consent of the non-assigning party; provided, however, the Bank may assign this Master Agreement, or any of the interests, rights, payments or obligations hereunder to any wholly-owned subsidiaries of JPMorgan Chase & Co. without the consent of the Client.

F. This Master Agreement, Client's Memorandum of Negotiations; Client's RFP2000001824 and Bank's Response to Client's RFP including the Technical Proposal dated January 13, 2016 and the revised Cost Proposal dated May 16, 2016; constitute the entire agreement between the Parties with respect to its subject matter and supersedes all prior or contemporaneous proposals, understandings, representations, negotiations, and agreements of any kind, whether written, oral, expressed or implied, relating to the subject matter thereof.

Notwithstanding documents making up the Agreement, the documents will control in this order of precedence:

a) Memorandum of Negotiations;

b) Client RFP2000001824;

c) Master Commercial Card Agreement dated July 8, 2016; and

d) Bank's RFP Response including the Technical Proposal dated January 13, 2016 and the revised Cost Proposal dated May 16, 2016.

G. The Master Agreement may be amended or waived, subject to applicable law, only in writing signed by both parties; provided, however, that the Bank may unilaterally change the terms of this Master Agreement upon prior written notice to the Client, for valid business reasons, to be determined in Bank's sole discretion, provided that the effective date shall not be less than sixty (60) days from the date of the written notice provided by Bank pursuant to this paragraph. The Client shall be deemed to have accepted such change if the Client continues to use the Program following the effective date of such change.

H. This Master Agreement may be signed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures were upon the same document. Facsimile signatures shall have the same force and effect as the original.

- I. Unless Client provides Bank with a valid applicable exemption certificate or other proof of exemption, Client will pay or reimburse Bank upon demand for any taxes, levies, imposts, deductions, charges, stamp, transaction and other duties and withholdings (together with any related interest, penalties, fines, and expenses) in connection with the Master Agreement, any Account or any Transactions, except if imposed on the overall net income of Bank. If a Tax Deduction is required by law, the amount of the payment due to Bank from Client will be increased to an amount which (after making the Tax Deduction) leaves an amount equal to the payment which would have been due to Bank if no Tax Deduction had been required. Notwithstanding the foregoing, Bank acknowledges that Client is a political subdivision of the Commonwealth of Virginia and is thereby exempt from taxation.
- J. Neither Bank nor Client shall be liable for any loss or damage to the other for its failure to perform or delay in the performance of its obligations under this Master Agreement, if such non-performance or delay is caused directly or indirectly by an act of God, act of governmental authority, de jure or de facto, legal constraint, war, terrorism, catastrophe, fire, flood or electrical, computer, mechanical or telecommunications failure, or failure of any agent or correspondent, or unavailability of a payment system, or other natural disaster or any cause beyond its reasonable control.
- K. Any disputes between the Parties hereto concerning this Master Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to choice of law provisions thereof.
- L. Client acknowledges that Bank prohibits the use of Cards under any Accounts to conduct transactions (including, without limitation, the acceptance or receipt of credit or other receipt of funds through an electronic funds transfer, or by check, draft or similar instrument, or the proceeds of any of the foregoing) that are related, directly or indirectly, to unlawful internet gambling. The term "unlawful internet gambling," as used here, shall have the meaning as set forth in 12 C.F.R. Section 233.2(bb).
- M. All notices and other communications required or permitted to be given under these Master Terms shall be in writing except as otherwise provided herein, and shall be effective on the date on which such notice is actually received by the Party to which it is addressed. All notices shall be sent to the address set forth below or such other address as specified in a written form from one Party to the other.

To Bank:

JPMorgan Chase Bank, N.A.  
~~390 South Riverside Plaza~~ 10 S. Dearborn, 6th FL  
~~Mail Code IL1-0199~~ IL1-0286  
 Chicago, IL ~~60603-2300~~  
 UNITED STATES  
 Attn: Commercial Card Contracts Manager

To Client:

County of Fairfax, Virginia  
 Department of Procurement & Material Management  
 12000 Government Center Parkway, Suite 427  
 Fairfax, Virginia 22035-0013  
 Attn: Cathy A. Muse

- N. If any credit arises on an Account in respect of a Card (for example as a result of a duplicate payment, merchant refund or refund for a disputed transaction), Bank will apply the credit to offset any amount owed to Bank, either then or at any later time, under this Master Agreement. Bank may at its option pay it to the relevant Cardholder or the Client using any method chosen by Bank.
- O. The Client's payment obligations under this Agreement are subject to appropriations by the Fairfax County Board of Supervisors.

IN WITNESS WHEREOF, the Parties have caused these Master Terms to be executed by their duly authorized representatives as of the Effective Date.

JPMORGAN CHASE BANK, N.A.

By Judy Mischel  
 Name \_\_\_\_\_  
 Title Judy Mischel  
Executive Director  
Commercial Card

Client Authorization: The undersigned is an officer, member, manager, director, managing partner, or general partner (or person authorized to represent the foregoing), as applicable, of Client, authorized to bind Client to enter into and to perform its obligations under this Master Agreement. The undersigned certifies to Bank that the governing body of Client has adopted resolutions or other appropriate and binding measures authorizing Client to enter into and perform its obligations under this Master Agreement and that those resolutions or other appropriate and binding measures were: (a) adopted in accordance with, as applicable, all requirements of law and Client's organizational or constituent documents, (b) have been entered into the minute books or company records of Client, and (c) are now in full force and effect. Client shall provide to Bank immediately upon demand conclusive evidence of the authorizations described above.

COUNTY OF FAIRFAX, VIRGINIA

By Cathy A. Muse

Name Cathy A. Muse, CPPO

Title Dir/County Purchasing Agent

Note: The legal name of any member, managing member or general partner who is signing but is not an individual person must appear in the signature block.

Client Attestation: The undersigned officer, member, manager, director, managing partner, or general partner (or person authorized to represent the foregoing) of Client, hereby certifies that the individual signing above on behalf of Client has been duly authorized to bind Client and to enter into and perform its obligations under this Master Agreement and that the person signing above on behalf of Client, whose execution of this Master Agreement was witnessed by the undersigned, is an officer, member, manager, director, managing partner, or general partner (or person authorized to represent the foregoing) of Client possessing authority to execute this Master Agreement. Client shall provide to Bank immediately upon demand conclusive evidence of the authorizations described above.

By Jamie Run

Name Jamie Run

Title Contract Specialist II

Note: The person signing the attestation shall be someone different from the person signing above on behalf of Client.

**EXHIBIT 1 to the Master Terms  
INCENTIVES & FEES**

**1. DEFINITIONS.** Capitalized terms herein that are not otherwise specifically defined herein shall have the same meanings as set forth in the Agreement.

"Average Annual Spend per Card" means annual U.S. Total Charge Volume divided by the average number of open Cards included in the calculation of annual U.S. Total Charge Volume for any calendar year. The average number of open Cards is calculated as the number of Cards open at each month-end, averaged over such calendar year.

"Average File Turn" has the meaning given to it in Section 4.A.

"Bonus Term" means the four (4) year term beginning on the Effective Date of this Agreement.

"Combined Large Ticket Transaction Volume" means the sum of U.S. Large Ticket Transaction Volume and U.S. Single-Use Large Ticket Transaction Volume.

"Combined Net Charge Volume" means the sum of U.S. Net Charge Volume and U.S. Net Single-Use Charge Volume

"Combined Total Charge Volume" means the total sum of U.S. Total Charge Volume and U.S. Total Single-Use Charge Volume

"Consortium Combined Total Charge Volume" means the total sum of U.S. Total Charge Volume and U.S. Total Single-Use Charge Volume for all Participants of the Fairfax County Consortium.

"Credit Losses" means all amounts due to Bank in connection with any and all Cards or Accounts that Bank has written off as uncollectible, excluding amounts due in respect of Fraudulent Transactions.

"Fairfax County Consortium" or "Consortium" means Fairfax County, VA and other public entities determined eligible to participate in the Program and that have been approved by the Bank for participation.

"Fraudulent Transactions" means Transactions made on a Card or Account by a person, other than the Consortium Participant or Cardholder, who does not have actual, implied, or apparent authority for such use, and which the Cardholder or Consortium Participant receives no direct or indirect benefit.

"Large Ticket Transaction" means a Transaction that the Associations have determined qualifies as a large ticket transaction.

"Participant" means each individual public entity approved by the Bank to participate under the Commercial Card Purchasing and Single-Use Account Programs provided to Fairfax County, VA under this Agreement and which have executed an agreement in such form as provided by the Bank from time to time, and for purposes of this Exhibit 1, the Client.

"Settlement Terms" means the combination of the number of calendar days in a billing cycle and the number of calendar days following the end of a billing cycle to the date the payment is due. Settlement Terms are expressed as X & Y, where X is the number of calendar days in the billing cycle and Y is the number of calendar days following the end of a billing cycle to the date the payment is due.

"U.S. Large Ticket Transaction Volume" means total Large Ticket Transactions made on any and all U.S. dollar issued Cards or Accounts, net of returns, cash advances, convenience check amounts, Fraudulent Transactions and any Transactions that do not qualify for interchange under applicable Association rules. U.S. Large Ticket Transaction Volume does not include U.S. Single-Use Large Ticket Transaction Volume.

"U.S. Net Charge Volume" means total charges made on any and all U.S. dollar issued Cards or Accounts, net of returns, cash advances, convenience check amounts, Fraudulent Transactions and any Transactions that do not qualify for interchange under applicable Association rules. U.S. Net Charge Volume does not include U.S. Large Ticket Transaction Volume, U.S. Net Single-Use Charge Volume, or U.S. Single-Use Large Ticket Transaction Volume.

"U.S. Net Single-Use Charge Volume" means total charges made on any and all U.S. dollar issued Single-Use Accounts, net of returns, cash advances, Fraudulent Transactions and any Transactions that do not qualify for interchange under applicable Association rules. U.S. Net Single-Use Charge Volume does not include U.S. Single-Use Large Ticket Transaction Volume.

"U.S. Single-Use Large Ticket Transaction Volume" means total Large Ticket Transactions made on any and all U.S. dollar issued Single-Use Accounts, net of returns, cash advances, convenience check amounts, Fraudulent Transactions and any Transactions that do not qualify for interchange under applicable Association rules.

"U.S. Total Charge Volume" means the sum of U.S. Net Charge Volume and U.S. Large Ticket Transaction Volume.

"U.S. Total Single-Use Charge Volume" means the sum of U.S. Net Single-Use Charge Volume and U.S. Single-Use Large Ticket Transaction Volume.

**2. BONUSES**

**A. Signing Bonus**

Bank will pay Client a one-time bonus of \$50,000 within 90 days following execution of this Agreement. Repayment of such bonus may be required as follows:

- i. Should the Agreement be terminated prior to the end of the Bonus Term, Client shall repay the bonus to Bank on a term pro-rata basis.
- ii. In addition, should Client fail to achieve at least \$400,000,000 in Combined Total Charge Volume ("Bonus Term Volume Requirement") for any reason during the Bonus Term, Client shall repay the bonus to Bank on a volume pro-rata basis. Such repayment will be deducted from the final rebate payment in respect of the Bonus Term, if any. If the amount of the repayment exceeds the final rebate payment of the Bonus Term, Client shall pay to Bank the amount in excess of the final rebate payment of the Bonus Term. If there is no final rebate payment, Client shall pay to Bank the full amount of such repayment.
- iii. Furthermore, should Client fail to achieve at least \$100,000,000 ("Annual Volume Requirement") in annual Combined Total Charge Volume for any reason in any year of the Bonus Term (with the exception of the first and final years of the Bonus Term), Client will be subject to an annual repayment. The amount of the annual repayment will be deducted from the annual rebate payment and will be calculated based on the following formula:
  - $(\text{Annual Volume Requirement} - \text{Actual annual Combined Total Charge Volume}) / \text{Annual Volume Requirement} = \% \text{ Shortfall}$
  - $\% \text{ Shortfall} * (\text{Signing Bonus} / \text{duration of Bonus Term in years}) = \$ \text{ Annual Repayment}$

If the amount of the annual repayment exceeds the annual rebate payment, Client shall pay to Bank the amount in excess of the annual rebate payment. If there is no annual rebate payment, Client shall pay to Bank the full amount of such annual repayment.

Should Client achieve at least its Bonus Term Volume Requirement by the end of the Bonus Term, any previous annual repayment made by Client to Bank based on an annual volume shortfall will be returned to Client at the time of final rebate payment in respect of the Bonus Term.

- iv. If upon termination of the Agreement Bank is owed both an early termination repayment under 2.A.i and a volume shortfall repayment under 2.A.ii, Client shall be required to pay the larger of the two amounts.

**3. REBATES**

**A. Volume Rebate**

Bank will pay each Participant a rebate based on the annual Consortium Combined Total Charge Volume and the respective individual Participant's annual Combined Total Charge Volume achieved according to the following schedule. The rebate will be calculated as the Volume Rebate Rate (as determined according to the following schedule) multiplied by each respective individual Participant's annual Combined Net Charge Volume, subject to the rebate adjustments below.

Annual Consortium Combined Total Charge Volume	Individual Consortium Participant's Annual Combined Total Charge Volume @ 30 & 14 Settlement Terms								
	\$1	\$250,000	\$500,000	\$1,000,000	\$5,000,000	\$10,000,000	\$25,000,000	\$50,000,000	\$100,000,000
\$100,000,000	0.00%	0.25%	0.50%	1.06%	1.46%	1.56%	1.61%	1.71%	1.75%
\$150,000,000	0.00%	0.25%	0.50%	1.07%	1.47%	1.57%	1.62%	1.72%	1.78%
\$200,000,000	0.00%	0.25%	0.50%	1.08%	1.48%	1.58%	1.63%	1.73%	1.83%
\$250,000,000	0.00%	0.25%	0.50%	1.09%	1.49%	1.59%	1.64%	1.74%	1.84%
\$300,000,000	0.00%	0.25%	0.50%	1.10%	1.50%	1.60%	1.65%	1.75%	1.85%
\$350,000,000	0.00%	0.25%	0.50%	1.11%	1.51%	1.61%	1.66%	1.76%	1.86%
\$400,000,000	0.00%	0.25%	0.50%	1.12%	1.52%	1.62%	1.67%	1.77%	1.87%
\$450,000,000	0.00%	0.25%	0.50%	1.13%	1.53%	1.63%	1.68%	1.78%	1.88%
\$500,000,000	0.00%	0.25%	0.50%	1.14%	1.54%	1.64%	1.69%	1.79%	1.89%
\$550,000,000	0.00%	0.25%	0.50%	1.15%	1.55%	1.65%	1.70%	1.80%	1.90%
\$600,000,000	0.00%	0.25%	0.50%	1.16%	1.56%	1.66%	1.71%	1.81%	1.91%

**B. Large Ticket Rebate**

Should the minimum annual Consortium Combined Total Charge Volume required to earn a Volume Rebate be achieved as stated above, Bank will pay each Consortium Participant a rebate based on the respective individual Consortium Participant's annual Combined Large Ticket Transaction Volume. The rebate will be calculated as 0.65% ("Large Ticket Rebate Rate") multiplied by each respective individual Consortium Participant's annual Combined Large Ticket Transaction Volume, subject to the rebate adjustments below.

**4. REBATE ADJUSTMENTS**

**A. Average File Turn Adjustment**

- i. For purposes of this Section 4.A, "Average File Turn" means the annual average outstanding balance (i.e. sum of the average outstanding balances for each calendar month divided by 12) divided by the annual Combined Total Charge Volume, multiplied by 365.
- ii. The Average File Turn Adjustment for a Consortium Participant's Program(s) is calculated by determining the difference between the Average File Turn for the respective Program(s) and 29. If the actual Average File Turn is less than 29, the Volume Rebate Rate and Large Ticket Rebate Rate will each be increased by 0.0075% for each whole number less than 29. If the actual Average File Turn is greater than 29, the Volume Rebate Rate and Large Ticket Rebate Rate will each be decreased by 0.0075% for each whole number greater than 29 but less than 46.

By way of example, Programs with Settlement Terms of 30 & 14 would have an Average File Turn of 29, provided that spend occurs ratably throughout each cycle. Programs with Settlement Terms of 7 & 7 would have an average File Turn of 10.5, provided that spend occurs ratably throughout each cycle.

- iii. If a Consortium Participant's actual Average File Turn under Section 4.A.ii is greater than 45 days, such Consortium Participant will not qualify for any rebate payment (as described below in the General Rebate Terms Section).

**B. Average Annual Spend per Card Adjustment**

Bank may adjust the Rebates if Client's Average Annual Spend per Card decreases more than 20%. The U.S. Purchasing Card Program assumes an Average Annual Spend per Card for Client of \$25,000.

**C. Interchange Rate Adjustment**

In the event of a reduction in interchange rates by the Associations, Bank reserves the right to adjust the rebate rates and fees accordingly.

**5. GENERAL REBATE TERMS**

**A. Annual Rebates**

- i. Rebates will be calculated annually in arrears. Rebate payments will be made in USD within the 90 day period after the end of the calendar year (the "Rebate Calculation Period") via wire transfer to a business account designated by each Consortium Participant and authenticated by Bank. Payment is contingent upon Bank receiving the respective Consortium Participant's wire instructions and Bank's authentication of such instructions prior to the end of the Rebate Calculation Period.
- ii. Rebate amounts are subject to reduction by all Credit Losses. If Credit Losses exceed the rebate earned for any calendar year, the respective Consortium Participant shall pay to Bank the amount in excess of the rebate, which invoice shall be due and payable in accordance with the terms of such invoice. If the respective Consortium Participant is participating in more than one Program, Bank reserves the right to offset any Credit Losses from one Program against any rebate earned under any other Program. In no event will Bank pay a Consortium Participant a rebate for the year in which the Agreement is terminated.

**B. To qualify for any rebate payment, all of the following conditions must be met.**

- i. Consortium Participant is not in default under the Agreement at the time of rebate calculation and payment.
- ii. Account(s) must be current at the time of rebate calculation and payment.
- iii. Average File Turn must be less than 46 days (as stated in the Average File Turn Adjustment section).

**6. SETTLEMENT TERMS**

Payment must be received by Bank in accordance with the Settlement Terms. Late payments shall be subject to a fee(s) as specified in the Fees Section. Settlement Terms are 7 & 7 for the Client's U.S. Purchasing Card and 30 & 14 for the Client's Single-Use Account Programs. Consortium Participants (excluding the Client) have the option to elect 7 & 1, 7 & 7, 14 & 7, 30 & 7, 30 & 14 and 30 & 25 Settlement Terms for their Purchasing Card program. Such Consortium Participant's Purchasing Card program Settlement Terms election will be determined at time of each respective program implementation process. Such Consortium Participant's Single-Use Account program Settlement Terms are 30 & 14, where applicable.

7. FEES – Existing U.S. Programs implemented prior to the Effective Date of this Agreement

A. The following are the fees associated with existing Programs implemented on PaymentNet reporting system and TSYS processor prior to the Effective Date of this Agreement.

<b>STANDARD SERVICES AND FEES</b>	
Late payment fee	Central bill: None
Delinquency/Finance charge	Central bill: Prime + 2.00 is applied to the average daily balance, which is calculated as follows: (past due balance + any new spend) /number of days in Cycle. Will be charged at the end of the first Cycle and each Cycle thereafter.
International transaction	1% surcharge
Standard card	\$0.00
<b>ADDITIONAL SERVICES AND FEES</b>	
Cash advances	2.0% of advance amount (\$3.00 minimum with no maximum)
Client logo plastic (hot stamp)	\$0.00
Rush card	\$25 per card if processed through Bank. If processed through the Credit Card Network, Participant shall pay any fees charged by the Credit Card Network. Rush Card fee waived provided the total number of rushed cards does not exceed 25.

If Consortium Participant requests services not listed in this schedule, Consortium Participant agrees to pay the fees associated with such services.

B. The following are the fees associated with existing Programs implemented on PaymentNet reporting system and HP/EDS processor prior to the Effective Date of this Agreement.

<b>STANDARD SERVICES AND FEES</b>	
Late payment fee	Central bill: 1% of unpaid balance at the end of the first Cycle
Delinquency/Finance charge	Central bill: 2.50% of the full amount past due charged at the end of the second Cycle and each Cycle thereafter.
International transaction	1% surcharge
Standard card	\$0.00
<b>ADDITIONAL SERVICES AND FEES</b>	
Cash advance	2.5% of amount advanced (\$2.50 minimum with no maximum)
Convenience check	2% of check amount (\$1.50 check minimum with no maximum)
Client logo plastic (hot stamp)	\$0.00
Rush card	\$25 per card if processed through Bank. If processed through the Credit Card Network, Participant shall pay any fees charged by the Credit Card Network. Rush Card fee waived provided the total number of rushed cards does not exceed 25.

If Consortium Participant requests services not listed in this schedule, Consortium Participant agrees to pay the fees associated with such services.

- C. The following are the fees associated with existing Programs implemented on Smartdata (SDG2) reporting System and TSYS processor prior to the Effective Date of this Agreement.

<b>STANDARD SERVICES AND FEES</b>	
Late payment fee	Central bill: None
Delinquency/Finance charge	Central bill: Prime + 2.0% is applied to the average daily balance and will be charged on the cycle date. Average daily balance is calculated as follows: the sum of the outstanding balances on each day in the cycle (including any new spend, fees, and payments) / number of days in the cycle.
International transaction	1% surcharge
Standard card	\$0.00
<b>ADDITIONAL SERVICES AND FEES</b>	
Cash advances	2.0% of advance amount (\$3.00 minimum with no maximum)
Rush card	\$25 per card if processed through Bank. If processed through the Credit Card Network, Participant shall pay any fees charged by the Credit Card Network. Rush Card fee waived provided the total number of rushed cards does not exceed 25.
<b>TECHNOLOGY SERVICES AND FEES</b>	
File transfer using FTP	\$300 one time setup fee
Data file fees (T&E expense system feeds, SAP, SmartLink, etc.)	\$50 per month

If Consortium Participant requests services not listed in this schedule, Consortium Participant agrees to pay the fees associated with such services

8. **FEES – New U.S. Programs implemented after to the Effective Date of this Agreement**

- A. The following are the fees associated with new Programs implemented on PaymentNet reporting system and TSYS processor after to the Effective Date of this Agreement

<b>STANDARD SERVICES AND FEES</b>	
Late payment charge	Central bill: 1% of full amount past due assessed at end of the Cycle in which payment first became due and each Cycle thereafter
International transaction	1.5% of the US Dollar amount charged
Rush card	\$25 per card if processed through Bank. If processed through the Credit Card Network, the Participant shall pay any fees charged by the Credit Card Network. Rush Card fee waived provided the total number of rushed cards does not exceed 25.
Standard card	\$0.00





# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Date: **JUL 21 2016**

JPMorgan Chase Bank, NA  
10 S. Dearborn, 6<sup>th</sup> FL  
Mail Code IL1-0286  
Chicago, IL 60603-2300

Attention: Vasyl W. Zuk, Executive Director

Reference: RFP2000001824, Procurement Card Services

Dear Mr. Zuk:

## Acceptance Agreement

**Contract Number: 4400007090**

This acceptance agreement signifies a contract award for the provision of Procurement Card Services. The period of the contract shall be from August 14, 2016 through August 14, 2020, with three (3) two-year renewal options.

The contract award shall be in accordance with:

- 1) This Acceptance Agreement; and
- 2) The Attached Memorandum of Negotiations

Please note that this is the order to proceed. Please contact the Program Manager, Pat Orlando, to schedule a contract kick-off meeting. Pat can be reached at 703-324-3208 or via e-mail at [patricia.orlando@fairfaxcounty.gov](mailto:patricia.orlando@fairfaxcounty.gov). Please provide your Insurance Certificate according to Special Provisions paragraph 17 within ten (10) days after receipt of this letter.

Sincerely,

Cathy A. Muse  
Director/County Purchasing Agent

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Department of Procurement & Material Management  
12000 Government Center Parkway, Suite 427  
Fairfax, VA 22035-0013  
Website: [www.fairfaxcounty.gov/dpmm](http://www.fairfaxcounty.gov/dpmm)  
Phone 703-324-3201, TTY: 711, Fax: 703-324-3228



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## MEMORANDUM OF NEGOTIATIONS RFP2000001824

The County of Fairfax (hereinafter called the County) and J.P. Morgan Chase Bank, N.A. (hereinafter called the Contractor) hereby agree to the following in the execution of Contract 4400007090 for Procurement Card Services. The final Contract contains the following documents listed in the order of precedence:

- a. This Memorandum of Negotiations;
- b. County's Request for Proposal RFP2000001824, as amended below, and all Addenda;
- c. The Attached Master Commercial Card Agreement;
- d. The Contractor's Technical Proposal dated January 13, 2016 and the Contractor's revised Cost Proposal dated May 16, 2016;
- e. Any amendments subsequently issued.

In addition, the County and the Contractor hereby agree to the following revised Contract terms:

1. The County accepts the Contractor's response to Paragraph 5.27(a) of the Special Provisions of the RFP, in the Section titled "Independent Audits" as stated below:

J.P. Morgan can provide our informational letter regarding SSAE-16 and a description of the comprehensive internal risk framework that is designed to provide a sound and well-controlled operating environment.

2. The parties mutually agree that the Section 17 titled "INSURANCE" of the Special Provisions of the RFP is deleted and is replaced with the following:

17.1 The Contractor is responsible for its work and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the project, whether owned by the Contractor or by the County. The Contractor assumes all risks of direct damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

17.2 The Contractor shall, during the continuance of all work under the Contract provide the following:

- a. Maintain statutory Worker's Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
- b. The Contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with contracted work.

- c. The Contractor agrees to maintain Business Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned borrowed, leased, or rented vehicles operated by the Contractor in the performance of its operations under the Contract.
- d. The Contractor agrees to maintain Bankers Professional Liability insurance in the amount of \$1,000,000 per wrongful act/aggregate to cover the Contractor and its employees while acting in the scope of their duties.
- e. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- f. Rating Requirements:
  - 1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia or is captive insurer that meets the statutory requirements of its domiciled state, with the Best's Key Rating of at least A-: VI.
  - 2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A-:VI or better.
- g. Indemnification: The Contractor shall indemnify, keep and save harmless the County, its agents, officials, and employees for direct damages arising from claims by third parties for injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, costs and expenses which may otherwise accrue against the County in consequence of this Contract, if it shall be determined that the act was caused through negligence or willful misconduct of the Contractor or its employees, or that of the subcontractor or its' employees, if any ("Indemnified Claims"); and the Contractor shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at its own expense, satisfy and discharge the same. The Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided. Notwithstanding the foregoing, with respect to Indemnified Claims the Contractor shall be liable in an amount not to exceed in the aggregate, the amount of \$300,000 during the initial four-year term and any subsequent two-year renewal term except for Indemnified Claims resulting from Bank's gross negligence or fraudulent conduct, which shall not be subject to any limitation.
- h. The Contractor will provide a signed Certificate of Insurance citing the contract number and shall have it filed with the County Purchasing Agent and/or Risk Manager before any work is started.
- i. If the Contractor delivers services from a County-leased facility, the Contractor is required to carry property insurance on all equipment, to include County-owned installed and maintained equipment used by the Contractor while in their care, custody and control for use under this Contract.

- 17.3 Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 17.4 The County, its officers and employees shall be named as an "additional insured" as their interests may appear in the Automobile and General Liability policies relative to claims of bodily injury or property damage which arise from Contractor's negligent acts or omissions in connection with the performance of this Contract and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess "
3. The County accepts the Contractor's response to Paragraph 19.1 of the Special Provisions of the RFP, in the Section titled "REPORTS AND INVOICING" as stated below:
- J.P. Morgan agrees to discuss in good faith with the County, the specifics of the reporting requirements.
4. The parties mutually agree that Paragraph 23.1 of the Special Provisions of the RFP, in the Section titled "ACCESS TO AND INSPECTION OF WORK," is deleted and replaced with the following language:
- Upon reasonable notice and at no expense to the Contractor, the County has the right to access and examine such directly pertinent records of the Contractor directly related to the County's transactions performed under the agreement that the Contractor may retain in accordance with its data retention policies and practices as may be applicable from time to time until the expiration of the applicable statute of limitations, but in no event beyond six (6) years from the date of the relevant transaction. Notwithstanding the foregoing or anything to the contrary in the Contract, the Contractor acknowledges that the Contractor does not permit general inspections or general third party audits due to the confidentiality and security obligations related to financial and customer data required of financial institutions and that the Contractor shall not be entitled to access any examination reports or filings made by or to the Contractor's regulators or other applicable supervisory authorities or any other data or information that the Contractor is precluded by contractual commitment, regulation, or other applicable law from disclosing to third parties.
5. The parties mutually agree that the Section 24 titled "PROJECT AUDIT" of the Special Provisions of the RFP is deleted and is replaced with the following language:
- Upon reasonable notice and at no expense to the Contractor, the County has the right to access and examine such directly pertinent records of the Contractor directly related to the County's transactions performed under the agreement that the Contractor may retain in accordance with its data retention policies and practices as may be applicable from time to time until the expiration of the applicable statute of limitations, but in no event beyond six (6) years from the date of the relevant transaction. Notwithstanding the foregoing or anything to the contrary in the Contract, the Contractor acknowledges that the Contractor does not permit general inspections or general third party audits due to the confidentiality and security obligations related to financial and customer data required of financial institutions and that the Contractor shall not be entitled to access any examination reports or filings made by or to the Contractor's regulators or other applicable supervisory authorities or any other data or information that the Contractor is precluded by contractual commitment, regulation, or other applicable law from disclosing to third parties.
6. The parties mutually agree that Paragraph 29.4 of the Special Provisions of the RFP, in the Section titled "USE OF CONTRACT(S) BY MEMBERS COMPRISING MID-ATLANTIC PURCHASING TEAM COMMITTEE," is deleted and replaced with the following language:

Any jurisdiction or entity using the resultant contract(s) may enter into an agreement with the successful Contractor(s); an agreement by an entity will be at the sole and absolute discretion of

the Contractor. An agreement entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue.

7. The County accepts the Contractor's response to Paragraph 31.1 of the Special Provisions of the RFP, in the Section titled "AMERICANS WITH DISABILITIES ACT REQUIREMENTS" as stated below:

J.P. Morgan is committed to complying with the Americans with Disabilities Act and will endeavor to address any perceived access barriers which prevent users with disabilities from using electronic and information resources and all associated information, documentation, and support that it provides to the County under this Agreement.

8. The County accepts the Contractor's response to Paragraph 32.1 of the Special Provisions of the RFP, in the Section titled "HIPAA COMPLIANCE" as stated below:

J.P. Morgan will not receive any protected health information in conjunction with the Commercial Card Services contemplated for in this RFP. Therefore, the execution of a 'Business Associate Agreement' is not applicable under this RFP.

At J.P. Morgan, we value our relationship with our clients and take the confidentiality of our clients' information seriously. With other product solutions that J.P. Morgan offers, such as lockbox payment processing, we take a conservative approach to HIPAA compliance. Currently, J.P. Morgan has over 1,000 healthcare banking clients and a demonstrated experience with appropriately handling health information. While we do not envision the need for such compliance with the County's Commercial Card Services, we are open to discuss the County's concerns so as to meet its needs.

9. The parties mutually agree that Paragraph 31 (TERMINATION OF CONTRACTS) of the General Conditions and Instructions to Bidders (Contract Appendix A) is deleted and is replaced with the following language:

Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Cause.
- b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
- c. Terminated by either party for any or no reason upon sixty (60) days prior written notice to the other party.
- d. Terminated due to the termination of all Accounts issued pursuant to this Contract.

10. The parties mutually agree that Paragraph 32 (TERMINATION FOR CONVENIENCE) of the General Conditions and Instructions to Bidders (Contract Appendix A) is deleted in its entirety.

11. The parties mutually agree that Paragraph 33 (TERMINATION OF CONTRACT FOR CAUSE) of the General Conditions and Instructions to Bidders (Contract Appendix A) is deleted and is replaced with the following language:

- a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract and fail to cure within thirty (30) days following receipt of notice of the breach from the County, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, in addition to the County's remedies under the contract and all other rights available at law or in equity, the County shall have the right to immediately terminate this contract. Such termination shall be effected by delivering a notice of termination to the Contractor at any time specifying the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- b. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
- c. Either party may terminate this Contract immediately upon the occurrence of one or more of the following events: (i) the other party's violation of Applicable Law, (ii) the liquidation, insolvency or dissolution of the other party, (iii) the voluntary or involuntary filing of bankruptcy proceedings or similar proceedings with respect to the business of the other party, or (iv) with the exception of a payment obligation, a party's breach of a material obligation under this Contract that is not cured within thirty (30) days following receipt of notice of the breach from the non-breaching party.
- d. In addition, the Contractor may immediately (a) terminate this Contract, (b) terminate one or more services provided for in this Contract, and/or (c) terminate one or more Cards upon the occurrence of one or more of the following events: (i) the County fails to remit any payment in accordance with the terms of this Contract, (ii) there is a default by the County or its parent, subsidiary or affiliate in the payment of any debt owed to the Contractor or a Bank-related entity under any other agreement, (iii) there is a material adverse change in the business, operations or financial condition of the Contractor, or (iv) any representation or warranty made by the County or any financial statement or certificate furnished to the Contractor, shall prove to be inaccurate, false or misleading in any material respect when made.



12. The parties mutually agree that Paragraph 35 (SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS) of the General Conditions and Instructions to Bidders (Contract Appendix A) is deleted and is replaced with the following language:

The Contract or any of the rights or obligations hereunder, may not be assigned by either party without the prior written consent of the non-assigning party; provided, however, the Contractor may assign this Contract, or any of the interests, rights, payments or obligations hereunder to any wholly-owned subsidiaries of JPMorgan Chase & Co. without the consent of the County provided that the assignee assumes this Contract or any of the rights or obligations and shall otherwise be capable of providing the same or substantially similar product or level of service provided to the County prior to such assignment.

13. The parties mutually agree that Paragraph 63 (INDEMNIFICATION) of the General Conditions and Instructions to Bidders (Contract Appendix A), is deleted and is replaced with the following language:

The Contractor shall indemnify, keep and save harmless the County, its agents, officials, and employees for direct damages arising from claims by third parties for injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, costs and expenses which may otherwise accrue against the County in consequence of this Contract, if it shall be determined that the act was caused through negligence or willful misconduct of the Contractor or its employees, or that of the subcontractor or its' employees, if any ("Indemnified Claims"); and the Contractor shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at its own expense, satisfy and discharge the same. The Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided. Notwithstanding the foregoing, with respect to Indemnified Claims the Contractor shall be liable in an amount not to exceed in the aggregate, the amount of \$300,000 during the initial four-year term and any subsequent two-year renewal term except for Indemnified Claims resulting from Bank's gross negligence or fraudulent conduct, which shall not be subject to any limitation.

ACCEPTED BY:

  
\_\_\_\_\_  
Contractor  
Judy Mischel  
Executive Director  
Commercial Card  
  
\_\_\_\_\_  
Cathy A. Muse, CPPO  
Director/County Purchasing Agent

7-8-2016  
Date  
  
7/20/2016  
Date