

**COURT ORDER  
2019-0458**



RFP No. 2018-048-6741 Request for Proposal for Electronic Payment Services and E-Commerce Solutions - Contract Execution

On a motion made by Commissioner Dr. Theresa M. Daniel, District 1, and seconded by Commissioner John Wiley Price, District 3, the following order was passed and adopted by the Commissioners Court of Dallas County, State of Texas:

BRIEFING DATE: 5/7/2019  
FUNDING SOURCE: N/A

Be it resolved and ordered that the Dallas County Commissioners Court does hereby authorize and approve the contract agreement between Dallas County and JP Morgan Chase in connection with RFP No. 2018-048-6741 Request for Proposal for Electronic Payment Services and E-Commerce Solutions and authorizes the County Judge to execute contract with signatures on behalf of Dallas County effective Court Order.

Done in open court May 7, 2019, by the following vote:

IN FAVOR: Honorable Clay Lewis Jenkins, County Judge  
Commissioner Dr. Theresa M. Daniel, District 1  
Commissioner J.J. Koch, District 2  
Commissioner John Wiley Price, District 3  
Commissioner Dr. Elba Garcia, District 4

OPPOSED: None  
ABSTAINED: None  
ABSENT: None

Recommended by: Charles Price  
Originating Department: Purchasing

## COMMISSIONERS COURT BRIEFING



**DATE:** 5/7/2019

**SUBMITTING DEPARTMENT:** Purchasing

**THROUGH:**

**SUBJECT:** RFP No. 2018-048-6741 Request for Proposal for Electronic Payment Services and E-Commerce Solutions - Contract Execution

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### **BACKGROUND:**

Dallas County provides multiple point of sale (POS) terminals for debit/credit transactions, web/on-line and pay by phone access for the purpose of collecting and processing electronic payments.

In accordance with Commissioner Court Order 2018-0808 the Dallas County Purchasing Department requested, advertised and received eleven (11) responses to 2018-048-6741 Request for Proposal for Electronic Payment Services and E-Commerce Solutions.

The Purchasing Department conducted initial evaluations of all proposal submitted using the following scoring criteria listed in the proposal.

- Cost to Customer/Fee- 0-20pts
- Organizational Information/Qualifications- 0-20pts
- Settlement Funding and Reporting- 0-20pts
- Equipment and System Capabilities- 0-15pts
- Financial Stability- 0-10pts
- Small Business Enterprise- 0-15pts

All evaluations were done by an evaluation committee comprised of the following departments: Treasurers Office, Tax Office, IT Department, County Clerk Office, District Clerks Office, Audit Department, Budget Department and Small Business Enterprise.

After initial evaluations and scoring, the Purchasing department shortlisted the top three (3) firms;

- JP Morgan Chase,
- Gov. Pay Net
- MSB

The Purchasing Department then conducted interviews and presentations of all firms shortlisted and allowed the evaluation committee to review and evaluate.

Based on evaluation committee scores and evaluation of all phases of the RFP, the committee has recommended JP Morgan Chase as the highest ranked firm and considered for contracting.

<b>RECOMMENDED BY:</b>	Purchasing	<b>PREPARED BY:</b>	Charles Price
		<b>APPROVED BY DEPT HEAD:</b>	Charles Price



The purpose of this briefing is to execute final contract documents.

**OPERATIONAL IMPACT:**

The goal of the contract was to procure a third party solution provider of electronic payment services, at no cost to the County, for integration into the County point-of-sale (POS) terminals. The solution offered will maximize and improve the County's ability to efficiently and accurately conduct various types of credit card, debit card, e-check collection transactions and manage financial data.

The Tax Office and Treasure Office will be the primary users of the contract.

**FINANCIAL IMPACT:**

There is no cost to the County for this service.

However, Dallas County has negotiated a lower fee schedule for users than previous year's contracts to include

- Point of Sale(P.O.S.) Credit Card Convenience Fee-2.15% of amount charged;
  - PIN Debit Card Fee=2.95 per transaction: minimum fee payment=2.95 per transaction

All Contracts awarded can be canceled without cause.

**LEGAL IMPACT:**

Dallas County District Attorney's Office-Civil Division has reviewed all documentation and has approved the contract to form.

**PROJECT SCHEDULE:**

The initial term of this contract is May 1, 2019 through April 30, 2022. The contract may be renewed or extended for two(2) additional 1 year terms subject to Commissioner Court agreement.

**SBE PARTICIPATION:**

Due to the nature of this contract, the SBE Policy does not apply.

**ADMINISTRATIVE PLAN COMPLIANCE:**

The RFP and Contract supports Vision Plan 1 of Dallas County Administrative plan; Dallas County is operationally a model governmental entity. Services provided will assist Dallas County and users in collecting payments electronically.

**RECOMMENDATION:**

Authorize and approve contract agreement between Dallas County and JP Morgan Chase in connection with RFP No. 2018-048-6741 Request for Proposal for Electronic Payment Services and E-Commerce Solutions and authorizes the County Judge to execute contract with signatures on behalf of Dallas County effective Court Order.

STATE OF TEXAS

COUNTY OF DALLAS

**E-COMMERCE PAYMENT SOLUTION CONTRACT ("Contract")  
To PROVIDE ELECTRONIC PAYMENT SERVICES AND AN E-COMMERCE SOLUTION FOR DALLAS COUNTY**

This Agreement among Paymentech, LLC, a wholly owned subsidiary of JPMorgan Chase Bank, N.A., and a Delaware limited liability company that has its principal office at 8181 Communications Parkway, Plano, TX 75024 ("Vendor"), JPMorgan Chase Bank, N.A., a national banking association that has its business address at 2200 Ross Avenue, 8th Floor, Dallas, Texas 75201 ("Bank" or "Proposer"), and Dallas County, Texas, a government entity that has its principal office at 411 Elm St., 2nd Floor, Dallas, TX 75202 ("County").

**WHEREAS**, County wishes to accept Payment Cards and E-Checks from its customers ("Payors" or "Customers" or "Cardholders") for payments to County; and

**WHEREAS**, Bank is a member of several Payment Brands and, through Bank, Vendor is authorized to process such Payment Card and E-Check transactions ("Transactions").

**ACCORDINGLY**, in consideration of the mutual promises made and the mutual benefits to be derived from this Contract, and in accordance with the Texas Tax Code § 31.06, as well as pursuant to the County Commissioners Court approval for Bank's provision of Services relating to its biller direct or e-commerce payment solution via Bank's proprietary application. Vendor, Bank, and County agree to the following terms and conditions intending to be legally bound:

**1. COUNTY'S ACCEPTANCE OF PAYMENT CARDS AND E-CHECKS.**

**1.1 Transmission.** County, either directly or through Bank, will tender to Vendor Transaction Data generated from all Transactions via electronic data transmission according to Vendor's formats and procedures.

**1.2 Certain Payment Card Acceptance and E-Check Policies.** Each Transaction involving a Payment Card and E-Check must be evidenced by a single Transaction Data record completed with (i) the Transaction date; (ii) a brief description of the activity; (iii) the payment amount or amount of any credit or adjustment; (iv) the Payor name; (v) County's name in a manner recognizable to Payors; (vi) County's address; (vii) any applicable terms and conditions of the Transaction; and (viii) any other information which the applicable Payment Brand may require. Neither County nor Bank shall impose any surcharge or finance charge on the Transaction except as otherwise stated in this Contract. Neither Bank nor County shall set a dollar amount above or below which County refuses to honor otherwise valid Payment Cards and E-Checks. With respect to any Transaction for which a Payment Card or E-Check is not physically presented, such as in any on-line, mail, telephone, or pre-authorized Transaction, County must (i) have notified Vendor on application or otherwise in writing of County's intention to conduct such Transactions and have secured Vendor's agreement to accept them and (ii) have reasonable procedures in place to ensure that each Transaction is made by a Payor. Notwithstanding the foregoing, County acknowledges that under the Payment Brand Rules, County cannot rebut a Chargeback where the Payor disputes making the Transaction without an electronic record (e.g., "swiping" or

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"tapping" a Card) or physical imprint of the Payment Card or E-Check.

**1.3 Brand Rules.** County agrees to comply with the Payment Brand Rules as may be applicable to County and in effect from time to time.

**1.4 Requirements for Transaction Data.** As to each Transaction Data County tenders, or that Bank tenders for County, to Vendor for processing, County represents and warrants that, to the best of County's knowledge:

- (1) The Transaction Data represents payment or Chargebacks for the bona fide payments of taxes, fines, fees or other obligations.
- (2) The Transaction represents an obligation of the Payor for the amount of the Transaction.
- (3) The Transaction Data does not involve any element of credit for payment of a previously dishonored check or for any other purpose except payment for a current transaction and, except in the case of approved installment or pre-payment plans.
- (4) The Transaction Data is free from any material alteration not authorized by the Payor.
- (5) The amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim.
- (6) Neither County nor County's employees have advanced any cash to the Payor (except as authorized by the Payment Brand Rules) or to County or to any of County's representatives, agents, or employees in connection with the Transaction, nor has County accepted payment for effecting credits to a Payor's account.
- (7) The activity described in each Transaction Data is related to payments of taxes, fines, fees or other obligations owed to County.
- (8) County has made no representations or agreements for the issuance of refunds except as stated in Section 3.
- (9) Any Transaction of credits submitted to Vendor represents a refund or adjustment to a Transaction previously submitted.
- (10) County has no knowledge or notice of information that would lead County to believe that the enforceability or collectability of the subject Transaction Data is in any manner impaired. The Transaction is in compliance with all applicable laws, ordinances, and regulations. Bank has originated on County's behalf, and where applicable, County has originated, the Transaction Data in compliance with this Contract and the Payment Brand Rules.

**1.5 Expectations for Bank.** Bank understands that County is seeking a third party solution provider of electronic payment services for integration into the County point-of-sale (POS) terminals for debit/credit transactions, web/on-line systems and pay-by-phone access for the purpose of processing electronic payments. To that end, Bank understands County's expectation that Bank should maximize and improve County's ability to efficiently and accurately conduct various types of credit card, debit card, e-check collection transactions, manage financial data, allow for integration into existing County operations, interact and interface with existing County payment processing and account management systems, improve workflow, and maintain data integrity. Furthermore, Bank will:

- a) Through cooperative and direct working relationships with the Dallas County Tax Assessor and Treasurer, provide e-commerce services to the entirety of County by acceptance and processing of major brand credit/debit cards, to include MC, Visa, Discover, AMEX, as well as Debit Cards and E-checks.
- b) To provide said services through Point of Sale terminals situated at locations throughout the County, as mutually agreed upon by the parties, through web/internet based interchanges as well as through a managed Call Center, as more fully set out in Exhibit A.
- c) As regards the Call Center, Bank shall, in accordance with Exhibit B, during the course of this Agreement, staff and maintain, or cause to be staffed and maintained, and solely at Bank's expense, a Call Center with live representatives capable of processing payments by phone in both English and Spanish.
- d) All funds received shall be processed in accordance with the cutoff times and settlement times currently in effect as of the date of this Contract.
- e) Bank shall initially provide 200 Point of Sale terminals along with appropriate signage for use by County, at no cost to County, and shall replace such terminals as deemed appropriate by malfunctions, end of useful life, etc.
- f) Bank shall provide all other services as set out more specifically in Exhibit B, and specifically to the performance and security standards set out therein.

## **2. AUTHORIZATIONS.**

- 2.1 Obtaining Authorizations.** Bank or, where applicable, County, is required to obtain authorization/approval codes on behalf of County for all Transactions by contacting the center designated by Vendor. County acknowledges that authorization/approval code of a Transaction indicates only that credit is available for the Transaction at the time the authorization is given, and it does not constitute a representation from Vendor or from any Payment Brand that a particular Transaction is in fact a valid or undisputed transaction entered into by the actual Payor or an authorized user of the Payment Card or E-Check.
- 2.2 Lack of Authorization.** Vendor reserves the right to refuse to process any Transaction Data presented by Bank or County, as applicable (i) unless a proper authorization/approval code is recorded, (ii) if Vendor reasonably determines that the Transaction Data is or will become uncollectible from the Payor to which the transaction would otherwise be charged, or (iii) if Vendor determines that the Transaction Data was prepared in violation of any provision of this Contract.

## **3. REFUNDS AND ADJUSTMENTS.**

- 3.1 Disclosure of Refund Policy.** County's policy with regard to the return/cancellation of payments and adjustment is governed by the applicable statutes specific to these payments, including but not limited to Texas Transportation Code §502.191, and Texas Tax Code §§ 31.11, 31.12 and 42.43 and is disclosed to Payors.

## **4. SETTLEMENT AND PROCESSING.**

- 4.1 Submission of Transaction Data.** County, where applicable, and Bank must transmit on behalf of County Transaction Data to Vendor no later than the next business day immediately following the day that such Transaction Data is originated. For debit Transactions that are credits to a

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Payor's account, Bank agrees to transmit on behalf of County such Transaction Data to Vendor within 24 hours of receiving the authorization for such Transaction of credits. Except as provided in Section 9.2, County will be solely responsible for all communication expenses required to accomplish the transmission of Transaction Data to Vendor.

**4.2 County's Operating Account and Chargeback Account.** In order to receive settlement funds from Vendor, County must maintain operating settlement accounts for property taxes, motor vehicle taxes, beer and wine taxes, and special inventory taxes (SIT) and other fines, fees or other obligations, as determined by County. Each settlement account must have a corresponding chargeback account from which to debit Chargebacks, Payor refunds, and adjustments and any other debits allowed under this Contract. County agrees not to close any Operating Account or Chargeback Account without giving Vendor and Bank at least five (5) days prior written notice and substituting another account in its place, if needed or required. County authorizes Vendor and Bank, where applicable, to initiate electronic credit entries to County's Operating Accounts at any time. County also authorizes Vendor and Bank, where applicable, to initiate electronic debit entries to County's Chargeback Account for County authorized Chargebacks and any other debit allowed under this Contract. This authority will remain in full force and effect until Vendor notifies County's bank that all monies due from County under this Contract have been paid in full. Vendor will not be liable for any delays in receipt of funds or errors in Chargeback Account or Operating Account entries caused by third parties, including but not limited to delays or errors by the payment Brands or County's depository bank.

**4.3 Payment Card and E-Check Processing.** Payor payments generated pursuant to this Contract from Payment Cards will be tendered by Bank to Vendor, or County to Vendor, as applicable, and E-Checks will be tendered to Bank's ACH department. The parties hereby agree that, with respect to all transactions described in this section that are submitted to Bank by a Payor over the Internet or other e-commerce forum, which Bank submits to Vendor or processing, (i) all Convenience Fee Transaction Data will be submitted by Bank to Vendor under a separate contract between Bank ("Submitter") and Vendor ("Submitter Contract"), (ii) all Transaction Data will be submitted on behalf of County to Vendor under this Contract (E-Commerce Payment Solution Contract), (iii) all Vendor processing fees, chargeback fees, funds transfer fees, interchange and assessment fees, or other fees that may be applied and which are associated with Transactions shall be paid by Bank, (iv) chargebacks, returns and similar charges, related to Transaction Data, and that are not caused by Bank or Vendor's failure to perform shall be paid by County, (v) all chargebacks, returns and similar charges related to Convenience Fee Data shall be paid by Bank, (vi) settlement funding for Convenience Fee Data will be paid directly to a bank account designated by Bank, (vii) settlement funding for Transaction Data will be paid directly to the Operating Accounts, respectively (viii) all fines, penalties, or assessments incurred by Vendor or Bank as a result of County's breach or violation of the Payment Brand Rules or NACHA Rules shall be paid by County, except as specifically prohibited by law; (ix) all fines, penalties, or assessments incurred by Vendor or Bank as a result of Vendor's Bank's breach or violation of the Payment Brand Rules or NACHA Rules shall be paid by Vendor or Bank, respectively, and (x) all information related to Transaction Data, chargebacks, returns, settlement funding and other information provided to Vendor pursuant to this Contract may be disclosed by Vendor to the Bank as necessary.

**4.4 Conveyed Transactions for Transactions Utilizing American Express Payment Cards.** Upon Bank's transmission of Conveyed Transactions in U.S. funds to Vendor, Vendor will forward the Conveyed

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Transaction to American Express. Payment of the proceeds due to County will be governed by the agreement Bank has with American Express, and Vendor does not bear any responsibility for American Express' performance. Even if Bank receives a valid authorization for a Conveyed Transaction, Vendor will not be liable for errors in Operating Account or Chargeback Account entries relating to the funding of Bank's Conveyed Transactions for County, including delays caused by County, third parties, American Express or Bank. If Bank's agreement with American Express requires American Express' consent for Vendor to perform the Services contemplated by this Agreement, Bank is responsible for obtaining that consent.

- 4.5 E-Checks.** Bank will initiate ACH debit entries to the checking or savings accounts of Payors who opt to pay using ACH transactions. Terms used herein but which are not defined in this Contract or the Account Documentation, have the meanings given those terms in the NACHA Rules. County (as Originator) and Bank agree to be bound by the NACHA Rules in effect from time to time and shall comply with same. County is deemed to provide to Bank the same warranties that Bank is deemed to make under the NACHA Rules; however, County shall not be deemed to warrant: (i) the power of Bank under applicable law to comply with the requirements of the NACHA Rules or (ii) conformity of debit transmitted by Bank to the file specifications contained in the NACHA Rules. County further warrants that (iii) County's use of the Services is not in violation of any law or regulation applicable to County or County's business or operations; and (iv) County will not use or include the full Social Security Number of any Payor as a customer identifier for any purpose related to the Services. Bank shall not be responsible or liable for any delays in receipt of funds or errors in Chargeback Account or Operating Account entries caused by County, Payors or third parties not associated with Bank. In preparing and transmitting ACH debit entries, Bank may rely upon all information and data provided to it via the Service for any Payor, and Bank shall have no responsibility or liability for the inaccuracy or invalidity thereof.
- 4.6 Transfer of Settlement Funds into Operating Account.** For all Settled Transactions Vendor will process Transaction Data to facilitate the funds transfer between the various Payment Brands and County. Promptly after Vendor receives credit for such Transaction Data, Vendor will provide provisional credit to the Operating Account for the proceeds. The proceeds payable to County Operating Account shall be equal to the amounts received by Vendor in connection with Transaction Data.
- 4.7 This Section Intentionally Left Blank.**
- 4.8 Negative Amounts.** To the extent Transaction Data does not represent sufficient credits or the Chargeback Account does not have a sufficient balance to pay amounts due or reasonably anticipated to become due under this Contract, Vendor may pursue one or more of the following options: (i) demand and receive immediate payment for such amounts; (ii) withhold County's settlement payments until all amounts are paid; (iii) delay presentation of County's refunds until County makes a payment to Vendor of a sufficient amount to cover the negative balance; and (iv) pursue any remedies Vendor may have at law or in equity. Furthermore, if the amount represented by County's Transaction Data in any day is negative due to refunds/customer credits submitted in excess of County's sales, County is required to provide Vendor with sufficient funds prior to the submission of the Transaction Data so as to prevent the occurrence of a negative balance.

**4.9 Delinquency/Merchant Fraud.** If: (i) there is an adverse change in County's financial condition or County's payment record with creditors; (ii) County is in material default of this Contract; (iii) County changes its billing practice in relation to shipment of merchandise or fulfillment of service or refund procedures currently in place, and County fails to notify Vendor in advance; (iv) County is receiving excessive Chargebacks (as defined in Section 7.2 below); (v) County significantly alters the nature of its business or product lines; or (vi) Vendor has reasonable grounds to believe that Vendor may be or become liable to third parties for the provisional credit extended to County or that County may be liable to its Customers, Payment Instrument issuing banks or the Payment Brands, or (vii) Vendor has reasonable grounds to believe that Vendor may be subject to any additional liabilities, including, without limitation, any fines, fees, or penalties assessed against Vendor by any of the Payment Brands, arising out of or relating to County's Transactions, County's Chargebacks, or County's failure to comply with this Contract, any of the Payment Brand Rules, or the Security Standards, Vendor may temporarily suspend or delay payments to County during Vendor's investigation of the issue and/or designate an amount of funds that County must maintain in order to protect Vendor against the risk of, among other things, existing, potential, or anticipated Chargebacks and to satisfy County's other obligations under this Contract (such funds being hereinafter referred to as the "Reserve Account"), which may be funded in the same manner as provided for negative balances in Section 4.5. The Reserve Account will contain sufficient funds to cover Vendor's estimated exposure based on reasonable criteria for Chargebacks, returns, unshipped merchandise and/or unfulfilled services, and all additional liabilities anticipated under this Contract, including, but not limited to, Chargebacks, fines, fees and penalties as set forth in this Contract. Vendor may (but is not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable to County against, the satisfaction of any amounts which are or may become due from County pursuant to this Contract. The Reserve Account will be held and controlled by Vendor and upon satisfaction of all of County's obligations under this Contract, Vendor will pay to County any funds then remaining in the Reserve Account. Any funds in the Reserve Account may be commingled with other funds, and need not be maintained in a separate account.

**5. ACCOUNTING.** Vendor will supply a detailed statement reflecting the activity for County's Operating Accounts and Chargeback Accounts by online-access (or otherwise if agreed to by both parties). Vendor will not be responsible for any error that County does not bring to Vendor's attention within 90 days from date of such statement.

**6. RETRIEVAL REQUESTS RELATED TO CHARGEBACKS.**

**6.1 Records.** County, either directly or through Bank, is required by the Payment Brands to store original documentation of each transaction for at least six months from the date of the respective transaction, and to retain copies of all such data for at least 18 months from the date of the respective transaction.

**7. CHARGEBACKS**

**7.1 Chargeback Reasons.** A Chargeback from a Payor or Payment Brand may occur for a number of reasons under the Payment Brand Rules. County is fully liable for all chargebacks except where caused by Bank's negligence or willful misconduct. The following are some of the most common reasons for Chargebacks:

- (1) The failure to issue a valid refund to a Payor.
- (2) An authorization/approval code was required and not obtained.
- (3) The Transaction Data is prepared incorrectly or fraudulently.
- (4) Vendor did not receive Bank's response to a Retrieval Request within 7 business days or any shorter time period required by the Payment Brand Rules.
- (5) The Payor disputes the Transaction or the signature on the Transaction documentation, or claims that the Transaction is subject to a set-off, defense, or counterclaim.
- (6) The Payor refuses to make payment for a Transaction because in the Payor's good faith opinion, a claim or complaint has not been resolved, or has been resolved by Bank but in an unsatisfactory manner.

**7.2 Excessive Chargebacks.** If County is receiving an excessive amount of Chargebacks, as defined by the Payment Brands, then in addition to Vendor's other rights under this Contract, Vendor may take the following actions: (1) review County's internal procedures relating to acceptance of Payment Cards and notify County of new procedures County should adopt (at County's sole discretion) in order to avoid future Chargebacks; (2) collect from County (pursuant to Section 4.6) an amount reasonably determined by Vendor to be sufficient to cover anticipated Chargebacks and related fines; or (3) terminate the Contract with written notice of termination. County also agrees to pay any and all Payment Brand fees and fines assessed against County or against Vendor relating to County's violation of the Contract or the Payment Brand Rules with respect to County's transactions or with respect to excessive Chargebacks under this Section, except as specifically prohibited by law.

**7.3 Claims of Payors/Customers.** County has full liability if any Transaction Data for which Vendor has given the Operating Account provisional credit is the subject of a Chargeback, except where such Chargeback is caused by Bank's negligence or willful misconduct. Subsequently, County is allowed to resubmit applicable Transaction Data for a second presentation, but only in accordance with Payment Brand Rules. To the extent that Vendor has paid or may be called upon to pay a Chargeback or refund/adjustment for or on the account of a Payor and County does not reimburse Vendor as provided in this Contract, then for the purpose of Vendor's obtaining reimbursement of such sums paid or anticipated to be paid, Vendor has all of the rights and remedies of such Payor under applicable federal, state, or local law and County authorizes Vendor to assert any and all such claims in Vendor's own name for and on behalf of any such Payor individually or all such Payors as a class.

**8. ADVERTISING.** Wherever County accepts Payment Cards or E-Checks, County will inform the public of the Payment Cards that County honors. Neither County, Bank nor Vendor, through posting and providing such notices to the public make endorsements of each other beyond the scope of the immediate transaction.

## **9. FEES, EQUIPMENT AND PARTIES' OBLIGATIONS.**

### **9.1 Bank's Fee Schedule.**

- (1) Except as otherwise provided in this Contract, there is no cost to the County; there are no Implementation or Monthly Maintenance Costs;
- (2) Bank may only charge Payor a Convenience Fee as reflected herein;
- (3) Integrated Receivables & Payables Connect: Credit Card Convenience Fee = 2.15% of amount charged; Debit Card Fee = \$2.95 per transaction;

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- (4) Integrated Receivables & Payables Connect: ACH/ E-Check Payments = no transaction fee;
- (5) Point of Sale: Credit Card Convenience Fee = 2.15% of amount charged; PIN Debit Card Fee = \$2.95 per transaction; minimum fee payment = \$2.95 per transaction;
- (6) Bank reserves the right to modify any of the Convenience Fees in the event there are changes in laws, regulations, Payment Brand Rules, NACHA Rules or other applicable rules or regulations outside the control of Bank or Vendor that impact the manner in which Convenience Fees are charged. In such event, Bank shall provide County with as much written notice as reasonably practicable under the circumstances of such modification but in no event less than 60 days, along with appropriate documentation to substantiate the need for such change.

**9.2 Bank's Provision of Equipment and Maintenance.** Bank will provide the appropriate number of POS swipe terminals that are compliant with Section 20.27 and will include "train-the-trainer" sessions at Dallas County locations to be mutually determined by the parties. At each such designated locations, Bank will install one POS terminal. Bank will also replace any defective terminals during the Term within two business days of request at no cost to County.

**9.3 County Responsibilities. County agrees to:**

- (1) maintain the County Website which houses access to the Services via the Internet, as well as the actual links and session transfer capabilities;
- (2) maintain the URLs to which Payors are returned after completing a payment transaction for the Services via the Internet;
- (3) provide Bank with all information reasonably necessary to setup or establish the Service on County's behalf, including but not limited to completing the Statement of Work and implementation questionnaire documentation and using commercially reasonable efforts to ensure its vendors, if applicable, cooperate fully with Bank to achieve interoperability of the Technology and Services with County's or its vendor's hardware;
- (4) intentionally deleted;
- (5) advise each authorized user of the Service of his or her obligations under this Contract;
- (6) provide appropriate and sufficient data to authenticate Payors, including but not limited to delivery of data that will be
  - (a) validated by the Service when a Payor is attempting access,
  - (b) used to perform the authentication of the Payor prior to a session transfer into the Service via the Internet,
  - (c) used to validate the Payor after a successful session transfer for ACH transactions; and
- (7) maintain the confidentiality of any passwords, codes, digital certificates, security devices and related instructions for use of the Services, and if County believes or suspects that any such information or instructions have been accessed by unauthorized persons, County shall promptly notify Bank and advise Bank as to the effect of the security breach and the corrective actions to be taken to restore or verify security. County shall not:
  - (a) engage in spamming, mail bombing, spoofing or any other fraudulent, or unauthorized use of the Services
  - (b) alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Technology or Services

- (c) knowingly introduce or transmit through the Technology or Services any virus, worm, software lock, drop dead device, Trojan-horse routine, trap door, back door, timer, time bomb, clock, counter or other limiting routine, instruction or design or any other codes or instructions that may be used to access, modify, delete, damage, disable or prevent the use of the Technology or Services or other computer systems of Bank
- (d) remove, obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed to or contained within the Technology or Services without Bank permission or
- (e) engage in or allow any action involving the Technology or Services that is inconsistent with this Contract and all functional specification documents that are or will be provided to County by Bank.

All requests for additional development or changes will follow the standard Bank change request process. Bank shall be entitled to rely on the content, accuracy and completeness of all information and data supplied to Bank by County. County shall be solely liable for the security and integrity of all information and data supplied or transmitted to Bank including during transmission to Bank.

**9.4 Bank Responsibilities.** Bank agrees to satisfactorily perform all Services and obligations set forth in County's Request for Proposal No. 2018-048-6741, and Bank's response thereto, as detailed in Section 16.17 Incorporated Documents.

**10. STATEMENTS.** (If Applicable: Statement Presentment is an optional service. This Section will apply only where County and Bank have documented acceptance of the Statement Presentment Service in a SOW, implementation questionnaire, or otherwise in writing).

**10.1 Statement Presentment.**

- (1) At an agreed upon time following each billing cycle, County shall electronically transmit to Bank an Image File containing .pdf images of the Statements they wish to have presented. They will also pass this image identification in the Pre-Registration file where it will be associated with a Payor. Bank shall store the image on-line for 18 months. Bank shall have no obligation to act upon any Image File it is unable to verify.
- (2) County shall be responsible for the accuracy, adequacy and proper form of all Image Files and other data and information supplied by County to Bank and County shall notify Bank of any errors or discrepancies promptly upon County's discovery or knowledge thereof. Bank shall have no responsibility or liability for any errors or inaccuracies contained in any Image File or other data or information received from County.
- (3) County shall immediately notify Bank if County revokes enrollment of any Payor, suspends or cancels any Payor or otherwise suspends or terminates any access to the Service.

**10.2 Statement Notification.** County shall be responsible for the accuracy, adequacy and proper data for all notification email data. Bank will send out statement notification emails to the Payor as specified by County. Bank shall have no responsibility or liability for any errors or inaccuracies continued in any notification related data or information received from County.

## **11. TERMINATION.**

**11.1 Term.** The initial term of this Contract is May 1, 2019 through April 30, 2022.

This Contract may be renewed or extended for two (2) successive one (1) year Terms subject to mutual agreement by all parties. Unless noted at the time of renewal, all renewals shall be based on existing terms, conditions, and fee structures set forth in this Contract or as amended and agreed upon by Dallas County Commissioners Court, Bank and Vendor.

**11.2 Termination Without Cause.** Any party hereto may terminate this agreement, without cause, by providing written notice to the remaining parties no less than one hundred eighty (180) days prior to any effective termination date.

**11.3 Termination for Cause.** If Vendor's or Bank's respective Services provided under this Contract fail to conform generally to accepted standards for such Services in the Payment Card and e-Check processing industry, then County's sole remedy for such failure shall be that upon notice from County specifying the failure of performance, the applicable party, Vendor or Bank will rectify such failure of performance. If the applicable party, Vendor or Bank does not rectify such failure of performance within thirty (30) days of receipt of notification, then County may terminate this Contract upon thirty (30) days written notice to Vendor and Bank. Vendor, Bank or County may terminate this contract at any time upon written notice to the other parties as a result of any of the following events: (i) any noncompliance with the contract, or the Payment Brand Rules, which is not cured within thirty (30) days of notice to the relevant party except as otherwise provided in this Contract and except that no cure period is allowed for termination based on a party's fraud; (ii) any voluntary or involuntary bankruptcy or insolvency proceeding involving a party, (iii) Vendor, Bank or County reasonably determines another party to be financially insecure; (iv) a party or any person owning or controlling a party's business is or becomes listed in the MATCH file, TMF file, or similar list of high-risk or terminated merchants maintained by any Payment Brand.

**11.4 Account Activity After Termination.** Termination does not affect either party's rights and obligations under this Contract as to Transaction Data submitted before the effective date of Termination. If County submits Transaction Data to Vendor after the effective date of termination, Vendor may, at its sole discretion and without waiving any of County's rights or remedies under this Contract, process such Transaction Data in accordance with and subject to all of the terms of this Contract. Upon notice of termination of this Contract, Vendor may estimate in good faith the aggregate dollar amount of Chargebacks and other obligations, liabilities and expenses that Vendor reasonably anticipates subsequent to termination, and County agrees to immediately deposit such amount in the Operating Account or as otherwise directed by Vendor, or Vendor may withhold such amount from settlement funds in order to establish a Reserve Account pursuant to and governed by the terms and conditions of this Contract.

## **12. INDEMNIFICATION.**

**THIS SECTION REFLECTS THE UNDERSTANDING OF ALL PARTIES WITH REGARD TO INDEMNIFICATION AND SUPERSEDES ANY AND ALL OTHER AGREEMENTS BETWEEN THE PARTIES (UNLESS IT IS CLEAR FROM THE LANGUAGE THEREIN THAT SUCH LANGUAGE IS MEANT TO BE READ IN CONJUNCTION HERewith), WHETHER ORAL OR IN WRITING, WITH REGARD TO INDEMNIFICATION BETWEEN THE PARTIES.**

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TO THE FULLEST EXTENT AUTHORIZED BY LAW, BANK AND VENDOR JOINTLY AND SEVERALLY AGREE THAT EACH WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE COUNTY AND ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DEMANDS, CAUSES OR ACTION, JUDGMENTS, LOSS AND EXPENSES, INCLUDING ATTORNEYS FEES, OF WHATSOEVER NATURE, CHARACTER, OR DESCRIPTION THAT ANY PERSON OR ENTITY HAS OR MAY HAVE DIRECTLY ARISING FROM OR ON ACCOUNT OF ANY DAMAGES SUSTAINED BY ANY PERSON, PERSONS, OR PROPERTY, ON ACCOUNT OF, DIRECTLY ARISING OUT OF, OR IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES AND CONTRACT, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY NEGLIGENT ACT OR OMISSION OF BANK OR VENDOR OR ANY AGENT, SERVANT, EMPLOYEE OR SUB- CONTRACTOR OF BANK OR VENDOR AS THE CASE MAY BE IN THE EXECUTION OR PERFORMANCE OF THE SERVICES AND CONTRACT. BANK AND VENDOR, EACH FURTHER AGREES TO PROTECT, INDEMNIFY, DEFEND AND HOLD COUNTY HARMLESS AGAINST AND FROM ANY AND ALL CLAIMS AND AGAINST AND FROM ANY AND ALL LOSS, COST, DAMAGE, JUDGMENTS OR EXPENSE, INCLUDING ATTORNEYS FEES ARISING OUT THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THE CONTRACT OF ANY FAILURE OF BANK, ITS EMPLOYEES, OFFICERS, AGENTS, CONTRACTORS, INVITEES, OR ASSIGNS IN ANY RESPECT TO COMPLY WITH AND PERFORM ALL THE REQUIREMENTS AND PROVISIONS HEREOF. NO PARTY WILL BE LIABLE TO THE OTHER PARTIES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. FOR ALL INDEMNIFICATION CLAIMS AGAINST ANY PARTY TO THIS CONTRACT, AND REGARDLESS OF THE BASIS ON WHICH THE INDEMNIFICATION CLAIM IS MADE, EACH PARTY'S LIABILITY UNDER THIS SECTION 12 SHALL BE LIMITED TO THE LESSER OF ONE HUNDRED THOUSAND DOLLARS (\$100,000), THE DOLLAR AMOUNT OF THE CONTRACT OR PURCHASE ORDER, OR TWO TIMES THE CONVENIENCE FEES COLLECTED BY BANK UNDER THE CONTRACT.

### 13. TRANSACTION DATA AND PAYOR INFORMATION

All parties acknowledge and understand the importance of compliance with the Security Standards, such as those relating to the storage and disclosure of Transaction Data and Payor Information. Therefore, the parties will exercise reasonable care to prevent disclosure or use of Payor Information, other than as permitted under the Payment Brand Rules, and will exercise reasonable care to prevent disclosure or use of Payor Information other than: (i) to each party's authorized agents for the purpose of assisting in completing a Transaction (ii) to the applicable Payment Brand, or (iii) as specifically required by law.

The parties are allowed by the Payment Brand Rules to store only certain Payor Information currently limited to the Payor's name, Payment Card account number and expiration date, and are prohibited from storing additional Payor Information, including, without limitation, any security code data such as CVV2, CVC2, and PIN data, and any magnetic stripe track data.

The parties will store all media Payor Information in an encrypted format wherever it is stored and in an area limited to selected personnel on a "need to know" basis only and, prior to a party discarding any material containing Payor Information, the parties will destroy it in a manner rendering the account numbers unreadable. If at any time a party determines that Payor Information has been compromised, that party will notify the other parties immediately and assist in providing notification to such parties as may be required by law or Payment Brand Rules, or as the parties otherwise reasonably deem necessary. County information may not be shared by Bank or Vendor without County's express approval except with each other and except as required to perform the Services and obligations set forth herein.

County agrees to comply with all standards and guidelines that may be published from time to time by  
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Visa, MasterCard or any other Payment Brand, including but not by way of limitation, the Visa U.S.A. Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection ("SDP"), and (where applicable), the VISA Payment Application Best Practices ("PABP") (collectively, the "Security Guidelines" ). All Service Providers County uses must be recognized by Visa as CISP compliant service providers and payment applications used by County must be recognized by VISA as compliant with PABP. County understands that failure to comply with Security Standards or the compromise of any Payment Card account information may result in assessments, fines, and/or penalties by the Payment Brands, and County agrees to reimburse Vendor immediately for any assessment, fine or penalty imposed on Vendor or the Bank due to any such event or County's breach of the requirements contained in the Contract. County further agrees to (i) exercise reasonable due diligence to ensure that any and all of County's Service Providers, agents, business partners, contractors, and subcontractors maintain compliance with the Security Guidelines and (ii) provide Vendor upon Vendor's request with evaluation of County's compliance with Security Guidelines as required by the Payment Brands. If any Payment Brand requires an audit of County or any of County's Service Providers, agents, business partners, contractors, or subcontractors due to a data security compromise event or suspected event, County agrees to cooperate with such audit.

#### **14. ACCESS TO PARTIES' INFORMATION AND CONFIDENTIALITY.**

**14.1 Audit Right.** The County Auditor, his assigns, or any other County authorized entity or personnel shall have the unrestricted right to audit all data or documents related to this Contract and in accordance with auditing statutes. Such data shall be furnished to County at a mutually convenient time and within a reasonable time. Should County determine it reasonably necessary, Bank and Vendor shall make all of its records, books and documents reasonably related to this Contract available without delay to authorized County personnel to fulfill inspection or auditing deadlines and purposes or to substantiate certain provisions under the Contract. Any such inspection or audit shall be at the sole expense of the County.

#### **14.2 Confidentiality.**

- (1) Bank or Vendor Information. County acknowledges that the Technology and Services contain valuable trade secrets and other nonpublic or proprietary information which is the sole property of the Bank or Vendor or their licensor's ("Bank/Vendor Confidential Information"), and County agrees to hold same in confidence and disclose only to those employees or agents whose duties reasonably require access to same. County will use the same care and discretion to avoid unauthorized use, disclosure, publication, access or dissemination of Bank/Vendor Confidential Information received from Bank or Vendor or through the Service as County uses with its own similar information (but in no event less than a reasonable degree of care).
- (2) County Information. The Bank and Vendor acknowledge that County's systems may contain valuable trade secrets and other nonpublic or proprietary information including information regarding its Payor customers, which are the sole property of County, and that Bank and Vendor may maintain, process or otherwise be permitted access to other Payor information through the Service which is of a nonpublic, personal nature (collectively referred to herein as "County Confidential Information") and the Bank and Vendor agree to hold same in confidence. The Bank and Vendor will use the same care and discretion to avoid unauthorized use, disclosure, publication, access or dissemination of County Confidential Information received from County or through the Service as Bank and Vendor use with its own similar information

(but in no event less than a reasonable degree of care). Bank and Vendor will use County Confidential Information only to perform its obligations under this Contract. Notwithstanding the foregoing, the Bank and Vendor may disclose such County Confidential Information to affiliates, agents and other third parties, including counsel and regulators, and their employees, as reasonably required for Bank and Vendor to provide the Services or as otherwise required by applicable law or regulation.

- (3) Exceptions. The obligations of this Section shall not apply to any Bank/Vendor Confidential Information or County Confidential Information (collectively, "Confidential Information") that: (a) is now, or hereafter becomes, through no act or failure to act on the part of the party (the "Receiver"), generally known or available; (b) is known by the Receiver at the time of receiving such Confidential Information, as evidenced by the Receiver's records; (c) is hereafter furnished to the Receiver by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by the Receiver without reference to or use of the disclosing party's Confidential Information; or (e) is required to be disclosed by law or in connection with a legal or administrative proceeding, provided that the party to whom the Confidential Information belongs is given prompt written notice of such proposed disclosure, provided such notice is not otherwise prohibited.
- (4) Data in Aggregate Form. The restrictions on use in this Section shall not apply to information or data in aggregated and/or anonymized form, and shall not prohibit the use by Bank or Vendor of any statistical, aggregate information that is not identified with County or any Payor for creation of statistical marketing studies for research, product development and promotion, or strategic planning. Further, notwithstanding anything in this Section should Bank have any contract with a Payor who is also a Bank customer that applies to the use of such Payor's information, the terms of such contract shall not be affected by the terms of this Contract and shall remain in full force and effect.

**15. DISCLAIMER: LIMITATION OF DAMAGES.** Subject to Section 5, Vendor will, at its own expense, correct any data to the extent that errors have been caused by Vendor, or by malfunctions of Vendor's intellectual property or machines. Under no circumstances will Vendor's financial responsibility for Vendor's failure of performance under this Contract exceed the total fees paid to Vendor under this Contract (net of Payment Brand interchange, assessments and fines) for six months of highest Transaction activities prior to the time the liability arose.

**16. MISCELLANEOUS.**

**16.1 Force Majeure.** A party will not be liable for delays in processing or other nonperformance caused by such events as fires, flood, storm, telecommunications, utility, or power failures, equipment failures, labor strife, riots, war, acts of God, or other causes over which the party has no reasonable control.

**16.2 Notices.** Any notice or certification required or permitted to be delivered under this Contract shall be deemed to have been delivered when either personally delivered, or certified as having been delivered via any standard and commercially acceptable mode of mail delivery (U.S. Mail certified or registered, Federal Express, United Parcel Service, etc.) properly addressed to the parties shown at the respective addresses set forth below, or at such other addresses as shall be specified by written notice delivered in accordance herewith:

Bank: JP Morgan Chase Bank, N.A.  
2200 Ross Avenue, Floor 8  
Dallas, Texas 75201

Vendor: Paymentech, LLC  
Attn: General Counsel  
8181 Communications Parkway  
Plano, TX 75024

Dallas County: John R. Ames  
Tax Assessor/Collector  
1201 Elm Street, 26th Floor, Suite 2600  
Dallas, Texas 75270

Pauline Medrano  
Dallas County Treasurer  
1201 Elm Street, 23rd Floor, Suite 2300-A  
Dallas, Texas 75270

w/copies to: Purchasing Director  
Dallas County Purchasing Department  
900 Jackson Street, 6<sup>th</sup> Floor, Suite 680  
Dallas, Texas 75202

Chong Choe  
Assistant District Attorney  
Dallas County District Attorney's Office  
Administration Building  
411 Elm Street, 5th Floor  
Dallas, Texas 75202

**16.3 Amendments and Changes in Law.** No modification, amendment, novation, renewal or other alteration of this Contract shall be effective unless mutually agreed upon in writing and executed by the parties hereto; provided, however, that the Contract may be amended by any changes required to conform to changes in applicable Payment Brand Rules or applicable law. Any alteration, addition or deletion to the terms of this Contract which are required by changes in federal or State law or Payment Brand Rules are automatically incorporated herein without written amendment to this Contract and shall be effective on the date designated by said law or Payment Brand Rules.

**16.4 Assignment.** This Contract shall be binding upon County, Vendor and Bank and the parties' respective heirs, successors and assigns. This Contract shall not be assigned by a party without the other parties express prior written consent and any purported assignment without such consent shall be void.

**16.5 Facsimile and Electronic Transmissions.** Bank, Vendor and County agree that facsimile transmissions are acceptable for purposes of this Contract and that facsimile signatures shall be deemed as originals and have the full force and effect thereof. If the parties agree, electronic

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signatures and transmissions may be utilized and shall be deemed as originals.

- 16.6 Transition of Services.** Upon notice of termination and/or expiration of this Contract, the County shall immediately have the right to audit any and all records of Bank and Vendor relating to this Contract. Moreover, upon termination and/or expiration date of this Contract, Bank and Vendor agree to assist in transitioning the Services provided herein in a cooperative manner and provide anything reasonably requested from the County, upon date of termination and/or expiration, at no additional cost, including, but not limited to the following: (i) All Contract and Services documentation identified in a complete, neat and orderly manner; (ii) Good faith pledge to cooperate with County upon transition of Services to another contractor or County department providing the same or similar Services; (iii) Final accounting of all income from the Contract (iv) Removal of all County information from the Bank's and Vendor's equipment and software except to the extent not commercially feasible or such information is maintained pursuant to Payment Brand Rules or applicable law or regulation, including record retention rules and regulations; (v) Removal of either or both Bank's and Vendor's Services without affecting the integrity of County's systems; and (vi) Return of all County records (except as by Bank or Vendor for record retention rules and regulations) and County property.
- 16.7 Relationship of Parties.** The parties agree that the terms and conditions of this Contract do not constitute the creation of a separate legal entity or the creation of legal responsibilities of either party other than under the terms of this Contract. County, Vendor and Bank are and shall be acting as independent contractors under this Contract; accordingly, nothing contained in this Contract shall be construed as establishing a master/servant, employer/employee, partnership, joint venture, or joint enterprise relationship among County, Vendor and Bank. No party to this Contract is responsible for the acts, forbearance, negligence and/or misdeeds of any other party, including those of their respective agents or employees in conjunction with the performance of work covered under this Contract.
- 16.8 Counterparts, Number/Gender and Headings.** This Contract may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings are for the convenience of reference only and shall not be considered in any interpretation of this Contract.
- 16.9 Contra Proferentum.** The doctrine of contra proferentum shall not apply to this Contract. If an ambiguity exists in this Contract, the Contract shall not be construed against the party who drafted the Contract and such party shall not be responsible for the language used.
- 16.10 Severability.** If any provision of this Contract is construed to be illegal or invalid, this will not affect the legality of any of the other provisions. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provision had never been incorporated.
- 16.11 Compliance with Laws and Venue/Jurisdiction.** In providing Services required by this Contract, all Parties agrees to observe and comply with all applicable grant requirements, licenses, legal certifications, or inspections required for the Services, facilities, personnel, equipment, or materials, and all applicable federal, state and local statutes, ordinances, rules and regulations.



Any Party's failure to comply with this assurance shall be treated as a default and/or breach of this Contract. This Contract shall be governed by Texas law and exclusive venue shall lie in the federal and state courts physically located in Dallas County, Texas.

- 16.12 Entire Contract.** This Contract, including all Exhibits and attachments, constitutes the entire Contract between the parties and supersedes any other Contract concerning the subject matter of this transaction, whether oral or written.
- 16.13 Binding Effect.** This Contract and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves; except that County, its successors and assigns shall not be obligated to perform beyond the Term of this Contract.
- 16.14 Government Funded Project.** If Contract is funded in part by either the State of Texas or the federal government, Bank and Vendor each agrees to timely comply without additional cost or expense to County, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other State or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the Services rendered under the terms of this Contract.
- 16.15 Fiscal Funding Clause.** Notwithstanding any provisions contained in this Contract, the obligations of the County under this Contract are expressly contingent upon the availability of funding for each item and obligation for the Term of the Contract and any pertinent extensions. Bank and Vendor each shall have no right of action against County in the event County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Contract or failure to budget or authorize funding for this Contract during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Contract by written notice to Bank and Vendor at the earliest possible time prior to the end of its fiscal year.
- 16.16 Default/Cumulative Rights/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare a default or delays in taking any action. Waiver of any term, covenant, condition or violation of this Contract shall not be deemed or construed a waiver unless made in authorized written instrument, nor shall such waiver be deemed or construed a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. The rights and remedies provided by this Contract are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Pursuit of any remedy provided in this Contract shall not preclude pursuit of any other remedies herein provided or any other remedies provided by law or equity, including injunctive relief, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any obligation of the defaulting party hereunder or of any damages accruing by reason of the violation of any of the terms, provisions, and covenants herein contained. Bank and Vendor each has a duty to mitigate damages.
- 16.17 Incorporated Documents.** All documents listed below are incorporated herein by reference  
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for all purposes:

- (1) Request for Proposal ("RFP") No. 2018-048-6741 issued by the County, attached as Exhibit A;
- (2) Bank's submitted response to the RFP, attached as Exhibit B;
- (3) Bank's Title VI Assurances and Compliance, attached as Exhibit C;
- (4) Bank's Small Business Enterprise (SBE) and Hub Participation Report, attached as Exhibit D;
- (5) Bank's Cost/Payment Fee Work Sheet, attached as Exhibit E;
- (6) Bank's Account Terms and Service Terms, attached as Exhibit F; and
- (7) Any supplemented information reasonably requested by County and added to the Contract via an amendment;

**16.18 Order of Precedence.** In the event of a conflict or ambiguity within, between or among the provisions of this Contract and/or any of the referenced or incorporated documents, such conflict or inconsistency shall be resolved in the following order of precedence: (1) this Contract; (2) Exhibit E; (3) Exhibit B; (4) Exhibit A; (5) Exhibit F; (6) Exhibit C; and (7) Exhibit D.

**16.19 Taxes.** Dallas County, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Tax Code § 151.309, and shall therefore not be liable or to the Bank or Vendor for the payment of such taxes under this Contract.

Bank and Vendor each accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries or other remuneration pay to persons employees respectively by Bank or Vendor for work performed under this Contract and each agrees to indemnify and save harmless the County from any such contribution or taxes or liability.

**17. SURVIVAL.** The provisions of Section 4.2, 7, 10, 12, 15, 16.5, 16.10, 18 and 20 shall survive the termination of this Contract.

**18. INSURANCE. THIS SECTION REFLECTS THE UNDERSTANDING OF ALL PARTIES WITH REGARD TO INSURANCE AND SUPERSEDES ANY AND ALL OTHER AGREEMENTS BETWEEN THE PARTIES (UNLESS IT IS CLEAR FROM THE LANGUAGE THEREIN THAT SUCH LANGUAGE IS MEANT TO BE READ IN CONJUNCTION HEREWITH), WHETHER ORAL OR IN WRITING, WITH REGARD TO INSURANCE BETWEEN THE PARTIES.**

**18.1** Bank and Vendor, at their own expense, shall purchase and maintain the herein stipulated insurance with companies possessing a current A.M. Best, Inc. Rating of "A minus (A-)" or better. No subcontractors of Bank or Vendor will provide services on County premises. Notwithstanding the foregoing, in the event subcontractors do perform such services on County premises, Bank and Vendor shall be responsible for ensuring the subcontractors have the appropriate levels of Workers' Compensation insurance reflected below.

The policies may provide coverage, which contain deductible or self- insured retention. Bank Contract under RFP No. 2018-048-6741 for Dallas County Electronic Payment Services and E-Commerce Solution

and Vendor shall be solely responsible for all deductibles and/or self-insured retention.

Within ten (10) calendar days after the Effective Date of this Contract, Bank shall submit verification of the following coverage, showing Dallas County as the certificate holder and additional insured (except for Workers' Compensation Insurance, Bankers Professional Liability and Bankers Blanket Bond / Computer Misuse and Telephonic Misuse Coverage).

All insurance required herein shall be maintained in full force and effect throughout the Term of the Contract, including all extensions.

- 18.2 Workers' Compensation Insurance:** Proposer shall procure and maintain, at its sole cost and expense Workers' Compensation Insurance in the amount and in compliance with the provisions as provided for by Texas Law as established by the Texas Workers Compensation Act, Title 5, Subtitle A, Texas Labor Code for all of its employees assigned to operate or work under the Contract.

Workers Compensation: Statutory Limits Employer's Liability: \$500,000 per accident

- 18.3 Commercial General Liability Insurance:** Proposer shall procure and maintain, at its sole cost and expense, Commercial General Liability Insurance with a limit of \$1,000,000.00 for each occurrence with a \$1,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, personal injury, damage to rented premises, products and completed operations, independent contractor's contractual liability, and blanket contractual liability coverage.

- 18.4 Bankers Professional including Error and Omission Liability Policy:** Proposer shall procure and maintain, at its sole cost and expense, Bankers Professional Liability Insurance including Error and Omission Liability Policy with a limit not less than \$2,000,000.00 for each wrongful act. Bank reserves the right to self-insure with respect to Bankers Professional Liability insurance.

- 18.5 Bankers Blanket Bond / Computer Misuse and Telephonic Misuse Policy:** Proposer shall procure and maintain, at its sole cost and expense, a Bankers Blanket Bond / Computer Misuse and Telephonic Misuse Policy covering property of Bank and Vendor, including property held by Bank and Vendor for any purpose or in any capacity or for which Bank or Vendor is legally liable for inside/outside premises, including, theft via electronic means; money & securities; depositors forgery; covering each employee of Bank and Vendor, whether or not they are compensated. The Bankers Blanket Bond / Computer Misuse and Telephonic Misuse Policy shall provide coverage of Two Million Dollars (\$2,000,000) each loss. Bank and Vendor shall maintain the Bankers Blanket Bond / Computer Misuse and Telephonic Misuse Policy for the duration of the Contract.

- 18.6** Bank and Vendor agree that, with respect to the above referenced insurance, all insurance contracts will contain the following required provisions

- a. Except for Workers Compensation, Bankers Blanket Bond / Computer Misuse and Telephonic Misuse Policy and Bankers Professional Liability, name Dallas County and its officers, employees and elected officials as additional insured(s) (as the interest of each insured may appear) as to all applicable coverage.
- b. Provide under Commercial General Liability Insurance that the "other insurance" clause

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- shall not apply to Dallas County where County is the additional insured on the policy,
- c. Except for the gross negligence or willful misconduct of Dallas County, its officers and employees, Bank and Vendor agree to waive subrogation against Dallas County, its officers, employees and elected officials for injuries, including death, property damage under Workers Compensation and Commercial General Liability Insurance.
  - d. Bank and Vendor will agree that all of the provisions of the Contract concerning liability, duty and standard of care, will be underwritten by contractual liability coverage sufficient to include obligation within applicable policies.
  - e. Bank and Vendor must be prepared to show coverage verification prior to entering upon County premises.

Failure to comply with lawful requirements or adequate liability requirements may result in delay of payments, subject to the orders of the Commissioners Court, not to exceed a period of up to two years from the termination of the Contract, or cancellation of the Contract, or both. (Court. Order 2003-1972, September 30, 2003)

**SUBJECT TO SECTION 12 OF THIS CONTRACT, BANK AND VENDOR FURTHER AGREE TO INDEMNIFY COUNTY FOR ANY PENALTIES, FINES, JURY AWARDS, COURT COSTS, LITIGATION EXPENSES, AND ATTORNEYS' FEES INCURRED BY COUNTY DUE TO PROPOSER'S FAILURE TO MAINTAIN THE REQUIRED INSURANCE AT ALL TIMES DURING THE TERM OF THE CONTRACT. PROPOSER, AT ITS OWN EXPENSE WILL DEFEND AND HOLD COUNTY HARMLESS IN ANY CLAIM OR ACTION AGAINST COUNTY THAT OCCURRED AS A DIRECT RESULT OF BANK OR VENDOR'S FAILURE TO MAINTAIN INSURANCE AT ALL TIMES DURING THE TERM OF THE CONTRACT. WITHOUT WAIVING ANY RIGHTS UNDER SOVEREIGN IMMUNITY, THE COUNTY SHALL COOPERATE WITH AND MAY MONITOR BANK AND VENDOR IN THE DEFENSE OF ANY CLAIM, ACTION, OR PROCEEDING AND WILL, IF APPROPRIATE, MAKE EMPLOYEES AVAILABLE AS PROPOSER MAY REASONABLY REQUEST WITH REGARD TO SUCH DEFENSE, SUBJECT TO THE REIMBURSEMENT BY PROPOSER OF ALL COSTS AND EXPENSES OCCASIONED BY THE COUNTY'S COOPERATION IN SUCH DEFENSE.**

**18.7 This Section Intentionally Left Blank.**

**18.8 CONTRACTOR RESPONSIBILITY.** Bank and Vendor will be responsible for any damages whatsoever to County and/or client property as applicable when such property is the responsibility or in the custody of Bank or Vendor, their employees or subcontractors. Bank and Vendor agree that all Subcontractors performing work under the Contract are not employees of Dallas County.

Bank and Vendor acknowledge and agree that it is liable and responsible for any act or omission by Bank or Vendor, respectively, their employees, agents, officers, representatives, and subcontractors occurring in the course of performance of the Contract, whether such act or omission occurs on County property or elsewhere and occurs due to negligence of the Bank or Vendor. Bank and Vendor shall be liable for any direct loss or damage arising out of or related to Bank or Vendor's negligent performance of the Contract. Bank and Vendor shall bear the above stated liability, unless County actions caused the loss or damage (i.e., if regulation, but damage occurs, Bank and Vendor are responsible for such damages.). Bank and Vendor shall bear the above stated liability, and direct damages, and shall be liable for all costs, including attorney's fees, incurred by the County to enforce this provision. Notwithstanding anything to the contrary herein, Bank's and Vendor's liability shall be subject to Section 12 of this Contract.

**18.9 INSURANCE LAPSE.** In the event Bank or Vendor fails to maintain insurance as required by the Contract, Bank or Vendor, as the case may be, shall have fifteen (15) calendar days to cure such lapse in insurance coverage at the applicable party's, Bank's or Vendor's sole expense. **Subject** to Section 12 of this Agreement, Bank and Vendor each further agrees to indemnify County and hold County harmless for any claims, actions, penalties, fines, jury awards, court costs, litigation expenses, and attorneys' fees due to Bank's or Vendor's respective failure to maintain the required insurance. Without waiving any rights under Sovereign Immunity, and any other rights, County will reasonably cooperate with Bank and Vendor in the defense of any claim, action, or proceeding and will, if appropriate, make employees available as Bank or Vendor may reasonably request with regard to such defense, subject to the relevant party's, Bank's or Vendor's, reimbursement of all associated costs and expenses occasioned by County's cooperation in such defense.

**19. SIGNATORY WARRANTY.** Each party represents that it has the full right, power and authority to enter and perform this Contract in accordance with all of the terms and conditions, and that the execution and delivery of Contract has been made by authorized representatives of each party to validly and legally bind the respective party to all terms, performances, and provisions set forth in this Contract.

## **20. DEFINITIONS**

**20.1** "ACH" means Automated Clearing House.

**20.2** "Application" is County's statement of the characteristics of County's account that County has submitted to Vendor to induce Vendor to enter into this Contract with Bank and County and that has induced Vendor to process Transactions on behalf of County under the terms and conditions of this Contract.

**20.3** "Bank" is JPMorgan Chase Bank, N.A. which provides sponsorship to Vendor as required by all applicable Payment Brands. Bank is a principal party to this Contract and County has no contract directly with any Payment Brands;

**20.4** "Call Center" means the Bank's customer service operations, as applicable;

**20.5** "Chargeback" is a refund and/or reversal of a payment made by Payment Card, a Transaction previously submitted to Vendor pursuant to Payment Brand Rules, or a refund and/or reversal of payments made by E-Check;

**20.6** "Chargeback Account" means the motor vehicle tax and/or property tax accounts or other accounts at Bank to be debited by Vendor for County authorized chargebacks;

**20.7** "Conveyed Transaction" is any Transaction conveyed to American Express Travel Related Services Company, Inc. ("American Express") by Bank for settlement by American Express to County via Vendor;

**20.8** "Convenience Fee" is a charge by Bank to a Payor's Payment Card for the convenience of using the ecommerce solution offered to the Payor by County and Bank.

**20.9** "Convenience Fee Data" is the evidence and electronic record of a Transaction representing a charge by Bank to a Payor's Payment Card for the convenience of using the ecommerce payment solution offered to the Payor by the County and Bank;

**20.10** "Customer" has the same meaning as Payor;

**20.11** "E-Check" means a payment by Payor via ACH.

**20.12** "Effective Date" means the date on which this Contract takes effect pursuant to the date on the County Commissioners Court Order;

**20.13** "Image File" means, if applicable, an electronic file containing a summary, detail Statement,

*Contract under RFP No. 2018-048-6741 for Dallas County Electronic Payment Services and E-Commerce Solution*



- payment information and/or Payor Information;
- 20.14** "IVR" means the Bank-provided interactive voice response, as applicable.
- 20.15** "NACHA" means the National Automated Clearing House Association.
- 20.16** "NACHA Rules" means the operating rules and guidelines of the National Automated Clearing House Association.
- 20.17** "Operating Account" means the motor vehicle tax, and/or property tax accounts or other accounts at a financial institution designated by County as the account to be credited by Vendor for settlement funds or Transactions;
- 20.18** "Integrated Receivables & Payables Connect Transaction" is a Transaction submitted to Bank by a Payor over the World Wide Web or other ecommerce forum, which Bank submits to Vendor for processing. A Integrated Receivables & Payables Connect Transaction is comprised of both Convenience Fee Data, if applicable, and Transaction Data;
- 20.19** "Payment Application" is a third party application used by County that is involved in the authorization or settlement of Transaction Data;
- 20.20** "Payment Brand" is any payment method provider whose payment method is accepted by Vendor for processing, including, but not limited to, Visa, U.S.A., Inc., MasterCard International, Inc., Discover Financial Services, LLC, American Express, and any other credit and debit card providers, debit network providers, gift card and other stored value and loyalty program providers. Payment Brand also includes the Payment Card Industry Security Standards Council;
- 20.21** "Payment Brand Rules" are the bylaws, rules and regulations, as they exist from time to time, of the Payment Brands;
- 20.22** "Payment Card" is an account, or evidence of an account, authorized and established between a Payor and a Payment Brand, or representatives or members of a Payment Brand that County accepts from Payor as payment for County taxes, fines, fees or other payment obligations. Payment Cards include, but are not limited to, credit and debit cards for Visa, Mastercard, Discover and American Express, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates and credit accounts;
- 20.23** "Payor" is the person or entity who accesses the Point-of-Sale, IVR, Call Center or the Internet, as applicable, to initiate payment to County by Payment Card or E-Check.
- 20.24** "Payor Information" is information related to a Payor or the Payor's Payment Card or E-Check that is obtained by County or Bank or Vendor, as the case may be, for a Transaction under this Contract. Such information may include, without limitation, the Payor's zip code when provided as part of an address verification system, Payment Card data or E-Check account number and expiration date, the Payor's name or date of birth, PIN data, security code data (such as CVV2 and CVC2) and any data read, scanned, imprinted, or otherwise obtained from the Payment Card or E-Check, whether printed thereon, or magnetically, electronically or otherwise stored thereon;
- 20.25** "Point-of-Sale" ("POS") means electronic payment system used in Payment Card presentment or E-Check Transactions to verify and process Payor Information.
- 20.26** "Retrieval Request" is a request for information by a Payor or Payment Brand relating to a claim or complaint concerning a Transaction;
- 20.27** "Security Standards" are all rules, regulations, standards or guidelines adopted or required by the Payment Brands or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure and handling of Payor Information, including but not limited to the Payment Card Industry Data Security Standards ("PCI DSS"), Visa's Payor Information Security Program ("CISP"), Discover's Information Security & Compliance Program, American Express' Data Security Operating Policy, MasterCard's Site Data Protection Program ("SDP"), Visa's Payment Application Best Practices ("PABP"), the Payment Card Industry's

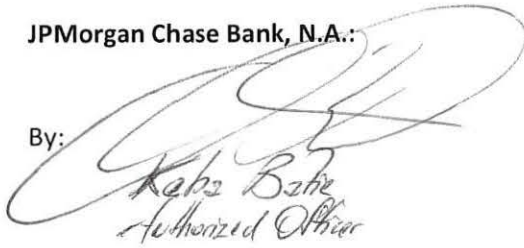
Payment Application Data Security Standard ("PADSS"), MasterCard's POS Terminal Security program and the Payment Card Industry PIN Entry Device Standard, in each case as they may be amended from time to time.

- 20.28** "Service(s)" means the specific service(s) provided by Bank more specifically described in County's Request for Proposal ("RFP") No. 2018- 048-6741; in Bank's submitted response to the RFP; and in any other written and incorporated documents; which Services include as applicable to an electronic payment services and e- commerce solution that allows Payors to initiate County tax or fee payments via the Internet, Point-of-Sale, IVR or Call Center; access to the Bank's provided equipment or Technology; reporting and analysis capabilities, and if applicable, electronic statement presentment;
- 20.29** "Service Provider" is any party that processes, stores, transmits or has access to Payor Information on County's behalf, including, but not limited to County agents, business partners, contractors and subcontractors;
- 20.30** "Settled Transaction" is a Transaction conducted between a Payor and Bank on behalf of County utilizing a Payment Card and E-Check and the value for such Transaction is settled by the Bank, or the Payment Brand through Vendor, to the County;
- 20.31** This section left intentionally blank.
- 20.32** "Statement" means, if applicable, a bill or invoice, as applicable, or comparable request for payment, prepared and sent to Payors by County or by Bank for County, as applicable;
- 20.33** This section left intentionally blank.
- 20.34** "Technology" means Bank's IVR, Point-of-Sale and web-based applications, as applicable, which have been designed to facilitate Transactions, via Payor's telephone to the Call Center or IVR, Point-of-Sale, or the Internet, using Payment Cards or E-Checks, or via automated clearing house ("ACH") and may include customer service support, reports, software, and software tools, user interface designs, and documentation, and any derivatives, improvements, enhancements or extensions thereof;
- 20.35** "Transaction" is a tax payment transaction utilizing a Payment Card or an E-Check conducted between a Payor and Bank on behalf of County, or with respect to POS, between a Payor and County.
- 20.36** "Transaction Data" is the evidence and electronic record of a Transaction representing payment by use of a Payment Card or E-Check or of a refund/credit to a Payor.
- 21. NO BOYCOTT OF ISRAEL.** Pursuant to Section 2270.002 of the Texas Government Code, Bank and Vendor verify that they:
- a) Do not boycott Israel; and
  - b) Will not boycott Israel during the term of this contract.
- 22. Title VI Assurances and Compliance.** Bank agrees to comply with its Title VI assurances contained in its RFP response which is attached as Exhibit C to this Contract.

**Agreed and Accepted by:**

**JPMorgan Chase Bank, N.A.:**

By:

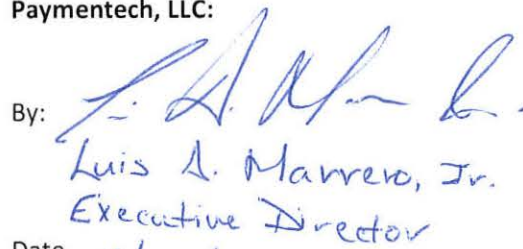
  
Kate Bzdek  
Authorized Officer

Date

4/24/19

**Paymentech, LLC:**

By:

  
Luis A. Marreño, Jr.  
Executive Director

Date

4/24/19

**Dallas County:**

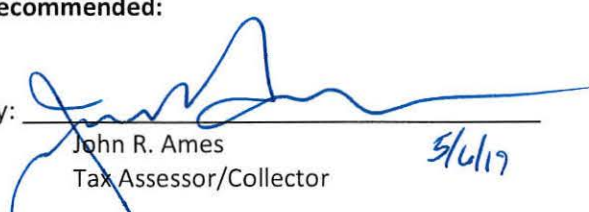
By: 

Clay Lewis Jenkins  
County Judge

Date

**Recommended:**

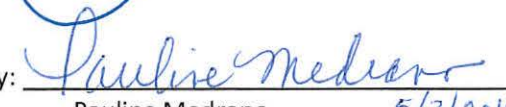
By:

  
John R. Ames  
Tax Assessor/Collector

5/4/19

**Recommended:**

By:

  
Pauline Medrano  
Dallas County Treasurer

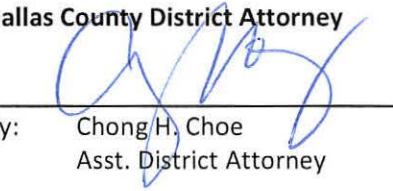
5/3/2019

**APPROVED AS TO FORM:**

**JOHN CREUZOT**

**Dallas County District Attorney**

By:

  
Chong H. Choe  
Asst. District Attorney

\*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

Contract under RFP No. 2018-048-6741 for Dallas County Electronic Payment Services and E-Commerce Solution



**EXHIBIT A**

**RFP NO. 2018-048-6741**

**EXHIBIT B**

**JP Morgan Chase Bank, N.A.'s Response to the RFP**

**EXHIBIT C**

**Title VI Assurances and Compliance**

## TITLE VI ASSURANCES/COMPLIANCE – APPENDIX A

### A. Assurances

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient

to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

*B. Nondiscrimination Authorities*

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

**Pertinent Nondiscrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

*C. Representations/Warranties*

The Contractor also makes the following representations and warranties to Dallas County:

1. It has taken the steps necessary to effectuate Title VI requirements.

2. Disadvantaged business enterprises are afforded equal opportunity to submit bids/proposals as sub-contractors or sub-consultants and will not be discriminated against on the grounds of race, color, sex, age, disability, religion, veteran status, or national origin in consideration of a selection or award.
3. Neither contractor or any subcontractors or sub-recipients that will participate in activities to be funded as a result of this contract/bid/solicitation, are listed on the debarred list due to violations of Title VI or VII of the Civil Rights Act of 1964, nor are any proposed parties to this contract, or any subcontract resulting therefrom, aware of any pending action which might result in such debarment or disqualification.

**D. Title VI Complaints**

Any person, contractor, or subcontractor who believes that they have been subjected to an unlawful discriminatory practice under Title VI will be notified of their right to file a formal complaint within one hundred eighty (180) days following the alleged discriminatory action or the date the person(s) became aware of the alleged act(s) of discrimination. Any such complaint must be filed in writing or in person with the Dallas County Title VI Coordinator:

Dallas County Human Resources  
 c/o: Dallas County Director of Human Resources and Title VI Coordinator  
 Renaissance Tower  
 1201 Elm Street, 23rd Floor, Suite 2300-B  
 Dallas, Texas 75270  
 (214) 653-7638 (phone)  
 (214) 653-7608 (fax)

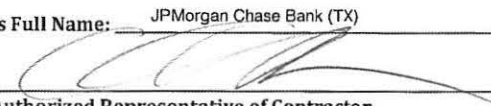
A copy of Dallas County Title VI Non-Discrimination Plan and Documents, and complaint forms, may be obtained at [http://www.dallascounty.org/departments/HR/title\\_vi.html](http://www.dallascounty.org/departments/HR/title_vi.html) or at the address above.

A complainant may also contact the Federal Coordination and Compliance Office, Civil Rights Division at the Title VI Hotline: 888-TITLE-06 (888-848-5306) or send a letter to: U.S. Department of Justice Civil Rights Division Federal Coordination and Compliance Section, NWB 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530. More information on Title VI is available from the Justice Department online at [www.justice.gov](http://www.justice.gov).

Contractor shall comply with all reasonable requests made in the course of an investigation of Title VI and these assurances by Dallas County, the Texas Department of Transportation, the US Department of Transportation, the US Department of Justice, or any other federal or state agency. Failure to comply with such reasonable requests will be deemed a breach of this contract/bid/solicitation.

**E. Enforcement**

The contractor affirmatively acknowledges that it will be subject to Title VI, and implementing regulations, and any enforcement measures therein. In addition to any enforcement action by Dallas County, the contractor acknowledges that the United States and the State of Texas has a right to seek judicial enforcement with regard to any matter arising under Title VI, including the assurances herein.

Contractor's Full Name: JPMorgan Chase Bank (TX)  
  
 Signature, Authorized Representative of Contractor \_\_\_\_\_ Date 8/22/18  
 Vice President  
 Title \_\_\_\_\_

**EXHIBIT D**

**SBE, HUB, and DBE Participation Plan**



### GOOD FAITH EFFORT PLAN

THE GOOD FAITH EFFORT PLAN IS REVIEWED BY THE DALLAS COUNTY OFFICE OF SMALL BUSINESS ENTERPRISE. THE SBE DIRECTOR OR DESIGNEE WILL EVALUATE THE "GOOD FAITH EFFORTS" OF A FIRM. THE GOOD FAITH EFFORT MUST BE APPROVED BY THE OFFICE OF SMALL BUSINESS OF ENTERPRISE PRIOR TO AWARD.

NAME OF PROJECT: County of Dallas Request for Proposal for Electronic Payments & E-Commerce Solution RFP 2018-048-6741

#### SECTION A - PRIME CONTRACTOR INFORMATION

NAME OF FIRM: JPMorgan Chase Bank (TX)

ADDRESS: 2200 Ross Avenue, Floor 08

CITY: Dallas STATE: Texas ZIP: 75201-2787

CONTACT PERSON: Keba Batie PHONE: 214-965-3695

EMAIL ADDRESS: keba.batie@jpmorgan.com

FAX:

IS YOUR FIRM CERTIFIED: NO ☒ YES ☐ CERTIFICATION NUMBER:

TYPE OF CERTIFICATION: SBE ☐ MBE ☐ WBE ☐ AAB ☐ HUB ☐ DBE ☐

#### 1. LIST ALL FIRMS TO BE UTILIZED ON THIS PROJECT/CONTRACT.

	SUBCONTRACTORS/SUPPLIERS	SCOPE OF WORK/SUPPLIES TO BE PERFORMED/PROVIDED BY THE FIRM	ESTIMATED CONTRACT AMOUNT ALLOCATED TO THE FIRM	IF FIRM IS CERTIFIED, LIST CERTIFICATION NUMBER AND ATTACH A COPY OF THE CERTIFICATION AFFIDAVIT
1.	NAME: ADDRESS:			
2.	NAME: ADDRESS:			
3.	NAME: ADDRESS:			
4.	NAME: ADDRESS:			
5.	NAME: ADDRESS:			
	NAME: ADDRESS:			

#### SECTION B - SBE COMMITMENTS



THE SMALL BUSINESS ENTERPRISE (SBE) ASPIRATIONAL GOAL FOR THIS PROJECT IS 40%

I. THE UNDERSIGNED CONTRACTOR HAS SATISFIED THE REQUIREMENTS OF THE BID SPECIFICATIONS IN THE FOLLOWING MANNER (PLEASE CHECK THE APPROPRIATE SPACE):

☐ THE CONTRACTOR IS COMMITTED TO A MINIMUM OF 40 % SBE UTILIZATION ON THIS CONTRACT

☐ THE CONTRACTOR (IF UNABLE TO MEETING THE SBE GOAL OF 40 %) IS COMMITTED TO A MINIMUM  
TBD % SBE  
UTILIZATION ON THIS CONTRACT

**MANDATORY PAYMENT REPORTING**

DURING THE TERM OF THE CONTRACT, THE CONTRACTOR MUST REPORT THE ACTUAL PAYMENTS TO ALL THE SBE SUBCONTRACTORS ON A MONTHLY BASIS IN THE SPECIFIED TIME INTERVALS AND FORMAT PRESCRIBED BY DALLAS COUNTY. ANY UNJUSTIFIED FAILURE TO COMPLY WITH THE LEVELS OF SBE PARTICIPATION IDENTIFIED IN THE BID AND AFFIRMED IN THE GOOD FAITH EFFORT PLAN SHALL BE CONSIDERED A MATERIAL BREACH OF CONTRACT. DALLAS COUNTY RESERVES THE RIGHT, AT ANY TIME DURING THE TERM OF THE CONTRACT TO REQUEST ADDITIONAL INFORMATION, DOCUMENTATION OR VERIFICATION OF PAYMENTS MADE TO ALL SUBCONTRACTORS IN CONNECTION WITH THE CONTRACT. VERIFICATION OF AMOUNT BEING REPORTED MAY TAKE THE FORM OF REQUESTING COPIES OF CANCELED CHECKS PAID TO THE SBE PARTICIPANTS AND/OR CONFIRMATION INQUIRIES DIRECTLY TO SBE PARTICIPANTS. PROOF OF PAYMENTS, SUCH AS COPIES OF CANCELED CHECKS MUST PROPERLY IDENTIFY THE PROJECT NAME OR PROJECT NUMBER TO SUBSTANTIATE SBE PAYMENTS FOR THIS PROJECT.

NAME AND PHONE NUMBER OF PERSON APPOINTED TO COORDINATE AND ADMINISTER THE SBE REQUIREMENTS ON THIS PROJECT

NAME: Keba Batie

TITLE: Vice President

DIRECT PHONE: 214-965-3695 EMAIL: keba.batie@jpmorgan.com

➡ IF THE SBE GOAL WAS MET, PROCEED TO GOOD FAITH EFFORT AFFIRMATION

➡ IF THE SBE GOAL WAS NOT MET, PROCEED TO SECTION C – DOCUMENTATION OF GOOD FAITH EFFORTS FOUND ON PAGE

2018-048-6741

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**3. SECTION C – DOCUMENTATION OF GOOD FAITH EFFORTS (TO BE FILLED OUT ONLY IF SBE ASPIRATIONAL GOAL WAS NOT ACHIEVED.)**

1. LIST ALL FIRMS CONTACTED WITH SUBCONTRACTING/SUPPLY OPPORTUNITIES FOR THIS PROJECT THAT WILL NOT BE UTILIZED FOR THE CONTRACT BY CHOICE OF THE CONTRACTOR, SUBCONTRACTOR, AND/OR SUPPLIER. WRITTEN NOTICES TO FIRMS CONTACTED BY THE CONTRACTOR FOR SPECIFIC SCOPES OF WORK IDENTIFIED FOR SUBCONTRACTING/SUPPLY OPPORTUNITIES MUST BE PROVIDED TO SUBCONTRACTOR/SUPPLIERS NOT LESS THAN FIVE (5) BUSINESS DAYS PRIOR TO BID/PROPOSAL DUE DATE. THE FOLLOWING INFORMATION IS REQUIRED FOR ALL FIRMS WHAT WERE CONTACTED OF SUBCONTRACTING/SUPPLY OPPORTUNITIES. MAY USE ADDITIONAL SHEETS IF NEEDED.

	NAME & ADDRESS OF SUBCONTRACTOR(S)/SUPPLIER(S)	SCOPE OF WORK/SUPPLIES TO BE PERFORMED/PROVIDED BY THE FIRM	IS FIRM SBE OR M/WBE CERTIFIED?	DATE OF WRITTEN NOTICE SENT & METHOD USED (FAX, LETTER, EMAIL, ETC.)	REASON AGREEMENT NOT REACHED
1.	NAME: ADDRESS:			DATE: METHOD:	
2.	NAME: ADDRESS:			DATE: METHOD:	
3.	NAME: ADDRESS:			DATE: METHOD:	
4.	NAME: ADDRESS:			DATE: METHOD:	
5.	NAME: ADDRESS:			DATE: METHOD:	

IN ORDER TO VERIFY A CONTRACTOR'S GOOD FAITH EFFORTS, PLEASE PROVIDE COPIES OF ALL WRITTEN NOTICES TO ALL FIRMS OF CONTACTED BY THE CONTRACTOR FOR SPECIFIC SCOPES OF WORK IDENTIFIED IN RELATIONS TO THE SUBCONTRACTING/SUPPLY OPPORTUNITIES IN THE ABOVE NAMED PROJECT. COPIES OF SAID NOTICES MUST BE PROVIDED TO DALLAS COUNTY'S OFFICE OF SMALL BUSINESS ENTERPRISE WITHIN FIVE (5) BUSINESS DAYS AFTER THE BID/PROPOSAL IS DUE. SUCH NOTICES SHALL INCLUDE INFORMATION ON THE SCOPE OF WORK TO BE PERFORMED AND/OR SUPPLIES TO BE PROVIDED.

2. DID YOU ATTEND THE PRE-PROPOSAL CONFERENCE SCHEDULED FOR THIS PROJECT? YES \_\_\_\_ NO \_\_\_\_
3. LIST ALL LISTINGS, DIRECTORIES, CONTRACTOR ASSOCIATIONS, AND/OR ANY OTHER ASSOCIATIONS UTILIZED TO SOLICIT SBE SUBCONTRACTOR/SUPPLIERS.

NAME	CONTACT PERSON	PHONE
		( )
		( )
		( )
		( )

4. DISCUSS EFFORTS MADE TO DEFINE ADDITIONAL ELEMENTS OF THE WORK PROPOSED TO BE PERFORMED BY SBEs IN ORDER TO INCREASE THE LIKELIHOOD OF ACHIEVING THE GOAL.


5. INDICATE ADVERTISEMENTS MEDIUMS USED FOR SOLICITING BIDS FROM SBEs (PLEASE ATTACH A COPY OF THE ADVERTISEMENTS).

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**GOOD FAITH EFFORT**

**AFFIRMATION**

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT/AGREEMENT.

NAME OF AUTHORIZED OFFICIAL: Keba Batie  
TITLE: Vice President  
SIGNATURE: [Signature] DATE: 8/22/18

FOR USE ONLY BY THE OFFICE OF SMALL BUSINESS ENTERPRISE

GOOD FAITH EFFORT RECOMMENDATION:

APPROVED: \_\_\_\_\_ NOT APPROVED: \_\_\_\_\_

DATE: \_\_\_\_\_

SBE DIRECTOR: \_\_\_\_\_

2018-048-6741

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**EXHIBIT E**

**Contractor's Cost/Payment Fee Work Sheet**

Payment, processing and convenience cost for **On-Line Web- Based** transactions for the following card types and applications

Type	Customer Convenience Fee
1. ACH	\$ <u>0.00</u>
2. Electronic Check	\$ <u>0.00</u>
3. Mastercard	\$ <u>2.15% of Payment</u>
4. Visa	\$ <u>2.15% of Payment</u>
5. Discover Card	\$ <u>2.15% of Payment</u>
6. American Express	\$ <u>2.15% of Payment</u>
7. Debit Card	\$ <u>2.95 per Payment for Signature Debit Cards</u> <u>2.15% of Payment for PIN-less Debit Cards</u>
Total	\$ _____

Payment, processing and Convenience Cost for Pay-by-Phone transactions for the following card types and applications

Type	Customer Convenience Fee
1. ACH	\$ <u>0.00</u>
2. Electronic Check	\$ <u>0.00</u>
3. Mastercard	\$ <u>2.15% of Payment</u>
4. Visa	\$ <u>2.15% of Payment</u>
5. Discover Card	\$ <u>2.15% of Payment</u>
American Express	\$ <u>2.15% of Payment</u>
7. Debit Card	\$ <u>2.95 per Payment for Signature Debit Cards</u> <u>2.15% of Payment for PIN-less Debit Cards</u>
Total	\$ <u>          </u>



## Cost/Payment Fee Work Sheet

Payment, processing and convenience cost for **Point of Sale** transactions for the following card types and applications

Type	Customer Convenience Fee
1. ACH	\$ 0.00
2. Electronic Check	\$ 0.00
3. Mastercard	2.15% of Credit or Debit Card Payment, or \$2.95 per Payment minimum
4. Visa	2.15% of Credit or Debit Card Payment, or \$2.95 per Payment minimum
5. Discover Card	2.15% of Credit or Debit Card Payment, or \$2.95 per Payment minimum
6. American Express	2.15% of Credit or Debit Card Payment, or \$2.95 per Payment minimum
7. Debit Card	\$ 2.95 per Payment for PIN-Debit Card
Total	\$

**EXHIBIT F**

**Bank's Account Terms and Services Terms**

# ACCOUNT TERMS

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## INTRODUCTION

This document, as amended or supplemented by account addenda for each country in which the Accounts are held, (collectively, the "Account Terms") contains the general terms, conditions and disclosures for the Accounts and Services selected by the Customer and constitutes an agreement between the Bank and the Customer and supersedes all previous drafts, discussions and negotiations, whether oral or written, between them in connection with the opening of Accounts and receipt of Services. References to "the Bank" shall mean **JPMorgan Chase Bank, N.A.**, and any of its affiliates. References to the "Customer" shall mean the entity to which the Bank, as an independent contractor, provides Accounts and Services, including any entity that is bound by a Subsidiary Election Agreement (not applicable in all jurisdictions), as may be amended from time to time. All accounts subject to the Account Terms are, regardless of their location, referred to as "Accounts". The Account Terms may be supplemented or amended as set forth in Section 17.6 (*Amendments; Supplement; Waivers*) herein. References to "Services" shall mean services offered by the Bank and subject to the Account Terms and any applicable Service Terms. References to "Service Terms" shall mean any terms and conditions regarding specific types of Accounts or Services that are subject to the Account Terms. In addition to the Account Terms and Service Terms, the Accounts are subject to other Account-related documentation, including signature cards and application forms (the "Account Documentation").

The Customer shall not transfer any of its rights and obligations in an Account or with respect to a Service, or create any form of security interest over such rights and obligations in an Account, without the prior written consent of the Bank. Failure to obtain the Bank's prior written consent constitutes a breach of these Account Terms by the Customer and may result in immediate closure of Accounts or termination of Services.

The Account Terms, Account Documentation and Service Terms may vary applicable law to the maximum extent permitted under any such law. Any provision of applicable law that cannot be varied shall supersede any conflicting term of the Account Terms, Account Documentation or Service Terms.

## 1. Authorized Persons.

- 1.1 **Authorized Persons.** The Bank is authorized to rely upon any document that identifies a person authorized to act on behalf of the Customer ("Authorized Person") with respect to the Accounts and Services, until the authority for such Authorized Person is withdrawn by the Customer upon written notice to the Bank, and the Bank has had a reasonable opportunity to act on such notice. The Customer will provide a specimen signature for each Authorized Person in the manner requested by the Bank.
- 1.2 **Authorizations.** Each Authorized Person is independent of the Bank, and, subject to any written limitation provided by the Customer and received and accepted by the Bank, is authorized on behalf of the Customer to: open, operate and close Accounts; overdraw Accounts as permitted by the Bank; appoint and remove Authorized Persons; execute or otherwise agree to any form of agreement relating to the Accounts or Services, including Account Documentation; execute guarantees, indemnities or other undertakings to the Bank in relation to guarantees, letters of credit or other financial transactions, or in relation to missing documents; draw, accept, endorse or discount checks, drafts, bills of exchange, notes and other financial instruments ("Items"); receive materials related to security procedures; and give instructions ("Instructions"), including requests and payment orders, by means other than the signing of an Item, with respect to any Account transaction. Without limitation, such Instructions may direct: (i) the payment, transfer or withdrawal of funds; (ii) the disposition of money, credits, items or property at any time held by the Bank for account of the Customer; (iii) the provision of access as described in Section 1.4 (*Third Party Access*) and Section 2.1 (*Third Party Instructions*) below; or (iv) any other transaction of the Customer with the Bank.
- 1.3 **Facsimile Signatures.** If the Customer provides the Bank with facsimile signature specimens, or if the Customer issues Items with a facsimile signature on one or more occasions, the Bank is authorized to pay Items signed by facsimile signature (including computer generated signatures) if the actual or purported facsimile signature, regardless of how or by whom affixed, resembles the specimens filed with the Bank by the Customer, or resembles a specimen facsimile signature otherwise employed for the Customer's benefit.
- 1.4 **Third Party Access.** The Customer may request that the Bank permit a third party to have access to an Account by submitting an access request in a form acceptable to the Bank (an "Access Request", and the third party designated in such form will be referred to as a "Third Party"). Each Third Party is authorized by the Customer to issue Instructions to the Bank in relation to an Account, including to initiate payments and transfers against an Account, and to access and receive balance and transaction information (including account statements, information reporting and transaction advices) by any method of communication, including the Bank's electronic channels, facsimile transmission, in writing, by telephone and SWIFT, and the Bank is authorized to act on such Instructions and provide such access as described in this Section and Section 2.1 (*Third Party Instructions*) below. Subject to the Third Party's completion of documentation required by the Bank, the Bank is authorized to act upon any Instructions issued in the name of any authorized person of the Third Party who has been nominated by the Third Party in a form acceptable to the Bank, and such authorized person shall be deemed an Authorized Person with respect to the provisions of these Account Terms relating to the use of the Accounts and the giving of Instructions with respect to the Accounts. The Customer may revoke an Access Request at any time by giving the Bank written notice of such revocation; such revocation shall be effective when the Bank has received such notice and has had a reasonable opportunity to act upon it.

## 2. Instructions; Security Procedures.

- 2.1 **Security Procedures Generally.** When issuing Instructions, the Customer is required to follow the Bank's security procedures as communicated to the Customer by the Bank from time to time, including the procedures set forth herein, and shall be bound by such security procedures for use of the Service. Upon receipt of an Instruction, the Bank will use the security procedures to verify that the Instruction is effective as that of the Customer. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, call back procedures or similar security devices. It is understood that the purpose of the security procedure is to verify the authenticity of, and not to detect errors in,

Instructions. The Customer shall safeguard the security procedure and make it available only to persons that it has authorized. Any Instruction, the authenticity of which has been verified through such security procedure, shall be effective as that of the Customer, whether or not authorized. An authenticated SWIFT or host-to-host (secure communications channel for data transfer) message issued to the Bank in the name of the Customer shall be deemed to have been given by an Authorized Person. For SWIFT, the security procedure shall be the authentication procedures established by SWIFT.

**Security Procedure for Verbal or Written Instructions.** Unless the Customer and the Bank have agreed in writing to an alternate security procedure, the Bank may verify the authenticity of verbal or written (including those transmitted by facsimile) funds transfer Instructions by telephonic call-back to an Authorized Person. The Customer agrees that this security procedure is commercially reasonable for such Instructions.

**Third Party Instructions.** The security procedures applicable to Instructions from any Third Party shall be those security procedures established by the Bank with the Third Party. Any Instruction that the Bank receives from the Third Party, the authenticity of which has been verified through such security procedure, shall be effective as that of the Customer, whether or not authorized, and shall be deemed an Instruction given on behalf of the Customer for all purposes of these Account Terms. The Bank is authorized to act upon any Instructions received via any of the SWIFT BIC codes specified in an Access Request whether or not such SWIFT BIC codes are associated with the Customer or the Third Party.

- 2.2 Confirmations.** If the Customer, other than with respect to security procedures, chooses to confirm an Instruction, any confirmation must be clearly marked as a confirmation, and, if there is any discrepancy between an Instruction and a confirmation, the terms of the Instruction shall prevail. Subject to Section 2.1 (*Security Procedure for Verbal or Written Instructions*), the Bank may, at its option, confirm or clarify any request or Instruction using any means, even if a security procedure appears to have been followed. If the Bank is not satisfied with any confirmation or clarification, it may decline to honor the Instruction.

### **3. Deposits.**

- 3.1 Processing Incoming Items.** All Items deposited or cashed are received for collection only, and are received subject to final payment. The Bank may agree with other banks and clearing houses to vary procedures regarding the collection or return of Items, and deadlines to the extent permitted by applicable law or practice. The Bank chooses the method of collecting Items and may use other banks in the process. The Bank will present Items in accordance with the custom and practice of the jurisdictions in which the Items are handled for collection. The Bank is not responsible for actions or omissions of other banks, nor for the loss or destruction of any Item in the possession of other banks or in transit. The Customer shall use reasonable efforts to assist the Bank in locating or obtaining replacements of Items lost while in the Bank's possession.
- 3.2 Availability of Funds; Credits Not Received.** Credits and deposits to an Account will be available in accordance with the Bank's availability policy and applicable law. If the Bank credits an Account: (i) in contemplation of receiving funds for the Customer's credit and those funds are not actually received by the Bank; or (ii) in reliance on a transaction which is subsequently returned, reversed, set aside or revoked, or if the Bank does not receive funds for the Customer's credit for value on the date advised by or on behalf of the Customer, or if final settlement is not received by the Bank for any reason, then the Bank shall be entitled to debit any Account of the Customer with the amount previously credited and/or with any other charges incurred, even if doing so creates or increases an overdraft.
- 3.3 Collection Basis Processing.** If an Item is processed by the Bank on a collection basis, the Bank may defer credit to the relevant Account until it has received final, non-reversible, payment in accordance with applicable law and market practice.

### **4. Payment of Items.**

- 4.1 Processing Outgoing Items.** The Bank is authorized to pay any Item drawn on the Account, in accordance with the Bank's usual procedures, including any Item that purports to be a substitute check. The Bank is authorized to debit the Account on which the Item is drawn on the day the Item is presented, certified or accepted, or at such earlier time when the Bank receives notice by electronic or other means that an Item drawn on an Account has been deposited for collection. The Bank may determine Account balances in order to decide whether to dishonor an Item for insufficient funds at any time between receiving such presentment or notice and the time of the return of the Item, and need make no more than one such determination.
- 4.2 No Inquiry.** The Bank is authorized to pay all Items presented to it or cashed at the Bank, regardless of amount and without inquiry as to the circumstances of issue, negotiation or endorsement or as to the disposition of proceeds, even if drawn, endorsed or payable to cash, bearer or the order of the signer or any Authorized Person or to a lender in payment of the signer's or Authorized Person's obligations.
- 4.3 Limitations.** The Customer shall immediately notify the Bank if it becomes aware that any Items (whether completed or blank) are lost or stolen. The Customer shall not allow any third party to issue Items against or otherwise use the Accounts unless specifically agreed to in writing by the Bank. The Customer shall not issue Items that are post-dated, and the Bank shall not be liable for any damages caused by premature payment or certification of a post-dated Item. Further, the Customer shall not put any condition, restriction or legend on any Item, and the Bank is not required to comply with any such condition, restriction or legend.
- 4.4 Electronic Processing; Specifications.** The Bank may process any Item by electronic means. All Items issued by the Customer against any Account must comply with industry standards and the Bank's check specifications and image standards, published from time to time. The Bank shall not be liable for damages or losses due to any delay or failure in procuring, collecting or paying Items not conforming to such specifications or standards, except to the extent such losses or damages are the direct result of the Bank's gross negligence or willful misconduct.

## 5. Funds Transfer Instructions.

- 5.1 Processing Funds Transfer Instructions.** The Customer may issue funds transfer Instructions against Accounts, subject to the Bank's acceptance. Funds transfer Instructions will be received, processed and transmitted only on the Bank's funds transfer business days, and within the Bank's established cut-off hours on such days. Communications requesting cancellation or amendment of funds transfer Instructions must be clearly marked as such and received at a time and in a manner affording the Bank a reasonable opportunity to act on the communication. The Customer may reverse, amend, cancel or revoke any Instructions only with the consent of the Bank and, if applicable, the beneficiary's bank. The Bank will debit the Account for the amount of each funds transfer Instruction accepted by the Bank, and the Customer authorizes the Bank to debit the Account for, or deduct from the amount of the funds transfer, all associated fees, including debit and credit processing charges. In processing a funds transfer, other banks may deduct fees from the funds transfer. No restrictions upon the acceptance of funds transfer Instructions by the Bank or upon the Accounts that the Bank may debit shall be binding unless agreed to by the Bank in writing. The Bank shall not be required to inquire into the circumstances of any transaction.
- 5.2 Acting on Instructions.** Notwithstanding any Instructions by the Customer to the contrary, the Bank reserves the right to use any funds transfer system and any intermediary bank in the execution of any funds transfer Instruction and may otherwise use any means of executing the funds transfer Instruction that the Bank deems reasonable in the circumstances.
- 5.3 Inconsistent Name and Number.** The Bank and other financial institutions, including the beneficiary's bank, may rely upon the identifying number of the beneficiary, the beneficiary's bank or any intermediary bank included in a funds transfer Instruction, even if it identifies a person different from the beneficiary, the beneficiary's bank or intermediary bank identified by name.
- 5.4 Foreign Exchange.** If the Bank accepts a funds transfer Instruction issued in the Customer's name for payment in a currency (the "Non-Account Currency") other than the currency of the Account (the "Account Currency"), the Bank is authorized to enter into a foreign exchange transaction to sell to the Customer the amount of Non-Account Currency required to complete the funds transfer and debit the Account for the purchase price of the Non-Account Currency. If the Bank accepts a funds transfer Instruction for payment to the Account in a Non-Account Currency, the Bank is authorized to purchase the Non-Account Currency from the Customer and to credit the purchase price to the Customer's Account in lieu of the Non-Account Currency. The purchase price for the foregoing transactions shall be at a rate and spread as the Bank determines in its discretion and may differ from rates at which comparable transactions are entered into with other customers or the range of foreign exchange rates at which the Bank otherwise enters into foreign exchange transactions on the relevant date. Further, (i) the Bank may execute such foreign exchange transactions in such manner as the Bank determines in its sole discretion; and (ii) the Bank may manage the associated risks of the Bank's own position in the market in a manner it deems appropriate without regard to the impact of such activities on the Customer. The Bank may also earn a profit which may be imbedded in the applicable rate and/or spread. Any such foreign exchange transaction will be between the Bank and the Customer as principals, and the Bank will not be acting as agent or fiduciary for the Customer.
- Foreign Exchange Cancellations, Reversals and Buybacks.** Notwithstanding any prior action or course of dealing, subject to applicable law, the Bank has no obligation to cancel, reverse or otherwise buy back foreign currencies purchased by the Customer under a Service and the Bank makes no commitment to buy back currencies. The Customer acknowledges that it may not be able to sell back certain foreign currencies once purchased.
- 5.5 Cancellation of Foreign Exchange Drafts.** Subject to applicable law, the Bank may cancel any draft issued by the Bank on behalf of the Customer in a Non-Account Currency if the draft is not presented for payment within one hundred eighty (180) calendar days after the date of issuance, and the Customer authorizes the Bank to recredit the Customer's Account with an equivalent amount of Account Currency at a foreign exchange rate and spread, and at such date and time, as the Bank determines in its discretion. Following such cancellation, the Customer shall be responsible for all claims that may be asserted against the Bank in respect of the draft.

## 6. Interest; Fees; Taxes.

- 6.1 Interest.** The Bank may pay interest on balances in interest-bearing Accounts at rates determined by the Bank, subject to any withholding or deduction for tax as required by applicable law, including without limitation the Foreign Account Tax Compliance Act ("FATCA") and is authorized to perform any other function (including debiting, blocking or suspending the Accounts) as required by applicable law or practice of any relevant government, regulatory, judicial or tax authority or in accordance with the Bank's usual business practice. The Bank may deduct from the Accounts charges for early withdrawals, which may include a deduction from principal (if permitted or required by law). To the extent market interest rates are negative, the rate applied by the Bank to interest-bearing Accounts may be negative, in which case the Customer may be required to make a negative rate payment, which the Bank shall also be entitled to collect by debiting the Account.
- 6.2 Fees and Taxes.**
- (a) The Bank may impose and the Customer will pay fees for Accounts and Services provided by the Bank, including transaction, maintenance, balance-deficiency, and service fees and other charges (collectively "Fees"). The Bank may debit any Account for Fees and/or Taxes, even if such debit creates or increases an overdraft of the Account. References to "Taxes" shall mean any taxes (including value added taxes, sales taxes and similar 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 Fees, Accounts or Services (including payments or receipts to an Account) except if such Taxes are imposed on the overall net income of the Bank.
  - (b) All payments (including Fees and interest on overdrafts) from the Customer to the Bank pursuant to the Account Terms, the Service Terms and any Account Documentation shall be in full, without set-off or counterclaim, and free of any withholding or deduction (collectively, a



"Deduction") related to any tax or other claim, unless a Deduction is required by applicable law. If any Deduction is required by applicable law in respect of any payment due to the Bank, the Customer shall:

- (i) ensure that the Deduction is made;
  - (ii) pay the amount of the Deduction as required by applicable law;
  - (iii) increase the payment in respect of which the Deduction is required so that the net amount received by the Bank after the Deduction shall be equal to the amount which the Bank would have been entitled to receive in the absence of any requirement to make any Deduction; and
  - (iv) deliver to the Bank, within thirty (30) days after it has made payment to the applicable authority, a certified copy of the original receipt issued by the authority, evidencing the payment to the authority of all amounts required to be deducted.
- (c) All Fees are exclusive of Taxes. In addition to any Fees or other amounts due and except to the extent the Bank is otherwise compensated for such Taxes under this Section 6, the Customer will pay or reimburse the Bank for any Taxes which the Bank is required to account for to any tax authority under any applicable law and, where required by applicable law, the Customer shall account for any Taxes directly to the applicable tax authority.

**6.3 Documentation and Information.** The Customer will provide the Bank with such documentation and information as the Bank may require in connection with taxation, and warrants that such information is true and correct in every respect and shall immediately notify the Bank if any information requires updating or correction.

## **7. Account Statements.**

The Bank will issue Account statements, confirmations, or advices ("Account Statements") at the frequency and in the manner advised to the Customer from time to time. The Customer is responsible for ensuring that an Authorized Person promptly examines each Account Statement and any accompanying Items that are made available to it by the Bank, and reporting any irregularities to the Bank in writing, including any claim of unauthorized funds transfer activity. The Bank shall not be responsible for the Customer's reliance on balance, transaction or related information that is subsequently updated or corrected or for the accuracy or timeliness of information supplied by any third party to the Bank. Internet Account Statements or electronic Account Statements, if applicable, shall be deemed by the Customer and the Bank to be available to the Customer when the Account Statements are posted on the internet and the Bank sends an electronic mail notification of availability to the Customer, or when the Bank sends the electronic Account Statement to the Customer. For purposes of determining when an Item is sent to the Customer, an image of an Item or information identifying the Item (i.e. Item number, amount and date of payment) is a sufficient substitute for the actual Item.

## **8. Overdrafts.**

**8.1 Overdrafts.** The Bank may debit an Account even if the debit may cause or increase an overdraft. Unless otherwise agreed in writing, the Bank is under no obligation to permit any overdraft or to continue to permit overdrafts after having permitted an overdraft or to provide notice of any refusal to permit an overdraft, in each case notwithstanding any prior action or course of dealing. Any overdraft shall be immediately due and payable by the Customer to the Bank, unless otherwise agreed in writing. If the Bank permits an overdraft, the Bank is authorized to charge interest on the amount of the overdraft as long as the overdraft is outstanding, at a rate determined by the Bank, up to the maximum rate permitted by law at the time of the overdraft or at the specific rate agreed in writing between the Customer and the Bank. Subject to applicable law, interest shall accrue on any negative balance in an Account notwithstanding closure of the Account and/or termination of these Account Terms. If the Bank pays an Item that causes or increases an overdraft, the Bank may deduct applicable Fees and expenses from the Account without notice.

**8.2 Order of Payment.** When Items and other debits to the Account are presented to the Bank for payment on the same day and there are insufficient available funds in the Account to pay all of these transactions, the Bank may choose the order in which it pays transactions, including the largest transaction first or any other order determined by the Bank, in its sole discretion.

## **9. Set Off.**

The Bank may at any time, without prejudice to any other rights which it may have, and without prior notice or demand for payment, combine, consolidate or merge all or any of the Accounts of the Customer or may retain, apply or set off any money, deposits or balances held in, or standing to the credit of, any Account in any currency towards payment of any amount owing by the Customer to the Bank or any of its affiliates. The Bank shall be entitled to accelerate the maturity of any time deposit or fixed term deposit. For the purposes of this Section the Bank may effect currency conversions at such times or rates as it may think reasonable and may effect such transfers between any Accounts as it considers necessary. The Customer grants to the Bank a lien and security interest in any Accounts of the Customer at the Bank, in order to secure any and all obligations and liabilities of the Customer to the Bank or any of its affiliates.

## **10. Agents; Information.**

**10.1 Confidential Information.** The Bank agrees to take customary and reasonable measures to maintain the confidentiality of Customer confidential information. The Customer authorizes the Bank and its affiliates, and their respective agents, employees, officers and directors to disclose Account opening documentation, information with respect to any Account or Service, any banking transaction, and the Customer itself, including Customer confidential information, in order to provide the services under the Account Terms, Account Documentation and Service Terms, for



compliance with legal, tax and regulatory requirements, including without limitation FATCA, and for the Bank's operational purposes, risk management and compliance with internal policies: (i) to unaffiliated third parties, including the transmission of information to other banks and clearing houses and through channels and networks operated by third parties, and to agents of the Bank; (ii) to a proposed assignee of the rights of the Bank; (iii) to branches and affiliates of the Bank; (iv) to the auditors, legal advisers and consultants of the Bank, its branches and affiliates; (v) to the auditors of the Customer; (vi) to the Bank's or its affiliates' or the Customer's examiners or other regulators, including tax authorities, law enforcement agencies, courts of competent jurisdiction or other official bodies, anywhere in the world; and (vii) pursuant to subpoena or other court process, or to establish, exercise or defend the legal rights, or satisfy the legal obligations, of the Bank and its affiliates.

**10.2 Agents.** The Bank may retain agents to perform data processing, collection and other services in connection with the Accounts and Services.

**10.3 Offshoring.** Subject to applicable laws, including without limitation FATCA, processing of Customer confidential information may be performed by any Bank affiliate, including affiliates, branches and units located in any country in which we conduct business or have a service provider. The Customer authorizes the Bank to transfer Customer Information to such affiliates, branches and units at such locations as the Bank deems appropriate.

**10.4 Consents.** The Customer represents and warrants that prior to submitting to the Bank information about natural persons related to the Customer (including Authorized Persons, users of the Bank's electronic access systems, officers and directors, employees, beneficial owners, and customers and persons on whose behalf the Customer is receiving or transmitting funds, issuing items or maintaining an Account), the Customer shall have obtained such consents as may be required by applicable law or agreement, for the Bank to process and use the information for purposes of providing the Services.

## **11. Liability Limitation; Force Majeure.**

**11.1 Liability.** The Bank, its agents, employees, officers and directors, shall not be liable for any damage, loss, expense or liability of any nature which the Customer may suffer or incur, except to the extent of direct losses or expenses resulting from the negligence or willful misconduct of the Bank, its agents, employees, officers or directors. The Bank, its agents, employees, officers and directors shall not, in any event, be liable for indirect, special, consequential or punitive loss or damage of any kind (including lost profits, loss of business or loss of goodwill), in each case, whether or not foreseeable, even if the Bank, its agents, employees, officers or directors have been advised of the likelihood of such loss or damage, and regardless of whether the claim for loss or damage is made in negligence, gross negligence, for breach of contract or otherwise; provided, however, that the foregoing shall not apply to the extent such loss or damage is caused by fraud on the part of the Bank, its agents, employees, officers or directors. Customer shall promptly provide the Bank with a notice of any claims it receives regarding a Service.

**11.2 Force Majeure.** Neither the Bank nor the Customer shall be liable for any loss or damage, expense or liability of any nature to the other for its failure to perform or delay in the performance of its obligations resulting from an act of God, act of governmental or other authority, de jure or de facto, legal constraint, civil or labour disturbance, fraud or forgery (other than on the part of the other party or its employees), war, terrorism, catastrophe, fire, flood or electrical, computer, mechanical or telecommunications failure or malfunction, including inability to obtain or interruption of communications facilities, or failure of any agent or correspondent, or unavailability or failure of or the effect of rules or operations of a payment or funds transfer system, including non-availability of appropriate foreign exchange or foreign currency, or any cause beyond its reasonable control.

## **12. Reimbursement.**

The Customer agrees that it shall allow the Bank to reverse credit, or reimburse the Bank, for returned or dishonored items that had previously been credited to the Customer's Accounts, and, the Customer agrees that it shall reimburse the Bank for all overdraft fees, service fees, and out of pocket expenses as may be determined by Automated Clearing House rules or Uniform Commercial Code or other applicable regulations, in each case, incurred by the Bank, including but not limited to, fees imposed by applicable law, or rules of clearinghouse networks, funds transfer systems, and the like where such fees are incurred in each case as a direct result of: (i) the Customer's breach of any obligations or warranties imposed upon or imputed to, the Customer as a result of its depositing, originating, or negotiating any item or entry, either under the Bank's account terms, rules of applicable funds transfer systems, Federal Reserve Operating Circulars, the Uniform Commercial Code, clearinghouse rules, or the Check 21 Act and implementing regulations; (ii) the Customer's breach of any of the Originator responsibilities under applicable NACHA rules, or (iii) compliance by the Bank and any receiving depository financial institution with any request the Customer makes for a cancellation, stop payment, reversal or recall of any item or entry. This reimbursement obligation supersedes the indemnification obligations of the Customer, as elsewhere stated in these Account Terms or in the applicable Service Terms.

## **13. Notices.**

All Account Statements and notices may be sent to the Customer by ordinary mail, courier, facsimile transmission, electronic transmission (including SWIFT communication and emails), through internet sites, or by such other means as the Customer and the Bank may agree upon from time to time, at the address of the Customer provided to the Bank. Unless otherwise arranged, all notices to the Bank must be sent to the Bank officer or service representative managing the Account or to any other address notified by the Bank to the Customer in writing from time to time, and must be sent by ordinary mail, by courier, by facsimile transmission, by electronic transmission or by such other means as the Customer and the Bank agree upon from time to time. The Bank shall have a reasonable time to act on any notices received.

## **14. Termination.**

Unless otherwise agreed, either the Bank or the Customer may close an Account or terminate a Service by giving the other party not less than thirty (30) calendar days' prior written notice of intent to close or terminate. Notwithstanding the foregoing, either party may terminate an Account or a Service upon written notice to the other party in the event of: (i) a breach of the Account Terms, Account Documentation or Service Terms by the other party; (ii) the other party's inability to meet its debts as they become due, receivership, administration, liquidation, or voluntary or involuntary bankruptcy; or the institution of any proceeding therefor, any assignment for the benefit of the other party's creditors, or anything analogous to the foregoing in any applicable jurisdiction, or a determination in good faith by the terminating party that the financial or business condition of the other party has become impaired; (iii) a determination by the terminating party, in its sole opinion, that termination is necessary or required by applicable legal, tax or regulatory requirements, or as a result of a court or regulatory agency order or proceeding; or (iv) a good faith belief by the terminating party that the other party is engaged in activities that are inconsistent with the terminating party's policies. The Bank shall have a reasonable opportunity to act upon any termination request. The Bank shall not be precluded from completing a request or Instruction received by it prior to a termination request based on receipt of such termination request. Notwithstanding anything to the contrary in any Service Terms, upon the closing of an Account, all Services linked to such Account are simultaneously terminated (unless otherwise specifically agreed to by the parties) and the Bank's obligations in respect of such Account or Services will terminate. However, any such closing or termination shall not affect the Customer's liabilities to the Bank arising prior to, or on, such closing or termination, all of which shall continue in full force and effect. In the absence of Instructions from the Customer, the Bank may transfer balances to an unclaimed moneys account, or issue a cashier's check, sending it to the address of the Customer provided to the Bank.

## **15. Account Disclosures.**

- 15.1 Rejection of Funds.** The Bank may return or refuse to accept all or any part of a deposit or credit to an Account, at any time, and will not be liable to the Customer for doing so, even if such action causes outstanding Items to be dishonored and returned, or payment orders to be rejected.
- 15.2 Withdrawal.** The Bank may refuse to allow withdrawals from Accounts in certain circumstances, including where: (i) there appears to be a dispute relating to an Account, including disputes regarding the persons authorized to issue Instructions; (ii) legal process affecting the Account is received by the Bank, including a levy, restraining notice or, order of a court or other competent authority; (iii) the Account is being used as collateral to secure indebtedness to the Bank or its affiliates; (iv) documentation requested by the Bank has not been presented; or (v) the Customer fails to pay its indebtedness to the Bank or its affiliates on time.
- 15.3 Payable Branch; Deposits Outside of the U.S.** Any amount standing to the credit of any Account with the Bank is payable exclusively at a branch in the country at which the Account is held; however, payment may be suspended from time to time in order to comply with any applicable law, governmental decree or similar order, in any jurisdiction, for the time period affecting the Bank, its officers, employees, affiliates, subsidiaries, agents or correspondents. The Customer acknowledges that deposits held in a branch of the Bank located outside the United States are not payable in the United States and: (i) are not insured by the Federal Deposit Insurance Corporation or any other United States governmental agency; (ii) are subject to cross-border risks; and (iii) have a lesser preference as compared to deposits held in the United States in the event of a liquidation of the Bank.
- 15.4 Commissions and Rebates.** In connection with the provision of any Service by the Bank to the Customer, the Bank may from time to time receive commission, rebate or similar payments from other banks or third parties.

## **16. Governing Law.**

- 16.1 Governing Law.** The Account Terms, the relevant Account Documentation and the rights and obligations of the Customer and the Bank in respect of each Account shall be governed by and construed in accordance with the laws of the country in which the branch holding the relevant Account is located.
- 16.2 Waiver of Jury Trial; Limitation of Claims.** The Customer and the Bank hereby irrevocably waive all right to, and will not seek, trial by jury in any action, proceeding or counterclaim, of whatever type or nature, arising out of these Account Terms, the Account Documentation or the relationship established hereby. Any claim in connection with any Account or Service, unless a shorter period of time is expressly provided, must be brought against the Bank within two (2) years of the occurrence of the event giving rise to the claim, except as prohibited by applicable law.
- 16.3 Venue.** In relation to each Account, the courts of the country or state in which the branch of the Bank at which the Account is held shall have exclusive jurisdiction to settle any disputes that arise out of or are connected with the Account Terms, the Account Documentation and/or the Account and the Customer agrees to submit to the jurisdiction of such courts. This section is for the benefit of the Bank only and does not prevent the Bank from taking proceedings in the courts of any other country or state with jurisdiction including, to the extent allowed by law, concurrently in any number of countries or states.

## **17. Miscellaneous.**

- 17.1 Languages.** If the Account Terms, Account Documentation or Service Terms are translated into, or appear in a language other than English, the English language version shall control.
- 17.2 Successors.** The term Bank in the Account Terms, the Service Terms and any Account Documentation shall include any successors of the Bank, including assignees or successors of JPMorgan Chase Bank, N.A. or its affiliates or any person who under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Bank or its affiliates hereunder or to which the same has been transferred. The Bank may, at any time, assign or transfer all or any of its rights and obligations hereunder to an affiliate of JPMorgan Chase Bank, N.A..

- 17.3 Order of Precedence.** Any terms of any supplement, amendment, agreement, Service Terms or notice that are inconsistent with a provision of the Account Terms or the Account Documentation shall supersede such provision of the Account Terms or the Account Documentation for purposes of the particular Account or Service that is the subject thereof. The Account Terms and Account Documentation supersede and replace any other account conditions previously sent to the Customer.
- 17.4 Interpretation.** Section and subsection headings are for convenience only and shall not affect the meaning of the Account Terms, the Service Terms and any Account Documentation. References to Schedules, Sections, Subsections and Clauses are to Schedules, Sections, Subsections and Clauses of the Account Terms, the Service Terms and any Account Documentation. Words in the singular import the plural and vice versa. If any provision of the Account Terms, the Service Terms and any Account Documentation shall be held to be illegal, invalid, or unenforceable the validity of the remaining portions of the Account Terms the Service Terms and any Account Documentation shall not be affected. The term "including" shall in all cases mean "including without limitation" unless otherwise indicated. The term "affiliates" shall mean with respect to any entity, an entity, whether directly or indirectly, that controls, is controlled by, or is under common control with that entity. The term "applicable laws" or similar terms shall mean any law, statute, order, decree, rule, injunction, license, consent, approval, agreement, guideline, circular or regulation of a government authority.
- 17.5 Compliance; Transaction Screening.** The Customer shall comply with all applicable laws and the Bank's policies notified to the Customer. The Bank is required to act in accordance with Bank policies, the laws of various jurisdictions relating to the prevention of money laundering and the implementation of sanctions, including economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State. The Bank is not obligated to execute payment orders or effect any other transaction where a party to the transaction is a person or entity with whom the Bank is prohibited from doing business by any law applicable to the Bank, or in any case where compliance would, in the Bank's opinion, conflict with applicable law or banking practice or its own policies and procedures. Where the Bank does not execute a payment order or effect a transaction for such reasons, the Bank may take any action required by any law applicable to the Bank including freezing or blocking funds. Transaction screening may result in delays in the posting of transactions and/or funds availability. The Bank may direct the Customer (a) to make changes to the activity in the Customer's Accounts, including to cease and desist from using the Accounts for particular types of transactions or for transactions involving particular parties from time to time, and (b) not to use the Accounts to send payments with certain characteristics. The Customer agrees to comply with such directions.
- 17.6 Amendments; Supplements; Waivers.** The Account Terms may be amended or supplemented on notice to the Customer, including by terms contained in any Service Terms or Account Documentation. The Service Terms may be amended or supplemented on notice to the Customer. These amendments or supplements may impose restrictions on the Accounts and Services, as the Bank deems necessary in the course of its business, and will be effective on notice to the Customer or at such other time to be specified in the notice; provided that amendments or supplements that are required by law may be implemented immediately or as required by law. By signing an Account signature card, Account application or similar document or by using or continuing to use any of the Accounts or Services, the Customer agrees to the Account Terms, the Account Documentation, Service Terms and any amendments or supplements, as applicable. All amendments must be in writing.
- The Bank may waive any of provision of these Account Terms, the Account Documentation or the Service Terms, but such waiver shall apply only on that occasion. Such waiver shall not constitute a waiver of any other provision of the Account Terms, the Account Documentation or the Service Terms. Any such waiver shall not affect the Bank's right to enforce any of its rights with respect to other customers or to enforce any of its rights with respect to later transactions with Customer and is not sufficient to modify the terms and conditions of the Account Terms, the Account Documentation or the Service Terms. The rights and remedies in the Account Terms, the Service Terms and any Account Documentation are cumulative and are not exclusive of any other rights or remedies provided by applicable law.
- 17.7 Waiver of Immunity.** To the extent permitted by law and to the extent that the Customer has or hereafter may acquire any immunity (including sovereign, crown or similar immunity) from jurisdiction of any court, suit or legal process (whether from service of notice, injunction, attachment, execution or enforcement of any judgment or otherwise), the Customer irrevocably waives and agrees not to claim such immunity as against the Bank or its affiliates.
- 17.8 Internet Services; Notice of Claims.** The Customer agrees at its sole expense: (i) to advise each of its employees, officers, agents or other persons accessing any Service by or on behalf of Customer ("Users") of their obligations under the Account Terms, Account Documentation or under any Service Terms or ancillary Service material, including the obligation to refrain from using the Service via the Internet in the countries identified by the Bank; and (ii) to provide the Bank with all information reasonably necessary to setup and provide Services for the Customer, including advising the Bank of the countries from which Users will access any Service via the Internet.
- 17.9 Recordings.** The Bank or the Customer, at its sole discretion, may make and retain recordings of telephone conversations between the Customer and the Bank.
- 17.10 Instructions.** All Instructions, whether Items, payment orders or otherwise, are subject to applicable laws, and rules, policies, operations and practices of the applicable clearing or settlement systems or payment networks.
- 17.11 Electronic Copies.** The Bank may retain copies (paper, electronic or otherwise) of any documents or Items relating to the Accounts and Services in a form preserving an image of any such documents or Items, including signatures, or a regular business record and discard the original documents or Items. The Customer hereby waives any objection to the use of such records in lieu of their paper equivalents for any purpose and in any forum, venue or jurisdiction, including objections arising from the Bank's role or acquiescence in the destruction of the originals.
- 17.12 Intellectual Property.** All intellectual property rights in or relating to a Service, including any trademarks, service marks, logos, and trade names used in conjunction with a Service are the property of the Bank or its licensors and are protected by applicable copyright, patent, trademark and

other intellectual property law. Except as provided herein, the Customer shall not reproduce, transmit, sell, display, distribute, establish any hyperlink to, provide access to, modify, or commercially exploit in whole or in part any part of a Service, without the prior written consent of the Bank.

- 17.13 Know Your Customer.** To assist in the prevention of the funding of terrorism and money laundering activities, applicable law may require financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for the Customer: when the Customer opens an Account, the Bank may ask for the Customer's name, address, date of birth (for natural persons), and/or other information and documents that will allow the Bank to identify the Customer. The Bank may also request and obtain certain information from third parties regarding the Customer. For purposes of this provision, the Customer, to the extent required by applicable law, shall include any Authorized Person or signatory on an Account.

**Information.** To fulfill the Bank's "know your customer" responsibilities, the Bank will request information from the Customer from time to time, inter alia, regarding the Customer's organization, business, Third Parties and, to the extent applicable, Authorized Persons and beneficial owner(s) of the Customer, the Customer's customers, and their beneficial owners, including relevant natural or legal persons, and the Customer shall procure and furnish the same to the Bank in a timely manner. The Bank may also request further information and/or documentation in connection with the provision of the Services. Any information and/or documentation furnished by the Customer is the sole responsibility of the Customer and the Bank is entitled to rely on the information and/or documentation without making any verification whatsoever (except for the authentication under the security procedures, as applicable). The Customer represents and warrants that all such information and/or documentation is true, correct and not misleading and shall advise the Bank promptly of any changes and, except as prohibited by applicable law, the Customer agrees to provide complete responses to the Bank's requests within the timeframes specified. The Customer will notify the Bank in writing if any Accounts or monies it holds or places with the Bank are subject to restrictions or otherwise held or received by the Customer in a capacity other than previously disclosed to the Bank, including but not limited to monies being held for the benefit of third parties, whether as fiduciary or otherwise, monies subject to encumbrances, monies received as intermediary, processor or payment service provider, or arising from undisclosed business or similar sources. The Bank may, at its sole discretion and subject to such further conditions as it may impose, including, without limitation, execution of further documentation in form and manner acceptable to the Bank, permit the holding of such Accounts or deposits or receipt of funds. Unless prohibited by applicable law, the Customer agrees to promptly disclose to the Bank activity in the Customer's Accounts that is suspicious or violates applicable laws or sanctions.

If the Customer fails to provide or consent to the provision of any information required by this Section, the Bank may close any Account or suspend or discontinue providing any Service without further notice.

- 17.14 Click-Thru.** The Bank may deliver, make available and/or make accessible terms and conditions applicable to Accounts and Services to the Customer via electronic means and channels (including by posting such terms on a Bank website). The Bank may request that an Authorized Person "click" its approval of such terms. Subject to applicable law, the Customer agrees that the act of "clicking" its approval (or any similar act which has the same effect) with respect to any such terms will be evidence of Customer's acceptance of the applicable terms and conditions, to the same extent, and with the same force and effect, as if Customer had manually executed a written version of such terms and conditions.

## **18. Interpleader; Reimbursement.**

If the Bank determines that there is a dispute regarding the ownership of or entitlement to funds held by the Bank for the account of the Customer, the Bank may apply to an appropriate court for resolution of the dispute and may pay the funds into the court pending resolution. The Customer agrees to reimburse the Bank for any related expenses, including its attorneys' fees and costs incurred in connection with the resolution of such disputes or in connection with the Bank's response to, any legal process, including subpoenas, interrogatories and other written questions, garnishments, attachments, levies, writs, restraining notices, court orders, civil investigative demands, requests or demands from regulators or law enforcement, or summonses, complaints or petitions relating to an Account.

## **19. Provisional Recredit.**

In connection with any dispute regarding an Account, the Bank may choose to credit the Account pending completion of the Bank's investigation of the dispute. If the Bank determines that the Customer is not entitled to such credit, then, the Bank may reverse the provisional recredit to the Account, even if that reversal results in an overdraft.



## ADDENDUM TO ACCOUNT TERMS United States of America

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Accounts maintained by the Customer with the Bank are subject to the Bank's Account Terms. This addendum ("Addendum") amends or supplements the Account Terms with respect to Accounts maintained in the United States of America ("U.S.") and to Services provided in connection with such U.S. Accounts, regardless of the location where Services are provided. Capitalized terms used in this Addendum, and not otherwise defined, have the meanings set forth in the Account Terms. By using any Account maintained in the U.S., the Customer acknowledges receipt of, and agrees to be bound by, the Account Terms which includes this Addendum, each as may be amended or supplemented from time to time.

### Section 2 of the Account Terms (Instructions; Security Procedures) is amended by adding the following provision:

- 2.3 The Customer represents and warrants to the Bank that the Customer has not requested funds transfer security procedures other than those expressly agreed by the Customer and the Bank.

### Section 3 of the Account Terms (Deposits) is amended by adding the following provisions:

- 3.4 Verification; Adjustments. Receipts issued by the Bank for deposits are based solely on the amounts stated in the deposit ticket. Credits for Items received for deposit or collection (whether or not accompanied by a deposit ticket) are subject to verification and the Bank's receipt of final payment of deposited Items. The Bank may make adjustments to the Account for any errors appearing on deposit tickets or occurring during processing or otherwise, but the Bank has no obligation to do so for *de minimis* discrepancies.
- 3.5 Foreign Currency Items. The Bank may handle Items drawn on a non-U.S. bank or Items payable in a foreign currency on a collection basis, not for deposit, even if the Bank has received the Items in a deposit. The Customer may not receive provisional credit for such Items or, if provisional credit has been given, the Bank may revoke it. Credit for Items payable in a foreign currency will be converted into U.S. dollars at a foreign exchange rate and spread, and at such date and time, as the Bank determines in its discretion.
- 3.6 Endorsements. Endorsement must be placed on the back of Items only in the area within 1.5 inches from the trailing edge of the Item. The trailing edge of the Item is defined as the left-hand edge of the check looking at it from the front. If the Customer is authorized in writing to endorse Items on the Bank's behalf, the Customer agrees to comply with the endorsement standards of the Bank.
- 3.7 Encoding. If the Customer encodes information on an Item, the Customer warrants to the Bank and to all other collecting and paying banks of that Item that it is properly encoded and the Customer will be liable for losses related to encoding errors, including any loss due to delay in processing caused by an encoding error.
- 3.8 Return or Charge Back. The Customer should not use carrier documents (Items placed inside envelopes) in either high-speed forward or return cash letters. The Bank may charge the Account for Items returned unpaid to the Bank or for claims based on asserted unauthorized signatures, endorsements or alterations.
- 3.9 Collections. The Customer agrees that the Bank may collect any Item deposited to Customer's Account by electronic means. The Bank has no duty to inspect such Item during the deposit and collection process.
- 3.10 Variance. The Bank may agree with other banks and clearing houses to vary procedures regarding the collection or return of Items, and to vary applicable deadlines, to the maximum extent permitted by applicable laws, and rules, policies, operations and practices of the applicable clearing or settlement systems or payment networks (collectively "Rules & Regulations").
- 3.11 Substitute Checks. The Customer will not deposit any substitute checks (that are not returned Items) unless the Bank expressly agrees to accept such Items for deposit. In the absence of the Bank's express agreement, the Customer will be solely responsible for any loss or claim in connection with its use of substitute checks.
- 3.12 Night Depository Deposits. The Bank is not liable for any deposit made through the use of the Bank's night depositories until the Bank issues a written acknowledgement of the deposit. The Bank's count of the amount deposited in a night depository will be conclusive. The Customer is solely responsible for any loss that may be incurred before the Bank verifies the contents of the deposit.
- 3.13 Remotely Created Checks. If the Customer deposits a remotely created check ("RCC"), as such term is defined in Federal Reserve Regulation CC, the Customer warrants to the Bank, with respect to each RCC, that the person on whose account the RCC is drawn, authorized the issuance of such RCC in the amount and to the payee stated on the RCC. The Customer authorizes the Bank to debit the Customer's account for any claim or return based upon an unauthorized RCC and the Customer agrees to indemnify and hold the Bank harmless from and against any claims, liabilities, costs and expenses (including attorneys' fees) resulting directly or indirectly from any breach of the foregoing warranty.

- 3.14 Electronically-Created Items. The Customer should not deposit electronically-created items (ECIs) to its account, as such term is defined in Federal Reserve Regulation CC. ECIs are included in the definition of an Item. If the Customer does deposit an ECI, the Customer authorizes the Bank to debit the Customer's account for any claim, return or adjustment related to the ECI, and the Customer agrees to indemnify and hold the Bank harmless from and against any claims, liabilities, costs and expenses (including attorneys' fees) resulting directly or indirectly from the Customer's deposit of the ECI.
- 3.15 ATM Cards. The Bank may issue one or more automated teller machine ("ATM") cards ("Cards") and personal identification numbers ("PINs") to Customer's employees or agents for use in initiating certain Account transactions at Bank owned ATMs. Unless otherwise agreed by Bank, Customer agrees that Cards will be used only at ATMs owned by the Bank and Customer shall be liable for any transactions and fees resulting from the use of such Cards. The Customer agrees that the types of transactions offered through the use of any Card may be limited by the Bank, in its sole discretion. The Bank may cancel any Card at any time and for any reason, and will notify Customer of such cancellation. The Customer agrees to obtain possession of and return to the Bank or destroy all cancelled Cards. If the Customer believes a Card or PIN has been lost or stolen, the Customer shall immediately contact the Bank's ATM call center. All ATM transactions are subject to verification. Any deposit transaction through an ATM that is not made on a business day or made after the Bank's designated cut-off time will be processed on the Bank's next business day.
- 3.16 Internet Gambling. The Customer agrees not to conduct any transactions through the Account that are directly or indirectly related to unlawful Internet gambling, including the acceptance or receipt of any funds or deposits in connection therewith. The term "unlawful Internet gambling," as used in this section, shall have its meaning set forth in 12 C.F.R. Section 233.2(bb).

**Section 4 of the Account Terms (Payment of Items) is hereby amended by adding the following provisions:**

- 4.5 Cashing Items. The Bank may, in its discretion, cash Items drawn on an Account when presented by the holder. If a holder who is not a deposit customer of the Bank presents an Item drawn on the Account for cash, the Bank may refuse to cash the Item, or may charge the holder a fee for cashing the Item.
- 4.6 Signatures. If the Customer establishes an Account which purports to: (i) require two or more signatures on Items drawn on the Account, or (ii) limits the amount for which an Item can be issued, the Customer acknowledges that any such requirements are solely for the Customer's own internal control purposes. The Customer agrees that, provided that the Bank follows its usual and customary procedures for processing and paying Items, the Bank will not be liable for paying any Item (a) lacking the required number of signatures, or (b) in an amount exceeding the applicable limit.
- 4.7 Fraudulent Items. The Bank provides Services to which the Customer may subscribe, such as Positive Pay and Reverse Positive Pay, which are reasonably designed to prevent payment of unauthorized or altered Items. Customer agrees that failure to use such Services will constitute Customer negligence contributing to the making of an unauthorized signature or the alteration of an Item, and the Customer will assume the risk that Items paid against its Account may be unauthorized or altered. In that event, the Customer will be precluded from asserting any claims against the Bank for paying any unauthorized, altered, counterfeit or other fraudulent Items. The Bank shall not be required to re-credit Customer's Account or otherwise have any liability for paying such Items to the extent such Services would likely have prevented such loss.
- 4.8 Obscured Endorsements. The Customer assumes responsibility for losses that the Customer or the Bank may incur as the result of processing delays caused by the Customer's: (i) issuance of an Item in such a manner that information, marks or bands on the back of the Item obscure endorsements; or (ii) placement of an endorsement on the back of the Item which obscures other endorsements.
- 4.9 Negotiation Outside of U.S. If an Item is transferred or negotiated outside of the U.S. and is subsequently sent to the Bank for deposit, collection or payment in the U.S., the Customer shall be deemed to make, to the Bank, the transfer and presentment warranties under the Rules & Regulations, as if such Item were negotiated or otherwise transferred in the U.S.
- 4.10 Stop Payments. A stop payment Instruction from the Customer will be effective with respect to an Item if: (i) the Bank has a reasonable opportunity to act on such Instruction prior to its payment or encashment, which shall be at least one (1) full Business Day following the Business Day on which the Bank received the Instruction; and (ii) the Instruction is in the form required by the Bank, the information is complete and is delivered to the location designated by the Bank. For purposes of this Section, "Business Day" means a day on which the Bank is generally open for business in the jurisdiction where the Account is maintained. Stop payment Instructions, unless otherwise provided, will be valid for one (1) year and will automatically renew up to six (6) additional years unless the Bank receives Customer's revocation of a stop payment Instruction. The Customer may request, through the Bank's call center or other authorized representative, a non-renewable stop payment, which will be effective for a 180-day period. The Bank shall not be liable for any Item properly paid or cashed prior to the effective time of a stop payment request. The Customer acknowledges that a stop payment instruction does not limit or vary its obligation to pay the subject Item and, notwithstanding a stop payment instruction, the Bank may properly pay such an item to a person entitled to enforce it.

- 4.11 Standard of Care. Any Item issued by the Customer drawn on its Account shall be deemed to be endorsed in the name of the payee if: the Item is endorsed or deposited into an account in a name that is substantially similar to that of the payee; the payee is a fictitious person; the Customer was wrongfully or erroneously induced to issue the Item payable to the stated payee; the deposit of the item was accomplished by an employee entrusted with responsibility for the Item or person working in concert with such an employee; or the Customer or payee failed to act with ordinary care with respect to the Item. The Bank shall not be liable for any loss caused by the alteration or unauthorized signature or endorsement on any Item issued by the Customer, unless the Customer establishes that the Bank failed to handle the Item with ordinary care, and that such failure substantially contributed to the loss. If the Bank's failure to act with ordinary care substantially contributed to the loss on the item, the loss shall be allocated between the Customer and the Bank based upon the extent to which their respective failures to exercise ordinary care contributed to the loss. The Bank may process any Item by electronic means and is not required to inspect the Item paid by automated payment processing.

**Section 5 of the Account Terms (Funds Transfer Instructions) is amended by adding the following provisions:**

- 5.6 Funds Transfer by Check. If the Customer, through the Bank's funds transfer services, requests that payment be made by check, the Customer authorizes the Bank to debit the Customer's Account on receipt of the Instruction and to issue a check as agent for the Customer in accordance with the Instruction. If the Customer requests the Bank to place a stop payment on the check before the check has been presented for payment, such request must be clearly identified as a stop payment request, including the reference number given for the transaction, and it must be received by the Bank at a time and in a manner designated by the Bank from time to time. If the check is not presented for payment within one hundred eighty (180) days after issuance, the Bank may place a stop payment on the check and transfer the funds back to the Account.
- 5.7 Credit Entries Received Through Automated Clearing House (ACH) System. Credit given by the Bank to the Customer for an ACH credit entry shall be provisional, until the Bank receives final payment. If the Bank does not receive final payment, the Bank may revoke the provisional credit and charge back the amount of the entry to the Account, or obtain a refund from the Customer, in which case the originator of the credit entry shall not be deemed to have paid the Customer the amount of such entry. The Bank shall not be obligated to notify the Customer of the receipt of a payment order or ACH entry for credit or debit to an Account.
- 5.8 Same Day Amend and Cancel. The Customer may subscribe to a service to enable same day amendment and cancellation of payment orders. All cancellation or amendment messages sent to the Bank shall be in the format specified by the Bank and must be received by the Bank no later than such time as may be established by the Bank upon notice to the Customer.
- 5.9 Priority/Timed. The Bank will determine the order in which it processes payment orders. If the Customer's payment order bears the codeword "PRIORITY" in such field as the Bank specifies, the Bank will use reasonable efforts to execute such payment order in advance of the Customer's standard payment orders. If the Customer's payment order bears the codeword "TIMED" in such field as the Bank specifies, the Bank will endeavor, but will have no obligation, to process the payment order by the time requested by the Customer within the payment order. For "TIMED" payment orders, funds in the Customer's Account are reserved by the Bank on the payment value date until processed. For the avoidance of doubt, all payment orders are subject to the Bank's acceptance, and the Bank will have no liability for failure to process payments by the time requested by the Customer.
- 5.10 Real Time Payments. Payments received through the Real Time Payment System operated by The Clearing House Payments Company LLC ("RTP System") will be processed pursuant to the RTP Operating Rules and any other applicable Rules & Regulations, to which the Customer agrees to be bound. If the Customer receives a payment through the RTP System on behalf of another person or entity, such other person or entity must be a resident of, or otherwise domiciled in the United States. In the further transmission of any such payments, the Customer agrees to comply with all applicable US laws and regulations, including, without limitation, those administered by the US Office of Foreign Assets Control.
- 5.11 Messaging Standards. To the extent there is any inconsistency between a fund transfer financial messaging standard and the governing law set forth in Section 16.1, the governing law set forth in Section 16.1 will govern.

**Section 7 of the Account Terms (Account Statements) is amended by adding the following provisions:**

- 7.2 Images Sufficient. The Customer acknowledges that Account Statements and images of paid Items are available to it and are sufficient to allow it to make all examinations and reports of Account activity including errors, as required in this Section. The Bank is not required to return paid or cancelled Items with the Account Statement.
- 7.3 Obligation to Inspect. The Customer must notify the Bank in writing, within a reasonable period of time not to exceed 60 calendar days of the date of an Account Statement, of (i) the failure to receive the Account Statement, or (ii) any errors, unauthorized payments, charges, alterations, discrepancies or irregularities reported on the Account Statement ("Errors"). The Customer must notify the Bank in writing of any unauthorized, improper, or missing endorsements within six (6) months after the date of the Account Statement on which the Item was reported to have been paid. The Customer must provide the Bank with all information necessary for the Bank to investigate any claim based upon an endorsement or Error, and must provide all supporting evidence that the Bank requests. Failure to comply with the time frames set forth above shall be deemed conclusive proof that the Customer failed to exercise reasonable care and promptness in examining Account Statements and paid Items or identifying Errors and that such failure may cause subsequent loss to the Bank. If the Customer fails to comply with the notice requirements set forth above, the Bank is not required to reimburse the Customer for the Customer's claimed loss and the Customer shall be barred from bringing any action against the Bank.



- 7.4 Inactive Accounts. If an Account has no activity other than charges assessed or interest credited by the Bank for a period of six (6) or more months, the Bank is not required to provide an Account statement until additional activity occurs in the Account. If an Account has no activity other than charges assessed or interest credited by the Bank for a period of twelve (12) or more months, the Customer may be unable to access the Account until the Customer contacts the Bank.
- 7.5 Advice Services. The Customer may subscribe to Bank services for the delivery of account-related information ("Advices") to a party designated by the Customer, including information relating to credits and debits to a Customer account, and the return or rejection of certain payments. Advices may be sent via SWIFT, electronic mail, facsimile transmission, ordinary mail, telephone, through internet sites, or as otherwise agreed by the parties. The Customer is responsible for maintaining the accuracy of the information that is required for delivery of Advices, including the address, telephone and/or facsimile number of the recipient and, if applicable, the messaging components and conditions that will trigger the transmission of the Advices.

**Section 15 of the Account Terms (Account Disclosures) is amended by adding the following provisions:**

- 15.5 Withdrawal Limitations on Certain Account Types. U.S. federal regulations limit the number of pre-authorized or automatic transfers or withdrawals or telephonic/electronic instructions (including check, draft, debit card or similar order payable to third parties) that can be made from a savings account (including a savings sub-account (as described below) and a money market deposit account) to a total of six (6) per calendar month or statement cycle or similar period. The Customer agrees to comply at all times with such restrictions. Exceeding these withdrawal limits may result in the Bank converting the savings account into a non-interest bearing demand deposit account, with any attendant changes in pricing and account terms and conditions. Further, the Bank is required by U.S. law to reserve the right to require at least seven (7) days' notice prior to a withdrawal from a savings account (including a savings sub-account) or an interest-bearing negotiable order of withdrawal account ("NOW Account").
- 15.6 NOW Accounts. The Customer, if eligible, may open a NOW Account. There is no limit on the number of withdrawals that the Customer may make from the demand deposit or NOW sub-account.
- 15.7 Administrative Subaccounts. The Bank is authorized, for regulatory reporting and internal accounting purposes, to divide an Account: (i) in the case of a demand deposit checking Account, into a non-interest bearing demand deposit sub-account and a non-interest bearing savings sub-account; (ii) in the case of a NOW Account, into an interest bearing NOW sub-account and an interest bearing savings sub-account, and, in both cases, to transfer funds on a daily basis between these sub-accounts in accordance with U.S. law at no cost to the Customer. The Bank will record the sub-accounts and any transfers between them on the Bank's books and records only. The sub-accounts and any transfers between them will not affect the Account number, balance requirement or use of the Account, except as described herein.
- 15.8 Savings Subaccounts. The Bank will establish a target balance for the Customer's demand deposit or NOW sub-account, which it may change at any time. To the extent funds in the demand deposit or NOW sub-account exceed the target balance, the excess will be transferred to the Customer's savings sub-account, unless the maximum number of transfers from the savings sub-account for that calendar month or statement cycle have already occurred. If withdrawals from the demand deposit or NOW sub-account exceed the available balance in the demand deposit or NOW sub-account, funds from the Customer's savings sub-account will be transferred to the demand deposit or NOW sub-account up to the entire balance of available funds in the savings sub-account to cover the shortfall and to replenish any target balance that the Bank has established for the demand deposit or NOW sub-account. If a sixth transfer is needed during a calendar month or statement cycle, it will be for the entire balance in the Customer's savings sub-account, and such funds will remain in the demand deposit or NOW sub-account for the remainder of the calendar month or statement cycle.
- 15.9 Branch Designation. The Bank, for its administrative purposes may designate a branch of the Bank as the branch of record of an Account which may be different from the branch at which the Account is opened. This designation requires no action on the part of the Customer and will not change the Bank's operations, Services or customer support.
- 15.10 No Fiduciary Relationship. Bank's relationship with Customer concerning the Accounts is that of a debtor and creditor. No fiduciary, quasi-fiduciary or other special relationship exists between Bank and Customer or any third parties regarding the Accounts.

**Section 16 of the Account Terms (Governing Law) is amended by replacing Section 16.1 with the following provision:**

- 16.1 Except as otherwise agreed in writing by the Bank and the Customer, the rights and obligations of the Customer and the Bank in respect of each Account maintained in the U.S. shall be governed by and construed in accordance with the laws of the State of Texas (without regard to its conflict of laws rules), except to the extent pre-empted by Federal law, in which case Federal law will govern. Each of the Customer and the Bank irrevocably and unconditionally submits to the exclusive jurisdiction and venue of any State or Federal court sitting in Dallas County, Texas over any action, suit, proceeding, claim or controversy arising out of or relating to the Account Terms which includes this Addendum. The rights and remedies of the Bank under this Addendum, the Account Terms, the Account Documentation, the Service Terms, and any other agreement by the Customer in favor of the Bank are in addition to the rights and remedies of the Bank under applicable law (as provided above in this Section), are cumulative and may be exercised successively or concurrently, and are retained by the Bank.

**Section 16 of the Account Terms (Governing Law) is amended by adding the following provision:**

- 16.4 In the event the Bank is required to remit funds to any state as abandoned property, the Account may be charged for fees in remitting funds to that state. In addition, the Bank may charge fees in connection with its handling of dormant funds and accounts.

**Section 17 of the Account Terms (Miscellaneous) is amended by adding the following provisions:**

- 17.15 When the Customer provides the Bank any information requested by the Bank under its "Know Your Customer" or Anti-Money Laundering or other compliance policies pertaining to any natural or other persons, the Customer represents and warrants to the Bank that the Customer has obtained that person's consent that the Bank may make continued use of that person's information in order for the Bank to discharge any of its responsibilities in connection with "Know Your Customer" or Anti-Money Laundering, or other compliance purposes.
- 17.16 Beneficial Ownership. Customer agrees to adhere to the FinCEN Customer Due Diligence final rule which requires certain entities to provide and certify beneficial ownership information to the Bank at 10% and provide information on a controller when opening a new USD account. The Bank is required to collect and validate certain information (e.g. Name, Address, DOB, SSN or Passport # for non US individuals) for new accounts impacted by the rule. If an entity is exempt from rule, the Bank may require documentation to support the exemption.
- 17.17 Payable Through Accounts. If the Customer is a bank or financial institution and is not organized under the laws of the U.S., it shall not permit its customers to conduct banking transactions in the U.S. through the Customer's Account, and shall not provide its customers with check stock, drafts, wire transfer capabilities or any other means which would enable its customers to draw on the Customer's Account. These types of arrangements are typically called "payable through accounts" and are prohibited under these Account Terms. The Customer acknowledges that the sale of U.S. dollar checks or drafts to third parties is prohibited without the express written approval of the Bank.
- 17.18 No Advice. The Customer acknowledges and agrees that the Bank has not provided and will not provide any investment, tax or accounting advice or recommendation in relation to the Accounts or any investments made under any Service.
- 17.19 ERISA Status. The Customer will notify the Bank in writing, reasonably in advance of the Account opening, if any Accounts or monies it holds or places with the Bank are subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), together with all the rules promulgated thereunder, or Section 4975 of the Internal Revenue Code, together with all the rules promulgated thereunder. The Bank may, in its sole discretion and subject to such further conditions as it may impose, including, without limitation, execution of further documentation in form and manner acceptable to the Bank, permit the holding of such Accounts or deposits or receipt of funds.
- 17.20 Additional Representation for ERISA Benefit Plans.  
(i) If the Customer is or represents a "benefit plan," as defined in Section 3(42) of ERISA, and U.S. Department of Labor Regulations Section 2510.3-101, as modified by Section 3(42) of ERISA (together, the "Plan Asset Rules" and each such benefit plan investor, a "Benefit Plan"), or is acting on behalf of one or more Benefit Plans, the Customer represents and warrants that:
- (1) the Bank has not or will not provide advice with respect to the services obtained by the Benefit Plan.
  - (2) the Benefit Plan fiduciary (the "Plan Fiduciary") is independent of the Bank, and is not an individual acting for his or her own Individual Retirement Account, and such Plan Fiduciary is either (a) a bank as defined in Section 202 of the Investment Advisers Act of 1940 (the "Advisers Act"), or similar institution that is regulated and supervised and subject to periodic examination by a State or Federal agency; (b) an insurance carrier which is qualified under the laws of more than one state to perform the services of managing, acquiring or disposing of assets of a Benefit Plan; (c) an investment adviser registered under the Advisers Act or, if not registered as an investment adviser under the Advisers Act by reason of paragraph (a)(1) of Section 203A of the Advisers Act, is registered as an investment adviser under the laws of the state in which it maintains its principal office and place of business; (d) a broker-dealer registered under the Securities Exchange Act of 1934, as amended; or (e) has, and will at all times have, total assets of at least U.S. \$50,000,000 under its management or control;
  - (3) the Plan Fiduciary is capable of evaluating investment risks independently, both in general and with respect to the Accounts and Services;
  - (4) the Plan Fiduciary is a "fiduciary" with respect to the Benefit Plan within the meaning of Section 3(21) of ERISA, Section 4975 of the Code, or both, and is responsible for exercising independent judgment in evaluating the receipt of Services by the Benefit Plan;
  - (5) the Bank has not exercised any authority to cause the Benefit Plan to agree to these Account Terms; and
  - (6) the Plan Fiduciary has been informed (a) that the Bank is not undertaking to provide impartial investment advice or to give advice in a fiduciary capacity in connection with the Services; and (b) of the existence and nature of the financial interests of the Bank, as disclosed in the Account Terms and Service Terms.
- (ii) The representations and covenants in the above clauses are intended to comply with the U.S. Department of Labor's Reg. Sections 29 C.F.R. 2510.3-21(a) and (c)(1) as promulgated on April 8, 2016 (81 Fed. Reg. 20,997). If these regulations are revoked or repealed, these representations shall be deemed no longer in effect.

#### AVAILABILITY POLICY - FOR ACCOUNTS MAINTAINED IN THE U.S.

The Bank's policy is to make funds available to the Customer on the same, next or second business day after the day of deposit depending on the type of deposit and when the deposit is made as described below. If the Customer will need the funds from a deposit immediately, the Customer should ask the Bank when the funds will be available.

**A. Determining the Day of a Deposit.** If a deposit is made to an account on a business day before the Bank's cutoff time established for that location (which will be no earlier than 2 p.m. local time), then the Bank will consider that day to be the day of deposit. However, if a deposit is made after the cutoff time or on a day that is not a business day, then the Bank will consider the deposit to have been made no later than the next business day. For determining the availability of deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. Availability with respect to any deposit will be determined by the location of the banking center or other facility where the deposit was received. For deposits made at the Bank's automated teller machines (ATMs) the cutoff time is 11 p.m. Eastern Time unless otherwise noted on the ATM screen.

**B. Same Day Availability.** Funds from the following deposits made at a banking center or at an ATM that do not require deposit envelopes will be available on the business day the Bank determines the deposit is made:

- Cash;
- Wire transfers; and
- Electronic direct deposits to an account.

**C. Next Day Availability.** Funds from the following deposits are available on the first business day after the business day the Bank determines the deposit is made:

- U.S. Treasury checks that are payable to the Customer;
- Checks drawn on a Bank affiliate that holds the applicable account (excluding a Controlled Disbursement site); and
- At least, the first \$200 from a day's total deposits.

If the deposit is made in person to a Bank employee, funds from the following deposits are also available on the first business day after the business day the Bank determines the deposit is made:

- State and local government checks that are payable to the Customer, if a special deposit slip, available upon request at any Bank banking center is used;
- Cashier's, certified, and teller's checks that are payable to the Customer, if a special deposit slip, available upon request at any Bank banking center, is used; and
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to the Customer.

If a special deposit slip is not used, availability of funds from these deposits will follow the schedule identified in the Availability of Other Check Deposits section below.

**D. Availability of Other Check Deposits.** Generally, funds from all other deposits of checks drawn on banks (as defined in Federal Reserve Regulation CC) will be available no later than the second business day after the day of deposit. Checks that require special handling may receive delayed availability. The amount of funds available to the Customer will be reduced by the amount of any deposited check that is returned unpaid. If the Bank reprocesses the check, the funds will become available no later than the second business day after the business day in which the check is reprocessed.

**E. Longer Delays May Apply.** In some cases the Bank may not make all of the funds that are deposited by check available. Depending on the type of check deposited, funds may not be available as set forth above. However, the first \$200 of the aggregate deposit will be available on the first business day after the day of deposit.

If the Bank is not going to make all of the funds from a deposit available at the times shown above, it will notify the Customer and specify when the funds will be available. If a deposit is not made directly to a Bank employee, or if the Bank decides to take this action after the Customer has left the premises, the Bank will mail or otherwise send the notice to the Customer by the business day after the day of deposit.

Funds deposited by check may be delayed for a longer period under the following circumstances:

- The Bank believes a deposited check will not be paid;
- Deposited checks for all of the Customer's accounts total more than \$5,000 in any one day;
- The Customer redeposited a check that has been returned unpaid;
- The Customer has overdrawn one or more of its accounts repeatedly in the last six months; or
- There is an emergency, such as failure of communications or computer equipment.

In such circumstances, funds will generally be available no later than the seventh business day after the day of deposit. Inclement weather or transportation problems may lead to additional delays under certain availability schedules. Customer may have specific availability schedules related to a banking service.

**F. Special Rules for New Accounts.** If the account is a new account, the following special rules may apply during the first thirty days the account is open:

- Funds from deposits of the first \$5,000 of that day's total deposits of cashier's, certified, teller's, traveler's and federal, state and local government checks payable to the Customer will be available on the first business day after the day of deposit. The excess over \$5,000 will be available no later than the ninth business day after the day of deposit. If the deposit of checks (other than U.S. Treasury checks) is not made in person to one of the Bank's employees, the first \$5,000 may not be made available until the second business day after the day of deposit; and
- Funds from all other check deposits will be made available no later than the fifteenth business day after the day of deposit.

**G. Large Dollar Deposits.** The U.S. Federal Reserve Banks will not forward process any Item over \$99,999,999.99 and considers such Items as "non-cash items." Such Items should not be deposited in the Account. If Customer does deposit such an Item, the Bank may refuse to process such Item or handle it as a collection Item. If handled as a collection Item, Customer credit and availability will be deferred accordingly.

This Availability Policy and availability schedules may be changed without notice.

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JPMorgan Chase Bank, N.A. Member FDIC.



# J.P. MORGAN TREASURY SERVICES ELECTRONIC CHANNELS SERVICE TERMS

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## 1. Service and Service Terms.

The Bank will provide a service (the "Service") for electronic access to the Customer's account information, reports and data (collectively, "Data") and for the electronic transmission to the Bank of messages, service requests, and payment and non-payment instructions (each an "Instruction") and from the Bank of messages, notifications and alerts, via the J.P. Morgan Access® Online<sup>SM</sup>, J.P. Morgan Access® Mobile<sup>SM</sup>, J.P. Morgan Host-to-Host/managed file transfer and J.P. Morgan Treasury Services API channels. The Bank reserves the right to modify the applications and products available via the Service. The Service is governed by these terms (the "Service Terms"), which incorporate the Bank's terms governing the business accounts and services, including service terms that govern the Bank's processing of Instructions transmitted via the Service (collectively, the "Account Documentation"), as the same may be amended from time to time. If and to the extent that there is a conflict between the Account Documentation and these Service Terms, the provisions of these Service Terms shall prevail. Capitalized terms used in these Service Terms, and not otherwise defined, have the meaning set forth in the Global Account Terms or other account terms applicable to the Customer.

## 2. Security Procedures and Other Controls

**2.1. General.** The security procedures for each channel are set forth below, as may be modified on notice to the Customer through any medium (each, a "Security Procedure"). Any Instruction, the authenticity of which has been verified through a Security Procedure, shall be effective as that of the Customer, whether or not authorized, and notwithstanding that the Instruction may result in an overdraft of an Account. Controls unilaterally implemented by the Bank shall not be deemed to be Security Procedures for purposes hereof unless explicitly identified as such in writing. The Customer is responsible for implementing any procedures and requirements set forth in the applicable documentation provided to it by the Bank, as well as any subsequent modification to the procedures and requirements that are designed to strengthen the Security Procedures.

### 2.2. Security Procedures for Access Online and Mobile Channels.

**2.2.1. Access Online.** The Security Procedure for verifying payment Instructions given in the Customer's name via the Access Online channel is validation of a user ID and confidential password of an Authorized User (as defined in Section 2.5 below), a token code generated by a Bank issued or approved security device ("Security Device") assigned to that Authorized User and Bank transaction review as specified in Section 2.4.

**2.2.2. Access Mobile.** The Security Procedure for verifying payment Instructions given in the Customer's name via the Access Mobile channel is either (i) validation of the registration with the Bank of the mobile device, a biometric identifier, and the private swipe key of an Authorized User (as defined in Section 2.5 below) and transaction review as specified in Section 2.4 or (ii) validation of a user ID and confidential password of an Authorized User (as defined in Section 2.5 below), a token code generated by Security Device assigned to that Authorized User and transaction review as specified in Section 2.4.

**2.2.3. Controls Offered to Customer.** For Access Online and Mobile, the Customer may choose to apply certain controls offered by the Bank to the Customer from time to time designed to reduce the Customer's risk of erroneous or unauthorized transactions. The Customer is responsible for choosing controls that are appropriate for the Customer taking into account, among other things, the nature and scale of the Customer's business, including the size, type and frequency of payment orders normally issued to the Bank, and the nature of its technical environment, internal accounting controls and information security policies and procedures (collectively, "Customer Internal Controls"). The Security Procedure that is established by agreement of the Customer and the Bank herein is established in view of the Customer Internal Controls applied by the Customer.

**2.3. Security Procedures and Certificate Procedures for Host-to-Host/Managed File Transfer and API Channels.** The Security Procedure for verifying payment Instructions given in the Customer's name via the Host-to-Host/managed file transfer and API channels is authentication of a digital signature certificate, which authenticates transmitted files on the basis of the corresponding security key (the "Signature Certificate") and transaction review as provided in Section 2.4. The Customer and the Bank will use the following procedures for the use of a transport certificate, which establishes a secure session between the Bank and the Customer on the basis of a corresponding security key (the "Transport Certificate") and the Signature Certificate. Each of the Signature Certificate and the Transport Certificate are referred to herein as a "Certificate" and the corresponding security key as a "Security Key".

**2.3.1. Certificate Procedures and Requirements.** The Customer shall comply with the Bank's procedures and requirements for Certificates and Security Keys notified to the Customer, including but not limited to Certificate validity period, key strength and cryptographic specifications, as amended from time to time. Any request to the Bank to add, update or delete a Security Key shall include the applicable Certificate, a text file or other physical representation of the public Security Key of such Certificate and any other information in the manner and form designated by the Bank. The Bank shall have the right to rely on any request that the Bank believes in good faith to have been sent by the designated security administrator ("Security Administrator"), notwithstanding that such Security Administrator may be a third party agent acting on behalf of the Customer.

**2.3.2. Certificate Expiration.** Notwithstanding any courtesy notifications the Bank may send to the Customer regarding the Customer's impending Certificate expiration, the Customer acknowledges that it is the Customer's sole responsibility to update the Certificate prior to its expiration date. The Bank shall have no liability for any loss or damage (including, for the avoidance of doubt, any indirect, special, punitive or consequential damages or losses) arising from the Customer's failure to timely update its Certificate. To allow for proper execution of administrative procedures, and to prevent any lapse in service or emergency procedures, the Customer must request a Certificate change at least 30 days prior to actual Certificate expiration.

**2.4. Transaction Review.** In addition to the Security Procedures described above, the applicable Security Procedure for each channel also includes transaction review based on various risk characteristics. The transaction review shall be conducted in accordance with commercially reasonable protocols selected by the Bank. Additional authentication from the Customer, such as call-back verification, may be required to complete certain transactions identified by the Bank through transaction review.

- 2.5. Confidentiality/Security Breach.** The Customer will be responsible for safeguarding and ensuring that the Security Procedures and Security Devices are known to and used (i) in the case of Access Online and Mobile, only by individuals designated as users by the Security Administrators ("Authorized Users"), or, (ii) in the case of the Host-to-Host/managed file transfer and API channels, only by the Security Administrators. The Customer shall notify the Bank immediately in the event of any loss, theft or unauthorized use of a Security Procedure or a Security Device or any other breach of security. The Bank may dishonor or disable any Security Device or any aspect of the Security Procedures at any time without prior notice and will inform the Customer of the same. In addition, each Customer must implement its own physical and logical security, as well as management controls, that appropriately protect the hardware, software, and access controls used in the transaction process from unauthorized access and use.
- 2.6. Security Administrator Designation.** The Customer shall designate Security Administrators who shall have equal authority as specified in Section 2.7 below. The Bank is entitled to rely on any such designation of a Security Administrator. The Customer agrees to notify the Bank of any change in Security Administrators in the manner and form designated by the Bank. Any such change shall be effective at such time as the Bank has received such notice and has had a reasonable opportunity to act upon it.
- 2.7. Security Administrator Responsibilities.** Each Security Administrator shall be authorized by the Customer to and be responsible for (i) designating individuals as Authorized Users with respect to the Access Online and Mobile channels; (ii) identifying the functions of the Service that each Authorized User may access; (iii) requesting, creating, controlling, disseminating, and/or canceling user entitlements with respect to the Access Online and Mobile channels; (iv) managing the Customer's Certificates and corresponding Security Keys with respect to the Host-to-Host/managed file transfer and API channels; (v) receiving and distributing materials, notices, documents and correspondence relating to the Security Procedures; and (vi) advising each Authorized User of his/her obligations hereunder or under any of the applicable Account Documentation. The Security Administrators shall provide to the Bank, upon the Bank's request, a list of Authorized Users for the Access Online and Mobile channels. In the absence of a valid designation of a Security Administrator at any time or in the event that, after reasonable efforts, the Bank is unable to contact a Security Administrator, the Bank may deliver Security Devices and materials and deliver/receive Security Keys to/from any person authorized to act on behalf of the Customer with respect to the Accounts.
- 2.8. Processing.** The Customer acknowledges that the application of the Security Procedures and any controls unilaterally implemented by the Bank may cause delays in processing Instructions or result in the Bank declining to execute an Instruction.

### 3. Open Network Access; Equipment

THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL WARRANTIES AND REPRESENTATIONS, EXPRESS, STATUTORY OR IMPLIED, WITH REGARD TO THE SERVICE ARE HEREBY DISCLAIMED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND COURSE OF DEALING OR USAGE OF TRADE OR WARRANTIES OF NON-INFRINGEMENT OR WARRANTIES AS TO ANY RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICE. TO THE EXTENT THAT ANY IMPLIED WARRANTIES CANNOT BE DISCLAIMED UNDER APPLICABLE LAW, ANY SUCH IMPLIED WARRANTIES ARE LIMITED IN DURATION TO 30 DAYS FROM THE INITIAL DELIVERY DATE OF THE RELEVANT SERVICE. THE BANK AND ITS THIRD PARTY DATA AND SERVICE PROVIDERS DO NOT WARRANT OR GUARANTEE THE SECURITY, SEQUENCE, TIMELINESS, ACCURACY, PERFORMANCE OR COMPLETENESS OF THE DATA OR THAT ANY PART OF THE SERVICE WILL BE ERROR-FREE, WITHOUT DELAY OR UNINTERRUPTED.

The Customer is responsible for, at its sole expense, obtaining, installing, maintaining and operating all browsers, software, hardware, telecommunications equipment or other equipment (collectively, "System") necessary for the Customer to access and use the Service in accordance with the Bank's recommended system configuration. The Bank makes no endorsement of any System or third party site, notwithstanding that the Bank may recommend certain Systems or provide a link to a third party site where the Customer may download software. The Customer shall at all times maintain current and effective anti-virus, anti-spyware or other security software and shall take all reasonable measures to maintain the security of its System. The Customer acknowledges that there are certain security, corruption, transmission error, and access availability risks associated with using open networks such as the Internet. The Customer further acknowledges that it has made an independent assessment of the adequacy of the Internet, the System and the Security Procedures in connection with the use of the Service. The Customer assumes all risks and liabilities associated with the operation, performance and security of its System and the use of the Internet or other open networks, failure or use of Customer's or third party equipment, hardware, browsers, operating systems and/or other software or programs, and services or persons outside of the Bank's control, and the Bank disclaims all such risks. The Customer shall not use any equipment, hardware, software or program that harms the Bank. The Customer agrees to indemnify and hold the Bank, and its agents, employees, officers and directors, harmless from and against any and all claims, damages, demands, judgments, liabilities, losses, costs and expenses arising, directly or indirectly, from the Customer's use of Customer's or third-party software or program. The Bank may in its discretion provide training or information on best practices to the Customer from time to time but in so doing it will not be considered a consultant or advisor with respect to cybersecurity.

### 4. Instructions; Data

- 4.1.** The Customer shall be solely responsible for the genuineness and accuracy, both as to content and form, of all Instructions given to the Bank's in the Customer's name and verified through the applicable Security Procedure.
- 4.2.** The Customer acknowledges that Data may not have been reviewed by the Bank, may be inaccurate, and may be periodically updated and adjusted. The Bank is not obligated to assure the accuracy of Data and will not be liable for any loss or damage arising out of the inaccuracy of Data. Further, the Bank shall have no liability for the receipt or viewing by any party of Data sent to the destinations designated by the Customer, including but not limited to email addresses, fax and telephone number(s).

### 5. Customer Warranties

The Customer represents, warrants and covenants to the Bank that: (i) prior to submitting any document or Instruction that designates Authorized Users, the Customer shall obtain from each individual referred to in such document or Instruction all necessary consents to enable the Bank to process the data set out therein for the purposes of providing the Service; (ii) the Customer has accurately designated in writing or electronically the geographic location of its Authorized Users and shall provide all updates to such information; (iii) the Customer shall not access the Service from any jurisdiction which the Bank informs the Customer or where the Customer has knowledge that the Service is not authorized; and (iv) the Security Procedures offered to the Customer conform to the Customer's wishes and needs and the Customer has not

requested Security Procedures other than those expressly agreed by the Customer and the Bank. The Customer hereby represents, warrants and covenants to the Bank that these Service Terms constitute its legal and binding obligations enforceable in accordance with its terms.

## **6. Miscellaneous**

- 6.1. The additional jurisdiction specific provisions set forth in the attached Exhibit are applicable to the Customer based on the domicile of the Customer. Where any local laws or regulations of any jurisdiction apply as a result of the Customer's Authorized Users accessing the Service from such jurisdiction or as a result of the location of such accounts in such jurisdiction, the jurisdictional specific provisions of that jurisdiction set forth in the attached Exhibit shall apply to the use of the Service by such Authorized Users.
- 6.2. These Service Terms shall be governed by and construed in accordance with the laws of the State of New York, USA (without reference to the conflict of laws rules thereof).
- 6.3. All disputes relating to or in connection with these Service Terms solely arising outside the United States shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be (i) Singapore where the dispute arises solely in Asia and (ii) London where the dispute arises elsewhere (other than the United States) and the arbitration shall be conducted in English, except that (a) disputes solely between a Customer domiciled in the People's Republic of China and JPMorgan Chase Bank (China) Company Limited shall be submitted to the China International Economic and Trade Arbitration Commission ("CIETAC") for arbitration in accordance with its rules in effect at the time an application is made, with the place of arbitration being Beijing and the arbitration being conducted in English; and (b) disputes involving a Customer domiciled in Taiwan shall be irrevocably submitted to the exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the borough of Manhattan in New York City. With respect to any dispute, suit, action or proceedings arising in the United States relating to these Service Terms, the Customer irrevocably submits to the exclusive jurisdiction of the courts of the State of Texas and the United States District Court located in Dallas County, Texas.

## **7. Mobile**

- 7.1. Accepting use of the Bank's SMS text notification service and/or Access Mobile channel constitutes the Customer's authorization for the Bank to send Data, message notifications and alerts through any communication service providers, including both Internet and telecommunications providers, which shall each be deemed to be acting as the Customer's agent. Such providers may not encrypt communications.
- 7.2. Authorized Users may be required to accept an application agreement or license in order to download Access Mobile. The Customer acknowledges that the Account Documentation shall in all cases govern the provision of these services.
- 7.3. The Customer acknowledges that the Bank shall not be liable for any delays in any Data, message notification or alert delivered via any mobile device.



## EXHIBIT A - JURISDICTION SPECIFIC PROVISIONS

### A. Australia & New Zealand

To the extent that any supply made by the Bank under these Service Terms is a taxable supply for the purposes of the Australian Goods and Services Tax, or that goods and services tax under the New Zealand Goods and Services Tax Act 1985 is payable in respect of any supply under this License Agreement, ("GST"), the fees payable in respect of that taxable supply ("original amount") will be increased by the amount of GST payable in respect of that taxable supply. Customer must pay the increased amount at the same time and in the same manner as the original amount.

### B. Indonesia

The Bank and the Customer agree that, for the effectiveness of any termination of these Service Terms or the Services provided hereunder, they hereby waive any provisions, procedures and operation of any applicable law to the extent a court order is required for the termination of these Service Terms and the Account Documentation as applicable to the services provided under these Service Terms.

Section 4.2 shall be replaced by "Except for losses directly resulting from errors or delay caused by the Bank's gross negligence or willful misconduct, the Customer acknowledges that the Bank shall not be liable for any delays in any Data, message notification or alert delivered via any mobile device."

### C. Malaysia/Labuan

In relation to accounts held in Malaysia (excluding Labuan) and/or where the Service is provided in Malaysia (excluding Labuan) references in the Service Terms to "Bank," shall mean J.P. Morgan Chase Bank Berhad. In relation to accounts held in Labuan and/or where the Service is provided in Labuan, references in the Service Terms to "Bank," shall mean J.P. Morgan Chase Bank, N.A., Labuan Branch. The Service provided by J.P. Morgan Chase Bank Berhad shall be accessed through <http://www.jpmorganaccess.com.my> and the Customer undertakes not to access or utilize or attempt to access or utilize the Service through any other JPMorgan website.

### D. Republic of China (Taiwan)

Section 4.2 shall be replaced by "Except for losses directly resulting from errors or delay caused by the Bank's gross negligence or willful misconduct, the Customer acknowledges that the Bank shall not be liable for any delays in any Data, message notification or alert delivered via any mobile device."

The Customer acknowledges that it will take steps to ensure it enters into the correct website before attempting to access the Service.

### E. European Union.

The Customer acknowledges that it is not a "consumer" for the purpose of the European Union's Electronic Commerce Directive ("ECD") (i.e., that it is not an individual) and agrees that the Bank shall not be required to make any disclosures or do any other thing which a non-consumer may agree not to require under the UK rules and legislation implementing the ECD. For further information on the Bank, please see "Notice regarding EU e-commerce information" in the Terms & Conditions on <http://www.jpmorgan.com>.

- (i) Details of the Bank's processing activities of personal data can be found in its EMEA Privacy Policy, which is available on the Bank's website at [www.jpmorgan.com/privacy/EMEA](http://www.jpmorgan.com/privacy/EMEA). The Bank's EMEA Privacy Policy may be updated or revised from time to time without prior notice. The EMEA Privacy Policy may be used to assist the Customer with providing a fair processing notice to the Customer's underlying data subjects.
- (ii) The Customer agrees that it has established rights necessary to provide personal data to the Bank and that the Customer will provide any requisite notice to individuals and ensure that there is a proper legal basis for the Bank to process the personal data as described in and for the purposes detailed in the Bank's EMEA Privacy Policy. Both the Customer and the Bank will comply with its respective obligations under applicable privacy laws.

# ACH ORIGATION SERVICE TERMS

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The origination of ACH Entries and the transmission and issuance of other transactions and information will be pursuant to these Service Terms and the Operating Rules and Guidelines (collectively the "Rules") of the National Automated Clearing House Association. Capitalized terms used in these ACH Service Terms, unless otherwise defined in the account documentation or these Service Terms, shall have the same meanings as set forth in the Rules. Customer and JPMorgan Chase Bank, N.A. (the "Bank") agree to comply with and be bound by the Rules as in effect from time to time.

**1. Service.** Bank provides automated clearing house ("ACH") origination services that will enable Customer to do one or more of the following:

- originate ACH Debit Entries;
- originate ACH Credit Entries; and
- instruct the Bank to issue or transmit prenotifications, reversals, requests for return, notifications of change or other information pertaining to the Entries.

Origination of ACH Credit Entries and origination of ACH Debit Entries are two separate services and approval or set up for one ACH service does not automatically create the ability to utilize the other. The Rules and these Service Terms shall apply to all Entries, whether or not transmitted through an ACH Operator.

It is Customer's responsibility to provide Entries and instructions to Bank with all the necessary information to complete Customer's requested transactions. Customer agrees to transmit Entries to Bank in the manner, at the times and in accordance with approved media, content and format as agreed by Bank and Customer. Bank may reject or delay processing transactions or information if instructions are not complete or are inaccurate, contain an inactive Company ID or otherwise do not meet the criteria Bank specifies for acceptance. All requests to Bank must be received by Bank before Bank's established cut-off time in order for processing to commence on that ACH processing day. Any request that is incomplete or that Bank finishes receiving after the relevant cut-off time will be processed by Bank on the next day Bank processes ACH transactions. All transactions are subject to acceptance by Bank. Bank will notify Customer of any transactions or other transmissions that are rejected or returned. If Customer wants Bank to re-process those transactions or transmissions, Customer must correct them and re-submit them. Customer agrees to furnish Bank with copies of any authorizations or notifications, if requested, as well as any other information reasonably requested by Bank relating to Entries originated by the Customer. Customer shall provide Bank's auditors and other personnel with reasonable access at all reasonable times to the Customer's facilities, data and records relating to the initiation of Entries for the purpose of auditing Customer's compliance with these Service Terms and the Rules.

**2. Security and Data Protection Procedures.** All instructions received by Bank in Customer's name are subject to verification pursuant to mutually agreed security procedures. If Bank follows those procedures, Bank may process and transmit transactions or information in Customer's name. Unless Customer and Bank both otherwise agree, transmissions to Bank will be authenticated and/or encrypted using commercially reasonable security technologies meeting standards acceptable to Bank. If Customer uses a security procedure other than as described above, Customer acknowledges that Customer refused Bank's security procedure and chose another and Customer agrees to be bound by any transaction, whether or not authorized, issued in Customer's name and accepted by Bank in compliance with the security procedure Customer chose. If Customer elects not to utilize recommended message authentication and/or encryption technology, Customer assumes all responsibility for unauthorized disclosure or unauthorized access to Customer's data that occurs during transmission or while such data is in storage. Customer shall not disclose any Receiver's account number or routing number to any third party for such third party's use, directly or indirectly, in initiating a separate Debit.

**3. Settlement and Exposure Limits.** On the settlement date, Bank will credit Customer's account with Bank that Customer specifies for the total of:

- Customer's Debit Entries that Bank processed for settlement that day;
- RCCs issued for deposit to Customer's account on that day; and
- any returned or reversed Credit Entries.

Bank may delay the availability of funds deposited into Customer's account by Debit Entry or RCC until those transactions cannot be reversed in accordance with the Rules or applicable law.

Bank will debit Customer's account with Bank that Customer specifies for the total of Credit Entries processed in Customer's name and for any returned Debit Entries and RCCs. Bank may require Customer to pay Bank the amount of any Credit Entries on the date of transmission to Bank or otherwise prior to the settlement date. Bank also may require Customer to maintain collateral with Bank in an amount Bank specifies.

Bank may from time to time establish or revise maximum dollar limits for the total value of all outstanding files of Credit Entries and/or Debit Entries and RCCs that Bank will release on Customer's behalf. Bank may change or cancel the limits at any time without prior notice to Customer; although Bank will try to notify Customer before Bank does that.

- 4. Warranties; Indemnity.** Except as specified below, Customer will be deemed to make the same warranties to Bank as Bank makes pursuant to the Rules. In the case of an Entry to another account with Bank, warranties will be deemed to be given as of the time Bank first processes the Entry. Customer will not be deemed to warrant the power of the Bank under applicable law to comply with the requirements of the Rules or the conformity of Entries and other data Bank transmits to the file specifications contained in the Rules. The Customer further represents, warrants and covenants that (a) each Entry and RCC it originates will comply with all applicable U.S. laws and regulations and acknowledges that Entries may not be initiated that violate the laws of the United States, (b) unless Customer has identified itself to Bank as a Third Party Sender (as defined in Section 7) and obtained Bank's express consent to originate Entries as a Third Party Sender, Customer will not originate any Entries, or use any of its Company IDs to originate Entries, on behalf of third parties (including, without limitation, any affiliate of Customer), and (c) Customer will not permit a third party to originate Entries using a Customer account as the offset account unless Customer obtains Bank's express consent to do so.

Customer agrees to indemnify Bank and Bank's employees, officers, directors and agents, and hold all of them harmless from and against any and all claims, demands, losses, liabilities or expenses (including attorneys' fees and costs) resulting directly or indirectly from (a) Customer's breach of any warranty made under these Service Terms and (b) compliance by Bank and the RDFI with any request Customer makes for a cancellation, stop payment, reversal or recall of any Entry or any RCC created by Bank under Section 1 hereof.

Bank shall have no responsibility for any delay by any ACH Operator or RDFI in processing any Entry the Bank transmits to the ACH Operator or failure to process or credit or debit any such Entry.

- 5. Stop Payments; Reversals and Recalls; Rejections.** Customer's instruction to cancel, stop payment of, reverse or recall one or more Entries must be received by Bank in such time and manner as Bank specifies. Bank will process these transactions in accordance with Bank's procedures advised to Customer. Any reversal or recall initiated by Bank is subject to acceptance by the RDFI. Instructions to reverse or recall an ACH Credit Entry that are not initiated by Customer in time to meet the prescribed NACHA deadline for reversals may be originated by Bank as a Debit Entry; Customer shall obtain authorization from the Receiver in accordance with the Rules for any such Debit Entry and all other terms of these Service Terms applicable to Debit Entries shall apply. Entries or other instructions may not be amended or modified.

If Customer originates Debit Entries to an account or accounts at a financial institution that is not a Participating Depository Financial Institution in the ACH system (such account hereafter called a "Non-ACH Eligible Account"), all such Debit Entries will be rejected unless Customer subscribes to a service, subject to Bank's prior consent, pursuant to which Bank will process each such Debit Entry to a Non-ACH Eligible Account by preparing a remotely created check, as such term is defined in Federal Reserve Regulation CC (an "RCC"), on the Customer's behalf. The RCC will be drawn in the amount and on the Non-Eligible ACH Account of the individual or entity specified as the receiver in the Customer's instructions and will be deposited to the Customer's designated account with Bank. Such RCC will thereafter be processed through the check clearing system. If the Customer is using such service, the Customer hereby authorizes the Bank to create each RCC as described herein and the Customer warrants to the Bank, with respect to each RCC, that the person on whose account the RCC is drawn authorized the issuance of such RCC in the amount and to the payee stated in the RCC. The Customer authorizes the Bank to debit the Customer's account for any claim or return based upon an unauthorized RCC. All other terms herein related to Entries shall also apply to RCCs created under this Section. The Bank shall not create or process RCCs or other paper drafts in lieu of ACH Debits under any circumstances other than for Non-ACH Eligible Accounts and only when the Bank has consented to provide such service, even if the Customer includes an instruction in its file for the Bank to otherwise originate an RCC or paper draft.

- 6. Third Party Service Providers.** Customer may choose to use a third party service provider or service bureau to issue Entries or other instructions, handle returned Entries or perform other functions for and on Customer's behalf. If Bank accepts such Entries or other instructions, Customer will be bound by them. Customer is responsible for all actions taken or not taken by Customer's provider and Customer is responsible for all costs and expenses of Customer's provider.

- 7. Third Party Sender.** If Customer is a Third Party Sender, as such term is hereafter defined, (a) Customer warrants that the Originator has agreed to be bound by the Rules and has satisfied the obligations of an Originator under the Rules; (b) in any case where the Originator fails to perform its obligations under the Rules as an Originator, Customer shall indemnify, defend and hold Bank harmless from and against any and all claims, demands, losses, liabilities and expenses, including attorneys' fees and costs, that result directly or indirectly from the failure of the Originator to perform its obligations as an Originator under the Rules; (c) Customer agrees to cooperate with Bank regarding any request for information concerning the identity of any Originator; and (d) Customer represents, warrants and covenants that neither these Service Terms nor anything related to the ACH Origination Services violates, contravenes or is inconsistent with any of the terms, conditions or provisions of any agreement, understanding or arrangement between Customer and the Originator. Further, Bank will rely on Customer to evaluate the legitimacy of the Originators and their transactions originated by Customer and for ensuring that instructions do not involve illegal activities. Customer must notify Bank immediately if Customer suspects or become aware of any activity or transaction of an Originator that Customer believes may be of an illegal or illegitimate nature or that involves the proceeds of illegal activity or that was conducted, in part or whole, for the purpose of disguising the source of funds. Bank will be entitled at any time upon notice to Customer to decline to provide the ACH Origination Services, or terminate the provision of ACH Origination Services, for any Originator on whose behalf are originating Entries if Bank determines that there are excessive returns or reversals of Entries originated on behalf of such Originator or if Bank becomes aware of any information indicating suspicious, fraudulent or illegal activity related to such Originator or for any other reason. As used herein, "Third Party Sender" means an entity that is not an Originator, that has authorized an ODFI or another Third Party Sender to transmit, for the account of the Third Party Sender or another Third Party Sender, (i) a credit entry to the account of a Receiver in order to effect a payment from the Originator (i.e., the third party on whose behalf the Third Party Sender is transmitting the entry) to the Receiver, or (ii) a debit entry to the account of a Receiver in order to effect a payment from the Receiver to the Originator (i.e., the third party on whose behalf the Third Party Sender is transmitting the entry). Without limitation of the foregoing, Third Party Senders include U.S. regulated financial institutions, brokers and other financial intermediaries as well as any other regulated or unregulated payment processors that are customers of the Bank and use their accounts to process payments for third parties (including affiliates of the Customer).

8. **IAT Entries.** If Customer is originating Entries that are required to be formatted under the Rules as IAT Entries, Customer will comply with all applicable Rules relating thereto, and Customer will originate such Entries only through one of Bank's ACH origination channels that support IAT origination. Some of Bank's ACH origination channels do not accommodate IAT Entries; upon request, the Bank will advise Customer as to which of Bank's ACH origination channels can be used for IAT origination.

If a foreign currency conversion is performed by Bank in connection with an IAT Entry, Customer acknowledges that the foreign currency exchange rates fluctuate, and accepts the risk of such fluctuation, including fluctuations in rate between the time Customer submits the Entry Data Instructions and the time the transaction is executed and/or reversed, returned or recalled. Any payment returns and/or reversals will be credited to Customer's account in the currency in which Customer's account is denominated, and Customer is responsible for any rate fluctuations.

In the event of an erroneous or duplicate IAT Entry originated for payment to a receiving bank outside the United States, the rights of Bank and Customer with respect to reversal or recall of such Entry are subject to the laws, regulations and payment system rules of the receiving bank's jurisdiction.

Customer acknowledges and agrees that IAT Entries may be delayed in processing or posting due to the Bank's or RDFI's review of such Entries for OFAC compliance. Further, Customer understands and acknowledges that unlike PPD Credit Entries, there is no requirement under the Rules that IAT Credit Entries that are made available to an RDFI by its ACH operator by 5:00 pm on the banking day prior to the Settlement Date be made available to the Receiver at the opening of business on the Settlement date; cleared IAT Credit Entries must be made available no later than the Settlement Date of the Entry, but funds are not required to be available at opening of business on the Settlement Date.

9. **Same Day Entries.** The terms set forth in this Section 9 apply to any Same Day Entry, as such term is defined in the Rules, originated by the Customer. From and after the effective date specified under the Rules for Same Day Credit Entries and Same Day Debit Entries (or such other dates as may be communicated to the Customer by the Bank), subject to the conditions set forth in this Section 9, any Credit Entry or Debit Entry submitted to the Bank that meets the criteria set forth in the Rules for a Same Day Entry ("Same Day Criteria") may be processed and released by the Bank in such time and manner as to enable same day processing and settlement by the applicable ACH Operator and RDFI.

The Bank may, in its sole discretion, provide the Same Day ACH Service to its customer segments on either an opt-out basis or an opt-in basis. If the Service is provided to the Customer on an opt-out basis, any Credit Entry or Debit Entry transmitted to the Bank in the name of the Customer that meets the Same Day Criteria may be processed as a Same Day Entry (from and after the Respective Implementation Date), and the Customer will be charged applicable fees for such processing. The Customer may elect to exclude transactions from Same Day ACH processing by notifying the Bank in writing (or by such other means as the Bank may specify) of specified Company IDs that the Customer wants to exclude from Same Day ACH processing even if the Same Day Criteria are met. In such case, the Bank will exclude files/Entries with such Company IDs from the Service. If the Service is provided to the Customer on an opt-in basis, the Customer may request that its originated Entries meeting the Same Day Criteria be processed on a same day basis; otherwise, such Entries will not be processed on a same day basis. As a result of the implementation of the Same Day ACH processing, there may be changes to the posting times for Entries; Same Day ACH Entries as well as Entries originated to accounts of Receivers at the Bank may be posted to Receivers' accounts earlier than posting was occurring prior to implementation of Same Day ACH processing. Notwithstanding anything to the contrary contained in these Service Terms, certain Bank transmission channels will not provide capability for origination of Same Day ACH Entries or will provide such capability at a later time than other channels.

10. **Incorporation of Account Documentation; Termination.** The provisions of the account documentation, including terms and conditions governing the operation of business accounts and services, are incorporated into these Service Terms by reference. By acknowledging or signing the applicable account documentation or by using or continuing to use the ACH Origination Services, Customer agrees to these Service Terms. In addition to Bank's termination rights under the aforementioned documentation, Bank shall have the right to terminate or suspend these Service Terms and the Services upon notice to Customer in the event of the Customer's breach of the Rules.



**RFP No. 2018-048-6741**

**Request for Proposal  
For  
Electronic Payment Services and E-Commerce Solution**

**Pre-Proposal Conference**

**July 13, 2018 @ 1:00 p.m. (CST)  
Dallas County Tax Office Conference Room  
Renaissance Tower  
1201 Elm St. 26<sup>th</sup> Floor  
Dallas, Texas 75202**

**Submittal Location and Due Date/Time**

**Proposal Due Date:  
August 16, 2018 @ 2:00 p.m. (CST)**

**Dallas County Purchasing Department  
Founder Square  
900 Jackson St. Suite 680  
Dallas, Texas 75202**

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**(To be included in the Original Hard Copy Proposal Response)**

The undersigned firm proposes to furnish and deliver any and all of the deliverables and services named in the attached Request for Proposals (“RFP”). It is understood and agreed that this proposal, including the price or prices offered herein, shall be valid and apply for a period One Hundred and Eighty (180) day’s from proposal opening date.

The undersigned firm further agrees to strictly abide by all the terms and conditions contained in the RFP and Dallas County (“County”) purchasing policies as modified by any attached special terms and conditions of the County, all of which are made a part hereof. Any exceptions are noted in writing and included with this proposal.

It is understood and agreed that this proposal constitutes an offer, which when accepted in writing by the Purchasing Office, Dallas County Commissioner Court, and subject to the terms and conditions of such acceptance, shall constitute a valid and binding contract between the undersigned and the County.

It is understood and agreed that authorized representatives of the undersigned firm have read the County specifications shown or referenced in the RFP and that this proposal is made in accordance with the provisions of such specifications. By written signature of an authorized representative on this proposal, the undersigned firm guarantees and certifies that all items included in this proposal meet or exceed any and all such County specifications. The undersigned further agrees, if awarded a contract, to deliver goods and/or services which meet or exceed the specifications. The County reserves the right to reject any or all proposals, waive technicalities, and informalities, and to make an award in the best interest of the County, or to make no award.

**PROPOSAL SIGNATURE AND CERTIFICATION**

I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal (“Offeror”) for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of the proposal and certify that I am authorized to sign this proposal for the firm.

Authorized Signature: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Firm/Company Name: Date: \_\_\_\_\_

\_\_\_\_\_

## **NO-CONTACT NOTICE TO ALL PROPOSERS**

**Upon the release of this Request for Proposal (RFP) and during the proposal process, vendors, firms and their employees of related companies as well as paid or unpaid representative or personnel acting on their behalf shall not contact or participate in any type of contact with County employees, elected officials, department heads and their respective support staff on any part of a solicitation or negotiation. Such contact may result in the vendor being disqualified.**

All questions regarding this RFP are to be submitted in writing to Charles Price, C.T.P.M. Purchasing Director with the Dallas County Purchasing Department via e-mail [charles.price@dallascounty.org](mailto:charles.price@dallascounty.org), or mail to Dallas County Purchasing, **900 Jackson St. Suite 680 ,Dallas, Texas 75202**. Please reference the RFP number on all correspondence to Dallas County.

All questions, comments and requests for clarification must reference the RFP number on all correspondence to County. Any oral communications shall be considered unofficial and non-binding.

Only written responses to written communication shall be considered official and binding upon County. County reserves the right, at its sole discretion, to determine appropriate and adequate responses to the written comments, questions, and requests for clarification.

All addendums and any other correspondence (general information, questions and responses) to this RFP will be made available exclusively through County's website for retrieval. ***It is the Proposer's sole responsibility to review and monitor the Dallas County Purchasing Department's website:***

***<http://www.dallascounty.org/department/purchasing/currentbids.php>***

***on a regular (daily) basis during the RFP process up to the closing due date and time for any updates or changes. Dallas County Purchasing Department's website is our primary communication tool for addenda and updated information regarding this RFP.***

## 1.0 INTRODUCTION

The intent of this request is to solicit Proposals from qualified agencies, companies, firms, and/or organizations to provide electronic payments processing services and serve as a solution provider.

## 2.0 DEFINITION OF TERMS

**The following definitions are used in this Request for Proposal , the terms set forth below are defined as follows::**

**Addendum:** means an addition to, deletion from, a material change in, or general interest explanation of the Request for Proposal.

**Auditor:** means the Dallas County Auditor or designee.

**BAFO:** means the Best and Final Offer

**Best and Final Proposal:** means an optional step in the solicitation process in which Proposers are requested to improve their Proposal by methods including, but not limited to, the reduction of cost, clarification or modification of the Proposal, or the provision of additional information

**Business Entity:** any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. Business entity” includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.

**Commissioners Court:** means Dallas County Commissioners Court.

**Contact Person/Procurement Coordinator:** the Dallas County Purchasing Department person identified in a County Solicitation as the contact person regarding the solicitation during the course of the no-contact period.

**Contract Manager** means the County employee for the user department assigned to administer the Contract.

**Contractor:** means a person or business which has a contract (as an "independent contractor" and not an employee) to provide some portion of the work or services on a project which the contractor has agreed to perform. Contractors are private, not public, entities and provide direct services.

**County:** means Dallas County, Texas, a political subdivision of the State of Texas.

**Due Date:** means the date and time specified in the Request for Proposal as the deadline for submitting Proposals.

**Exhibits:** means those documents which are attached to and incorporated as part of the Request for Proposal.

**Interested Party:** means a person who has a Controlling Interest in a Business Entity with whom the County contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.

**Intermediary:** means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person's participation;
- (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity

**Local Time:** Time in the Central Time Zone as observed by the State of Texas. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.

**No-Contact Period:** means the period of time from the date of issuance/release of the Solicitation until a Contract is executed.

All Respondent/Bidder/Offeror/Proposer/Vendor/Contractor/Consultant communications including, but not limited to, questions, comments, requests for clarification, and general information requests, during the No-Contact Period, regarding any Active Solicitation, must be directed solely to the Purchasing Contact Person. The Contact Person for any specific solicitation can be identified by visiting:

<http://www.dallascounty.org/departments/purchasing/currentbids.php> to view the solicitation Respondent/Bidder/Offeror/Proposer/Vendor/Contractor/Consultant (including any employees, agents, representatives, or any other individuals or entities acting on their behalf) that are found to have violated the No-Contact Period will be automatically disqualified from any Active Solicitations at the time of the violation.

**Purchasing Agent:** means the Dallas County Purchasing Agent.

**Project:** shall mean the complete undertaking by Contractor to provide the goods and/or services contemplated by the Agreement or Contract.

**Request for Proposal (RFP):** A document requesting an offer from vendors, which allows for negotiations after a proposal has been received and before award of the contract for goods and services procured in compliance with TEX. LOC. GOV'T CODE ANN., §§ 262.030.

**Respondent/Bidder/Offeror/Proposer/Vendor/Contractor/Consultant:** Any person, individual, company, firm or business that submits a Proposal in response to a Request for Proposal

**Responsible:** means an entity that demonstrates its ability and capability to perform, meet and deliver in accordance with the contract requirements and standards.

**Responsive:** means a Proposal that has complied with all material respects with the criteria and specification requirements outlined in the Request for Proposal.

**Services:** means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include, but are not limited to, all of the activities, obligations, deliverable(s) (including supplies, equipment, or commodities) that result from Contractor performing the Services pursuant to this Contract.

**Solicitation :** applicable, includes Invitation for Bid, Request for Proposal, Request for Qualifications, Statement of Qualifications, Request for Quotation, Request for Information, or such other request as defined by the County.

**State:** means State of Texas

**Vendor:** means a person, firm, or entity that sells Goods and/or Services.

### 3.0 PRE-PROPOSAL CONFERENCE

#### 3.1 Pre-Proposal Conference

A voluntary Pre-Proposal Conference will be held on July 13 at 1:00 P.M. (CST) at the Dallas County Tax Office Conference Room, **1201 Elm St. Dallas, and 26th floor Texas 75202**. All prospective Proposers are encouraged to attend in order to facilitate better preparation of their Proposals.

The purpose of this voluntary Pre-Proposal Conference is to provide an “Informal” forum for the potential Proposers to ask questions and gain clarifications on the requirements identified in the Request for Proposal (RFP). The County will entertain questions, however prospective Proposers must understand that the County’s oral response to any question at the Pre-Proposal Conference shall be unofficial and non-binding. Prospective Proposers must submit all questions, comments, or other concerns regarding the RFP in writing prior to the submission of questions deadline indicated below.

All answers by County Representatives, Staff or Personnel to potential Proposers questions are considered Informal and nonbinding on Dallas County.

#### 3.2 Submission of Questions

Proposers having questions, inquiries and requests for clarification concerning the RFP document must submit them in writing to Charles Price, C.T.P.M by fax or via email.

**The deadline for all questions, inquiries or requests for clarification is due on or before July 20, 2018, 10:00 am (CST).**

Email [Charles.price@dallascounty.org](mailto:Charles.price@dallascounty.org)

Questions inquiries and requests for clarification received after the submission deadline may not be considered or receive a response. If question or inquiry prompts the need for changes to the specifications, the County will issue a written addendum to the original specification.

Questions from all Proposers shall be answered with the responses made available and posted exclusively through the Dallas County Purchasing Department’s website: <http://www.dallascounty.org/departments/purchasing/currentbids.php>

***Note: It is the Proposer's sole responsibility to review and monitor the Dallas County Purchasing Department's website on a regular (daily) basis during the RFP process up to the closing due date and time for any updates or changes. Dallas County Purchasing Department's website is our primary communication tool for addenda and updated information regarding this RFP.***

**Please reference the RFP Solicitation Number, Company Name, Representative Name and e-mail address on all written communication and correspondence to Dallas County.**

### 4.0 ADMINISTRATIVE INFORMATION

#### 4.1 COUNTY PROCUREMENT COORDINATOR

The issuing department and the sole point of contact for the coordination and dissemination of all information regarding this RFP is:

Charles Price, C.T.P.M.  
Dallas County Purchasing Department  
Founders Plaza  
900 Jackson St. Suite 680  
Dallas, Texas 75202  
214 653-6223 (office)  
214 653-7449 (fax)  
[Charles.price@dallascounty.org](mailto:Charles.price@dallascounty.org)

**The point of contact shall hereinafter be referred to as the County Procurement Coordinator.**

#### 4.2 COMMUNICATIONS REGARDING THE RFP

4.2.1 Upon release of this RFP and during the entire process, lobbyists, firms and their employees of related companies as well as paid or unpaid personnel acting on their behalf shall not contact any Evaluators, Evaluation Committee Member, County Employees, Department Heads, County Judge or Commissioners, Elected Officials or its Consultants for meeting, conferences, or discussions that are specifically related to this RFP.

**Unauthorized contact of any type with any individual associated with Dallas County, including, but not limited to, Evaluators, Evaluation Committee Members, County Employees, Department Heads, the County Judge or Commissioners, Elected Officials or its Consultants may subject the Proposer to immediate disqualification from further consideration in the sole discretion of Dallas County.**

4.2.2 All communication should be in writing to the County Procurement Coordinator. Any oral communication, amendment or interpretation that is not in writing shall not legally bind Dallas County. Only information supplied by the Dallas County Purchasing Department in writing or in this RFP should be used in preparing proposal responses.

4.2.3 **Written Questions, Inquiries and Requests for Clarification:** All questions, inquiries and requests for clarification pertaining to this RFP must be submitted in writing no later **July 20, 2018, 10:00 A.M. (CST)**, and must be directed, fax 214.653.7449 or via e-mail ([charles.price@dallascounty.org](mailto:charles.price@dallascounty.org)) to Charles Price, C.T.P.M. as indicated in Section 4.1 of this RFP.

Questions, inquiries and requests for clarification received after the due date and time deadline may not be considered or receive a response.

Proposers are responsible for insuring all answers to questions, inquiries and request for clarification are reviewed prior to proposal submittal. Answers provided to posted questions address minor irregularities and are for clarification purposes only and do not revise or modify the specification requirements. Answers to questions that result in revisions to the specifications will be addressed by Addendum. No oral statement of any person shall modify or otherwise change, or affect the specifications.

*Please reference the RFP Number, Company Name, Representative Name and e-mail address on all written communication and correspondence to Dallas County.*

#### 4.2.4 Addendum and General Information

Only documents issued as Written Addendum by Dallas County Purchasing Department serve to change the Request for Proposal in any way. No other direction received by the Proposer, Written or verbal, serves to change the Request for Proposal. Addendum will be publicized on the Dallas County Purchasing Department website. Proposers are advised to



consult the Dallas County Purchasing Department website prior to submitting a Proposal in order to ensure that all relevant Addendums have been incorporated into the Proposal. Proposers are responsible for obtaining and incorporating any changes made by Addendum into their Proposal. Failure to do so may make the Proposal non-Responsive, which in turn may cause the Proposal to be rejected.

These addendum(s) will be numbered consecutively beginning with 1 and will be posted exclusively on the Dallas County Purchasing Department's website: <http://www.dallascounty.org/department/purchasing/currentbids.php>

Each Proposer is required to acknowledge receipt, sign and return each addendum with the proposal response.

The County reserves the right, at its sole discretion, to determine appropriate and adequate responses to the written comments, questions, and requests for clarification.

**Note: All addendums and any other correspondence (general information, questions and responses) to this RFP will be made available exclusively through County's website for retrieval. *It is the Proposer's sole responsibility to review and monitor the Dallas County Purchasing Department's website:***  
<http://www.dallascounty.org/department/purchasing/currentbids.php>  
***on a regular (daily) basis during the RFP process up to the closing due date and time for any updates or changes. Dallas County Purchasing Department's website is our primary communication tool for addenda and updated information regarding this RFP.***

***Download Instruction for rfq, rfps, bids, solicitations, addendums, and general information documents:***

1. Go to: <http://www.dallascounty.org>
2. On the top header section click on "Departments," scroll down to locate and click on the Purchasing Department link
3. You are now at the Purchasing Department website
4. Navigate to the far left hand column to click on "Bidding Opportunities"
5. You can now download any solicitation, bid, rfq, rfp, addendums, and general information documentation available on the website by clicking on the corresponding hyperlink.

#### 4.3 PROPOSAL ERRORS AND OMISSIONS

Due care and diligence has been used in the preparation of this information, and it is believed to be substantially correct to secure comparable Proposals. If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, he/she shall immediately notify the County Procurement Coordinator of such errors in writing and request modification or clarification of the document. Any modification made to this RFP will be issued as an addendum to the solicitation and will be posted on the Dallas County website:

<http://www.dallascounty.org/department/purchasing/currentbids.php>

**Any and all errors, omissions, or inconsistencies in the specifications are to be reported no later than July 12, 2017, 10:00a.m. (CST).**

#### 4.4 PROPOSAL WITHDRAWAL

Proposer may withdraw its proposal at any time before the deadline for submitting qualifications and proposals by notifying the County Procurement Coordinator in writing of its withdrawal. The notice must be signed by the Proposer. The Proposer may thereafter submit a new or modified qualifications and proposals, provided that it is received at the Dallas County Purchasing Department, **900 Jackson St. Suite 680 Dallas, Texas 75202**, no later than the proposal due date and time listed in the timeline of the RFP. Modifications offered in any other manner, oral or

written, will not be considered. Qualifications and Proposals cannot be changed or withdrawn after the proposal due date and time listed in the timeline of the RFP.

#### 4.5 REJECTION OF PROPOSALS

4.5.1 County reserves the right, at its sole discretion, to reject any and all proposals received in response to this RFP or to cancel this RFP in entirety as determined to be in the best interests of County.

4.5.2 The issuance of this RFP and the acceptance of responses do not constitute an agreement by the County that it will enter into a contract with any of the Proposers to this RFP.

4.5.3 Any proposal received which does not meet the requirements of this RFP, may be considered to be non-responsive, and the statement of qualification and proposal may be rejected.

4.5.4 County reserves the right, at its sole discretion, to waive any defect, irregularity, informality or technicality in any proposal provided such action is in the best interest of County. Where County waives minor defect, irregularity, informality or technicality in proposal, such waiver does not modify the RFP requirements or excuse the Proposer from full compliance with the RFP. Notwithstanding any minor defect, irregularity, informality or technicality, County holds any Proposer to strict compliance with the RFP.

#### 4.6 DISCLOSURE OF PROPOSAL CONTENT

4.6.1 County will not disclose any of the evaluation and selection processes until after the final contract is executed.

4.6.2 Ownership of materials: Any materials submitted to County shall become the property of County and will be subject to the Texas Public Information Act. All documents that you send to County will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement. Therefore, any proposal which contains language purporting to render all or significant portions of their proposal "Confidential", "Trade Secret" or "Proprietary", or fails to provide the exemption information required will be considered a public record in its entirety. Do not mark your entire proposal as "confidential".

4.6.3 Designation of information: All confidential, trade secret or proprietary information must be *clearly identified* by the Proposer prior to submission of the proposal.

4.6.4 Confidential information means information that (i) qualifies as trade secret or proprietary under the law; and (ii) is designated as confidential information as described below.

4.6.5 Information: The statement of qualifications and proposals are deemed to contain two types of information: (i) confidential information, also known as "proprietary information" or "trade secret information," which must be specifically designated by Proposer in the proposals and statement of qualifications; and (ii) non-confidential information, which is information not specifically designated as confidential information."

4.6.6 Management of Information: (i) All proposal information that is specifically designated by Proposer as *confidential information*, and meets the standard definition as such, including detail prices and cost information, shall be held in confidence during the evaluation process and thereafter to the extent authorized by law; (ii) Information not designated as confidential information may be discussed in open meetings throughout the entire RFP procurement process and thereafter and will be made available to the public subject to the Texas Public Information Act; and (iii) County will uphold the confidentiality of Proposer trade secrets to the extent authorized by law.

4.6.7 Duty of Confidentiality upon Proposer(s): Any information divulged publicly by any Proposer(s) (e.g., at an open meeting) shall, from that time forward, be deemed information that is not designated as confidential information. During all open meetings with the Commissioners Court, it is the duty of the Proposer(s) to (i) timely assert any claim of confidentiality; and (ii) request confidential handling of any materials presented to the Commissioners Court during any open meeting.

## **5.0 EVALUATION PROCESS**

### **5.1 EVALUATION PROCEDURES AND PROCESSES**

5.1.1 Management and coordination of the evaluation process including all meetings, requests, negotiation and documentation will be handled by the Dallas County Purchasing Department Procurement Coordinator.

5.1.2 Proposals received by the specified deadline will be reviewed and evaluated consistently with the stated Evaluation and Selection Factors. Before the final evaluation and ranking of Proposals is complete, County, at its sole discretion, may request interviews, presentations, and/or site visits with Proposer(s) found to be among the most qualified. Proposals will be ranked based on final evaluation with a recommendation to begin negotiations with the Proposer(s) that received the highest evaluation.

5.1.3 Evaluation Committee will be composed of various County Departments.

5.1.4 Each proposal and will be independently evaluated by each Committee member.

5.1.5 All Proposers will be accorded fair and equal treatment.

5.1.6 Each proposal shall be evaluated for completeness and for compliance with the requirements of this RFP.

5.1.7 Proposals which substantially deviate from the basic intent of the RFP will be eliminated.

5.1.8 As part of the evaluation process, the County reserves the right to request the Proposer to provide written clarification or make a formal, oral presentation. The Dallas County Purchasing Department Procurement Coordinator the point of contact as identified within this RFP shall request the written clarification or schedule any presentations required. Each Proposer should be prepared to discuss and substantiate all areas of its proposal. The purpose of these questions will be to clarify information already contained in the submittals and will not be an opportunity for Proposers to submit additional documentation or change existing documentation. This is a fact finding and explanation session only and does not include negotiation. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Proposers. The Proposer shall be responsible for all of its costs associated with the presentation. Oral presentations are an option of the County and may or may not be conducted with none, some or all of the Proposers.

5.1.9 Discussions may be conducted only with responsible Proposers who submit proposals determined to be reasonably susceptible of being selected for award.

5.1.10 Proposals will be assessed to determine the most comprehensive, competitive and best value solution for County.

5.1.11 Although price will be a factor in Proposal evaluation, it is specifically a consideration of secondary importance to the needs and selection criteria identified in the RFP.

5.1.12 A best and final offer (BAFO) may be conducted with only those proposer(s) who are reasonably susceptible of being selected for award. Any proposer(s) deemed not likely

to be awarded may be dropped at this point. The BAFO will be evaluated and rescored by the evaluation committee.

5.1.13 Recommendation made to Dallas County Commissioners Court to the firm evaluated to be most qualified, highest rated and offering the best value to County. Upon formal approval, a contract will be formally drafted and entered into with the selected firm.

## 5.2 EVALUATION AND SELECTION FACTORS

The Evaluation Committee will evaluate proposal on the criteria listed below. The objective is to enter into a future Contract with the best qualified Proposer(s) at the best price and value. Each category shall be weighted as follows:

Evaluation Criteria	Points
Factor 1: Cost to Customer/User through Convenience and Payment Fees (Sealed separate envelope)	0-20
Factor 2: Organizational Information/Qualification	0-20
Factor 3: Settlement Funding and Reporting	0-20
Factor 4: Equipment and System Capabilities	0-15
Factor 5: Financial Stability (sealed separate envelope)	0-10
Factor 6: Small Business Enterprise (sealed separate envelope)	0-15
<b>Total Points</b>	<b>100</b>

## 5.3 AWARD AND NEGOTIATION PROCESS

5.3.1 The Purchasing Department Agent will coordinate and supervises all negotiations.

5.3.2 The Proposer awarded or chosen pursuant to the provisions of this section will not be based solely on price, but will include and be limited to evaluation criteria listed in the RFP. Upon completion of the evaluation process, the Evaluation Committee will make a recommendation to County Commissioners Court to award to the highest rated firm. Negotiations may or may not be conducted with the finalist(s); therefore, the Proposal submitted should contain Proposer's most favorable terms and conditions, since selection and award may be made without further discussion or need for clarification. **Due to the size of Dallas County, Dallas County may award to multiple Firm(s)**

5.3.3 The award of the contract is made to the responsible Proposer, whose proposal is determined to be the best evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth herein.

5.3.4 Any oral negotiations must be confirmed in writing prior to award.

5.3.5 In considering the proposals, Dallas County reserves the right to select one or more responsible Proposers.

5.3.6 Dallas County reserves the right to award only a portion of the RFP.

5.3.7 Proposers may be required to submit additional data during the process of any negotiations.

5.3.8 Dallas County reserves the right to negotiate the price and any other term with the Proposers.

5.3.9 In the event that County cannot reach agreement with the selected firm by negotiation of a contract, County may formally end negotiations by written notification to the selected firm. County shall have the right, but not the obligation, to sequentially negotiate with the next most-qualified firm and will continue in this manner until either a contract is awarded or this Request for Proposal is canceled. Upon successful completion of negotiations, the results will be reduced to a written contract for the services to be rendered. Such contract may contain additional requirements from County.

5.3.10 All necessary contract documents will be prepared by the Dallas County District Attorney's Office and will be tailored specifically for this RFP. No contract shall be binding on County until it has been approved as to form by the Dallas County District Attorney's Office and executed by the Dallas County Commissioners Court. County will not be liable for, nor will it pay for, any amount of work commenced prior to the approval of the contract by the Dallas County Commissioners Court.

## **6.0 PREPARING AND SUBMITTING A PROPOSAL**

### **6.1 PREPARATION COSTS**

The County shall not be responsible or liable for any costs directly or indirectly associated with the preparation, submittal, presentation, on-site interviews, demonstration/web presentation or other costs incurred by participating in this procurement process. All costs associated with the preparation to this response shall be the sole responsibility of the Proposer, including but not limited to document preparation, and any and all travel expenses.

### **6.2 SUBMISSION**

6.2.1 All responses must be in a sealed package clearly labeled/marked on the outside with the name of the firm submitting the response and the following information:

**RFP No. 2018-048-6741  
Request for Proposal  
For  
Electronic Payment Services and E-Commerce Solution**

**Must Be Delivered To:  
Dallas County Purchasing Department  
Founder Square  
900 Jackson St. Suite 680  
Dallas, Texas 75202**

*Dallas County is not responsible for delays in the delivery of mail by the U.S. Postal Services, FedEx, UPS, Private Couriers, or delivery by any other means. It is the sole responsibility of the Proposer to ensure that his/her proposal reaches the Dallas County Purchasing Department, by the designated date and hour indicated on the Cover Page and/or addendum (when applicable). Late RFP submissions will not be accepted.*

**Note: Please reference the RFP Number, RFP Title and Company Name on the outside of all sealed envelopes, packaging and boxes or used the label provided in the RFP. Dallas County accepts no responsibility for late or misdirected mail.**

**RFP should be submitted in sealed packaging, marked and addressed as directed.**

**RFPs responses which are received by telephone, telegraphic, fax, email, or any other type electronic transmittal method, will not be accepted for consideration.**

**Proposers should take into account mailing/delivery times in order to assure that proposals and offers are received on time.**

6.2.11 Responses to this Request for Proposal (RFP) shall be formatted and organized in the following order for consistency and easy screening:

- All proposals must be typed, single spaced, and printed single-sided on 8 ½" by 11" paper, 12 Point Font in Time New Roman theme.
- One (1) original, clearly marked "ORIGINAL", and one (1) copies, clearly marked "COPY", must be submitted in separate three-ring, loose-leaf binders with identification of the vendor, the job number as located on the RFP cover sheet, and the RFP title on the front cover.
- The complete proposal response must be sealed in an envelope or box for delivery to the Office of the Dallas County Purchasing Department per instructions
- All documents must be labeled with the vendor's name and the job number. Any response received by the Office of the Dallas County Purchasing Department that is not identified on the outside with the job number will be at risk for rejection.
- Each section of the vendor's response should start on a new page. A tabbed divider page marked with the section number should separate each section.

6.2.2 Any RFP received after the required due date and time shall be considered late, void, unacceptable and shall be returned unopened to Proposer upon request.

**The time/date stamp clock in the Dallas County Purchasing Department shall be the official time of receipt.**

6.2.3 Each Proposer must provide a total of two (2) paper hardcopies of the entire proposal including all data, Cost/Fee, Financial Stability and Small Business Enterprise Information as outlined in the RFP.

6.2.4 Additionally, copies of the;

- Cost/Fee,
- Financial Statements
- Small Business forms

Must be submitted in separate sealed envelopes (**Envelope 1- Cost/Fee, Envelope 2 - Financial Statements Envelope 3 - Small Business Forms**) and labeled with the RFP number on the outside of the envelope.

One copy (1) of the printed hardcopy (original) must be signed in blue ink. The original bound copy of the proposal is to be clearly marked as "original" on the outside cover and contain original signatures in blue ink of a person authorized to make a binding offer.

In addition, the Proposer must also provide nine (9) "individual labeled" electronic copies of the entire/complete proposal and attachments (**excluding Cost/Fee ", "Financial Statements" and "Small Business Forms" information**) on Disc, Jump or USB Flash Drive, formatted in "Adobe PDF". Proposer must make sure that the document on the Disc, Jump or USB Flash Drive can be opened and viewed.

6.2.5 By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the services required under this RFP and that it is capable of providing the services that will achieve County's task and objectives.



6.2.6 All Proposals shall be valid for a period of one hundred eighty (180) days following the closing date (due date) for submission of Proposals or best and final offer if requested. The one hundred eighty (180) days may be extended by mutual agreement of all parties.

6.2.7 Dallas County reserves the right, at its sole discretion, to reject any and all offers received in response to this RFP or to cancel this RFP in its entirety if deemed by County to be in the best interests of County.

### 6.3 PROPOSAL FORMAT

6.3.1 Proposal should be specific and complete in every detail. It should be practical and should be prepared simply and economically, providing a straightforward, concise delineation of capabilities to satisfactorily perform the Contract being sought. Proposers are advised to organize their submissions to be as brief and succinct as possible while providing relevant information. The submission of irrelevant and superfluous information is discouraged. Emphasis should be placed on conformity to the RFP's instructions and requirements, and completeness and clarity of content.

6.3.2 Proposer must submit its Proposal in strict accordance with all requirements of this RFP, and an agreement to fully comply with the requirements must be stated in the Proposal. Deviations, clarifications and/or exceptions must be clearly identified and listed separately as alternative items for County's consideration.

6.3.3 The original proposal and copies shall be prepared on standard 8-1/2" x 11" paper in 12pt Time New Roman font. (Narrative shall not exceed 20 pages front) All proposals shall be submitted as hard copy documents; each page shall be consecutively numbered and identified sequentially by section. Proposals must be tabbed and indexed in accordance with the information requested. Expensive bindings, color displays, foldouts that contain charts, spreadsheets, and oversize exhibits are permissible but are not necessary. Tabs or other separators shall serve to divide major sections of the proposal.

6.3.4 In order to expedite the evaluation and comparison process, County requests that proposals be organized in accordance the format outlined below. Proposals that do not follow the specified format outlined below, or fail to provide the required documentation, may receive lower scores. A table of contents shall be provided that identifies the consecutive page numbers where to find the various sections included in the proposal.

6.3.5 Each proposal shall organized in the manner describe below.

6.3.5.1 **Cover Letter:** The cover letter shall include:

- Identify the submitting organization and legal entity;
- Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
- Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
- Should state in writing that all furnished information, including prices, will remain valid for a period of not less than one hundred and eighty (180) days from the date set for the opening thereof and will remain the property of Dallas County;
- Acknowledgement of all addendums to this RFP; and
- Be signed by the person authorized to contractually obligate the organization

#### 6.3.5.2 Claim of Confidentiality

All documents that are submitted to the County will be subject to disclosure after the award and execution contract, if requested by a member of the public in accordance to the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.). Therefore, any proposal which includes confidential, trade secret or proprietary information the Proposer wishes to except from public disclosure must be clearly stamped, marked and identified on each page by the Proposer. The entire Proposal should not be given a blanket confidentiality designation and pricing is not considered to be confidential, trade secret or proprietary information.

#### 6.3.5.3 Table of Contents

A table of contents shall be provided that identifies the consecutive page numbers where to find the various sections included in the proposal.

#### 6.3.5.4 Executive Summary

This section should be a brief (limited to three- (3) page) summary of the key aspects of the Proposer's Proposal. The executive summary should include an overview of the Proposer statement of qualifications, approach to deliver the services described in the Request for Proposals (RFP), time frame to deliver the services, proposed team, and advantage to Dallas County. The summary should also indicate the proposer's commitment to accept the terms and conditions in the RFP.

#### 6.3.5.5 Cost to Customer/User through Convenience and Payment Fees (20 Points) **Must be submitted in separate sealed envelope and labeled accordingly (Original and One Copies)**

**\*\*\*Please see Cost/Payment Fee Worksheet\*\***

**Variables considered in evaluating this category will include but not be limited to the following:**

**a) Payment, processing and convenience cost for on-line web- based transactions for the following card types and applications:**

ACH  
Electronic Check  
MasterCard  
VISA  
Discover Card  
American Express  
Debit Card

**b) Payment, processing and convenience cost for Pay-by-Phone transactions for the following card types and applications :**

ACH  
Electronic Check  
MasterCard  
VISA  
Discover Card  
American Express  
Debit Card

c) **Payment, processing and convenience cost for Point of Sale transactions for the following card types and applications :**

ACH  
Electronic Check  
MasterCard  
VISA  
Discover Card  
American Express  
Debit Card

- Returned ACH
- Monthly account charges
- Gateway transaction fees
- All other potential cost and fees associated with the proposed solution

6.3.5.6 **Organizational Information/Qualification (20 Points)**

Variables considered in evaluating this category will include but not be limited to the following:

**Company background.**

Proposed has been performing services required by the RFP for at least five years.

- i. Project experience of the company in relation to the ability to provide scope and quality of service as outlined in the RFP.
- ii. Method of approach of providing the services as outlined in the RFP.
- iii. Capacity and capability of the business to perform the work, including any specialized services, within the time frame.
- iv. Past experiences and background regarding providing electronic payment collection services as required in the RFP.
- v. Proposed project team, members, and organizational structure, including an assessment of the capabilities of the team members who will be specifically involved in the project. The assessment may include an evaluation of educational and prior work experience.
- vi. Account Management.
- vii. Implementation Timeline.
- viii. Innovative or creative approach.
- ix. Financial Statements illustrating Proposer's financial stability.
- x. Customer/Client References from similar implemented electronic payment and collection services projects.
- xi. Proposer's exceptions to County's RFP requirements and the contract terms and conditions listed in Section 6.
- xii. Quality, Responsiveness and Completeness of the Proposal as it addresses the needs outlined in the RFP.

6.3.5.7 **Settlement Funding and Reporting (20 Points)**

Variables considered in evaluating this category will include but not be limited to the following:

- i. Settlement Timeframe
- ii. Charge backs and reverse Timeframe
- iii. Ad-Hoc Reporting
- iv. Detailed Auditable Reporting
- v. Downloadable transaction detail

- vi. On-line Services
- vii. Exception Monitoring

6.3.5.8 **Equipment and System Capabilities (15 Points)**

**Variables considered in evaluating this category will include but not be limited to the following:**

- i. **Reliability and Ease of Data Transfer**
- ii. **Types of Connectivity**
- iii. **Fraud Detection**
- iv. **System Security and Back-up Procedures**
- v. **Equipment, peripherals and supplies to include type and quantity of equipment provided, supplies provided and proposed plan for replacing/upgrading equipment**

6.3.5.9 **Financial Stability (10 Points)**

**Must be submitted in separate sealed envelope and labeled accordingly (Original and One Copies).**

The following documentation is required in order for County to evaluate financial stability and responsibility:

- **Financial Statements**
- Proposer will provide annual financial statements for the last two (2) calendar years for your organization. Independently audited statements are preferred. Statements should include the company's assets, liabilities, and net worth. At a minimum, include the Balance Sheet (Statement of Financial Positions), Income Statement (Statement of Operations – Profit and Loss Statement), Retained Earnings and Cash Flow Statement. Financial Statements will be kept confidential, if so stamped on each page.
- List all litigation or other legal proceedings, if any, in the last 5 years brought against your firm, or any of the firm's past or present owners, principal shareholders or stockholders, officers, agents or employees, that relates to or arises from a contract similar to this contract or the work contemplated under this contract. (The list should include the contractor as well as the product supplier.). Provide the style of the lawsuit or proceeding (name of parties and court or tribunal in which filed), nature of the claim, and resolution or current status.

The County acknowledges that privately held corporations and other business entities are not required by law to have audited financial statements. In the event the Proposer is a privately held corporation or other business entity whose financial statements are audited, such audited statements shall be provided. If the privately held corporation or other business entity does not have audited financial statements, then un-audited statements or other financial documentation sufficient to provide the same information as is generally contained in an audited statement, and as required above, shall be provided. If the financial statements are unaudited the reviewed shall be in accordance with standards issued by the American Institute of Certified Public Accountant.

In addition, the Proposer may supplement its response to this Section by including one or more of the following with its response: Dunn and Bradstreet Rating and/or Standard and Poor's Rating.

6.3.5.10 **Small Business Forms (15 Points)**

**Must be submitted in separate sealed envelope and labeled accordingly (Original and Two Copies).**

6.3.5.11 **Additional Information**

Provide any additional information deemed necessary by the Proposer believes to be pertinent but specifically requested elsewhere in the RFP including any value added services.

6.3.5.12 **Signed Addendum(s)**

6.3.5.13 **Proposal Exceptions**

Proposer shall identify and list all exceptions taken to any part or sections of the RFP. An “exception” is defined as the Proposer’s inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP.

All exceptions taken must be identified and explained in writing in your proposal response and must specifically reference the relevant section(s) of this RFP. Other than exceptions that are stated in compliance with this Section, each proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP. If the Proposer provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Proposer’s solution, must be described in detail.

However, any exceptions submitted may render the submission as non-responsive to the requirements listed. The County will be sole determiner of the acceptability of any exception.

If the Proposer has taken no exceptions to the requirements of this RFP, please state no “exception” in the section.

**\*\*Please Note\*\*** upon identification of the highest ranked vendor and negotiations the following forms will need to be submitted prior to contracting

6.3.5.14 **Title VI Assurances/Compliance – Appendix A Form**

**\*\*Please Note\*\*** upon identification of the highest ranked vendor and negotiations the following forms will need to be submitted prior to contracting

6.3.5.15 **Campaign Contribution Form**

6.3.5.16 **Insurance Affidavit Form**

6.3.5.17 **Conflict of Interest Form**

Chapter 176 of the Texas Local Government Code requires that any proposer or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the proposer or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of County no later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed as defined in Section 178.006 of the Texas Local Government Code. A person commits an offense if the person violates Section 178.006 of the Texas Local Government Code. An

offense under this section is a Class C misdemeanor. A copy of the law is available at: <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.178.htm>

*By submitting a response to this request, the proposer represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.*

## **7.0 SMALL BUSINESS ENTERPRISE (SBE) PROGRAM**

### **7.1. Definitions.**

- 7.1.1. The term **“Commercially Useful Function”** is defined as a business that is directly responsible for providing the supplies or services to Dallas County as required by the solicitation or request quotes, bids or proposals. A firm is considered to perform a commercially useful function when responsible for the execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. A business that stocks sufficient quantities of supplies in direct inventory, held for sale or resale, to cover anticipated future demands for the suppliers is performing a commercially useful function.
- 7.1.2. A **“Contractor”** is defined as one who participates, through a contract or any other contractual agreement in a County funded contract opportunity for work, labor, services, supplies, equipment, materials, goods or any combination of the foregoing. For purposes of this Section, a Contractor is any individual, company, or other entity seeking to do work for Dallas County regardless of the method used to procure the services or products, including by bid or solicitation. A Contractor includes but is not limited to a contractor, consultant, or vendor.
- 7.1.3. The term **“Director of Small Business Enterprises”** shall mean the Director of the County’s Office of Small Business Enterprises and include his or her designee.
- 7.1.4. The term **“Contract Administration”** shall mean the County Purchasing Department and/or his or her designee.
- 7.1.5. The **“Contract Administration Supervisor”** shall mean the Purchasing Director and/or his or her designee.
- 7.1.6 **Equal Employment Opportunity Requirements.** It is the policy of Dallas County to ensure non-discrimination in the award and administration of contracts. The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, disability, veteran status, religion, or sex in the performance of this contract.
- 7.1.7 **Good Faith Effort Plan.** The plan submitted with a Submittal detailing the Respondent’s to achieve the set aspirational goal or documenting it Good Faith Efforts to meet the goals for all elements the Solicitation. A Good Faith Effort Plan must be submitted with a Submittal for any Dallas
- 7.1.8 **Metropolitan Statistical Area (MSA).** The Dallas County MSA includes the following counties: Dallas, Tarrant, Denton and Collin.



7.1.9 **Small Business Enterprises.** It is the policy of the County to support the growth and development of Small Business Enterprises (“SBEs”) and ensure that SBEs have an equal opportunity to compete for and participate in Dallas County contracts. Thus, Dallas County Commissioners Court has created the Office of Small Business Enterprise to establish and oversee a Diversity Program to ensure that SBEs have an equal opportunity to compete for and participate in Dallas County contracts. It is Dallas County’s intent to:

- Ensure nondiscrimination in the award and administration of Dallas County contracts;
- Create a level playing field on which small businesses can compete fairly for Dallas County contracts; and
- Ensure that only firms that attempt to meet the SBE good faith efforts are considered for applicable contract awards.

Consequently, the contractor shall carry out applicable requirements of the good faith effort in its proposal/bid hereunder and, if awarded the contract, the award and administration of the Contract.

## 7.2 **SBE Goals, Good Faith Efforts and Eligibility.**

The Director of Small Business Enterprises (“Director”) and the Contract Administration Supervisor sets the annual SBE participation contracting/subcontracting aspirational SBE goals for each contract. The contracting/subcontracting goals for this contract will be based on meeting or exceeding the **minimum aspirational SBE goal of 40%**, unless good cause exists for failing to meet the goal. The SBE aspirational goal is based on the total contract value.

**NOTE: On January 1, 2018,** Dallas County moved from an M/WBE Program to a Small Business Enterprise Program. The County will accept Minority Women Owned Business (M/WBE) and Disadvantage Business Enterprise (DBE) certifications for a one (1) year period ending December 31, 2018. For M/WBE/DBE certification to qualify for SBE recognition, between January 1, 2018 and December 31, 2018, the firm must be certified by one of the entities listed in subsection (a) and satisfy the requirements in subsection (b)-(c), and (f) below. The firm must also compete and sign an SBA Threshold Affidavit affirming the firm meets all of the afore-mentioned requirements to qualify and be recognized as a SBE by Dallas County.

**The maximum number of points to be earned is 15 points.** Self-performance and subcontracting may be used to achieve the aspirational goals and earn points.

To be eligible for points, firms (contractors and/or subcontractors):

- a) Must be certified as an SBE by one of the following County approved entities: North Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council and/or the Women’s Business Council of Southwest, at the time of the proposal/bid submission Other certifications are not acceptable;
- b) To qualify as an SBE firm, the firm’s must gross revenues or number of employees averaged over the past three years must be equal to or below 20% of the Small Business Administrations (SBA) standards, and
- c) The SBE firm owner’s personal net worth (PNW) must not exceed \$3.2 million;
- d) All SBE firms (contractors and/or sub-contractors) must compete and sign an affidavit

affirming the firm meets all of the above mentioned requirements to qualify and be recognized as a SBE by Dallas County; and

- e) All eligible firms must also perform a commercially-useful function on the project and have a local presence in Dallas County Metropolitan Statistical Area (MSA) in order to be counted for SBE points. The MSA includes the following counties: Dallas, Tarrant, Denton and Collin.

### 7.3 Utilization Scoring

- a) SBE or certified Prime Contractor: **5 points**
- b) SBE or certified Sub-Contractor Scoring Method: **Up to 10 Points (by percentage) 40% Aspirational Goal**
  - Participation Percentage between 1% and 9.99% = **2 points**
  - Participation Percentage between 10% and 19.99% = **4 points**
  - Participation Percentage between 20% and 29.99% = **6 points**
  - Participation Percentage between 30% and 49.99% = **8 points**
  - Participation Percentage meeting or exceeding 40.00% = **10 Points**

The aspirational SBE or certified sub-contractor goal is expressed as a percentage of the total dollar amount of the contract going to SBE or certified Sub-Contractor for those areas which the Contractor has sub-contracted or anticipates sub-contracting. The aspirational goal shall also apply to contract amendments that require work beyond the scope of services originally required to accomplish the project.

The Respondent agrees to employ good faith efforts through the award of subcontractors to eligible SBEs and certified firms to the fullest extent possible.

Dallas County's Good Faith Effort Plan (GFEP) will be used for scoring purposes based upon SBE and other eligible certified firm's participation. However, all subcontractors and/or supplier, whether certified or not, must be listed in the GFEP. The information provided in the GFEP Form will be utilized in the development of the final contract/agreement. The GFEP Form can be found on page 46. This form is required and considered part of the response to the RFP. **Should the Good Faith Effort Plan or any of the specified documents listed below be incomplete, not signed, and/or not submitted, the proposal/bid may be deem non-responsive.**

### 7.4 Each Contractor must include with its proposal/bid, the following documents:

- Completed and signed **Good Faith Effort Plan Form**, executed by an authorized representative;
- Completed and signed **Good Faith Effort Affirmation**, executed by an authorized representative;
- **If submitting as an SBE**, a completed, signed and notarized **SBE Threshold Affidavit**, executed by an authorized representative; and
- **A signed and executed form or letter from each SBE subcontractor identified in the Contractor's Good Faith Effort Plan of their intent to perform as a subcontractor.**
- **Provide copy of certification from one of the three certifying agencies referenced in**

## Section 7.2(a).

***Note: All forms must be complete in their entirety and submitted as part of a Respondent's Proposal.***

The County reserves the right to accept or reject any certified firm and in its sole discretion is not bound by the certifying bodies' determination if the County has a concern regarding the eligibility of the firm to meet SBE guidelines or standards. A Contractor whose proposed certified firm is rejected may contest in writing to the Office of Small Business Enterprises, in accordance with the SBE Policy. The denial of SBE certification by Business Enterprise is excluded from the Dallas County Purchasing Code of Ethics Protests Procedure and is exclusively governed by the appeal process set forth in the SBE Policy.

**SBE Reporting.** The Contractor and its subcontractors are required to electronically submit subcontractor payment information using the County's Subcontractor Payment Compliance System (SPCS), accessed through a link on the Dallas County SBE webpage. The Contractor and all subcontractors will be provided a unique log-in credential and password to access Subcontractor Payment Compliance System. Training on the use of the system will be provided by Dallas County's Office for Small Business Enterprises.

- 7.5. **Contracting.** If awarded the contract, the Contractor agrees to be bound to the policies and guidelines set forth in the County's SBE Policy, which may be incorporated into the contract. If a conflict exists between the SBE section of the solicitation and the County SBE Policy, the language in the solicitation governs.

## 8.0 CONTRACT TERM

- 8.1 The initial term of this contract is three (3) years, commencing as approved by the Dallas County Commissioners Court, unless terminated earlier under any provision hereof. This contract may be renewed for up to two (2) additional one (1) year periods at the discretion of Dallas County subject to the availability of departmental funding, vendor performance, mutual agreement by all parties and the approval of the Dallas County Commissioners Court.
- 8.2 Cost Adjustment: Contractor may apply for a cost adjustment after the first two (2) years of the contract agreement (initial term of the contract agreement). In order for the rate adjustment to be considered by Dallas County, the Contractor shall be in full compliance with all of the performance standards as establish by this Contract. The Contractor assumes all risks associated with increased costs of service not reflected in the rate adjustments. Contractor may submit requested price adjustment to the Dallas County Purchasing Department in writing at least ninety (90) days prior to the renewal period. If approved the price adjustment will become effective on the beginning date of the next contract renewal date.
- 8.3 Dallas County reserves the right to accept, negotiate or reject any price increase and may choose to re-solicit the contract if is deemed to be in the best interest of Dallas County. Upon expiration of the initial term or any period of renewal, the Contractor agrees to hold over the terms and conditions of this Agreement for such a period of time as may be reasonably necessary, but not to exceed 120 days (unless mutually agreed upon in writing by all parties), to renew this Agreement or allow the County to re-solicit this Agreement through the competitive solicitation process.

## 9.0 MINIMUM QUALIFICATION REQUIREMENTS (PASS/FAIL)

Proposer may supply documentation supporting that they meet the Minimum Qualification Requirements and should provide the references so that County can confirm qualifications.

- 9.1 Proposer shall have been actively engaged in the E-commerce business for a minimum of three (3) years within the last five (5) years under its current name and in good standing with a track record of performance and must provide evidence of such in this section. If name changes have occurred in the past ten (10) years, provide these name changes in chronological order.

**Recent start-up businesses do not meet the requirements of this solicitation.**

**NOTE: A start-up business is defined as a new company that has no previous operational history or expertise in the relevant business and is not affiliated with a company that has that history or expertise.**

- 9.2 Proposer shall have the financial strength and rating to secure bonding requirements per "job" with other insurance requirement in accordance to proposal specifications.
- 9.3 Proof of Financial Condition: Proposer will provide annual financial statements for the last two (2) calendar years for your organization. Independently audited statements are preferred. Statements should include the company's assets, liabilities, and net worth. At a minimum, include the Balance Sheet (Statement of Financial Positions), Income Statement (Statement of Operations), Retained Earnings and Cash Flow Statement. Financial statements will be kept confidential, if so stamped on each page.
- 9.4 Proof of all applicable certification to perform services as directed during the course of the contract

- 9.5 **Proposers who do not meet a minimum qualifications (pass/fail) submission requirement as specified above, or has not included minimum qualifications information, their Proposal will be deemed non-responsive after which no further evaluation will occur.**

## **10.0 CONTRACTOR'S RESPONSIBILITY**

### **10.1 General Provisions and Requirements**

Contractor shall furnish all labor, personnel, supervision, services, administration, reports, forms, documentation, materials, supplies, equipment, tools, pay all salaries, wages, taxes including payroll taxes, FICA, benefits, insurance, fees, permits, fuel including fuel surcharges, shipping, transportation, freight, travel time to and from assignments, mileages, parking, tolls, and all other overhead costs including incidentals necessary in accordance with standards, conditions and methods set forth and outlined in this RFP for job order contracting services.

**Minimum Wage Rate:** Contractor shall be required to pay its employees not less than the current Federal Minimum Wage rate or State Minimum Wage Rate (if applicable), whichever is greater. Dallas County reserves the right to inspect and audit the contractor's payroll records to verify compliance with all federal and state wage and hour laws and labor statutes including, but not limited to, payment of minimum wage, payment of overtime, payment of mandatory withholdings. In the event the Federal minimum wage rates are increased, the Contractor may submit a request for increases by providing justifiable documentation addressing the wage rate increases and a list of employee name(s), employment date(s), and current pay rate (s) of the staff assigned to this contract that are affected by the rate increase.

Failure to submit this information within ten (10) days constitutes successful contractor's acknowledgement and understanding that revised Federal or State Minimum Wage Rate or law will not impact its proposal prices throughout the term of contract and waiver of any contractual price increase request(s).

The apparent silence of this specification and any supplement thereto as to details, or the omission of a detailed description concerning any point, will be regarded as meaning only the best commercial practices are to prevail. Only materials of the highest quality, correct type, size, and design are to be used. County reserves the right to require Contractor to use alternate methods or products at no additional cost to the County if satisfactory results are not being achieved.

Any verbal communication with Dallas County employee concerning this RFP is not binding on the Dallas County and shall in no way alter a specification, term or condition of this solicitation. All changes to the specification requirements or scope of services must be approved in writing by an authorized representative Dallas County Purchasing Department and/or Commissioners Court.

Dallas County does not guarantee any quantities to be serviced or worked under this contract. The quantities indicated in the proposal are based on prior year data and may not reflect the actual quantity required during the duration of the contract. Contractor will notify Dallas County immediately if square footage is questionable. All notification must be in writing, signed and dated by an authorized representative of the Contractor.

### **10.2 Background Check, Staff and Personnel**

- **Background Check**
  - Verification of Employment Status
  - Prior to the employment of any person under this contract, the Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to

verify the employment eligibility of (a) all persons employed during the contract term by the Contractor to perform employment duties within Texas and (b) all persons, including subcontractors, assigned by the Contractor to perform work pursuant to the contract with Dallas County. For more information on this process, please refer to United States Citizenship and Immigration Service site at: <http://www.uscis.gov/portal/site/uscis>

- Only those employees determined eligible to work within the United States shall be employed under this contract.
- Contractor acknowledges and agrees to perform background checks on all employees and personnel providing services to the County under this contract at no additional cost to the County (at Contractor expense). "Background check" means, including but not limited to, the research and verification of an individual's employment history, criminal history, identity, driving record history, current and past residences, and any discrepancies contained therein. The following items will be included in a background check, at a minimum:
  - E-Verify all employees and personnel providing services under this contract;
  - Employment history (last ten (10) years);
  - Social Security number verification;
  - Assumed names and aliases search;
  - State criminal records search for an unlimited period of time including court records search, Motor Vehicle Driving Records search, Department of Public Safety search, Department of Corrections search, Administrative Office of Court search, a County criminal records search for all counties of residence, and a Justice of the Peace criminal records search for all precincts of residence;
  - Federal criminal records search for an unlimited period of time, including National Sex Offender Public Registry Search and National Criminal Records Database Search;
  - Current and prior address check; and
  - Employee photo picture
- The background check must be performed and completed seven (7) days prior to each employee or personnel providing services to the County. A copy of the e-verify documentation and background check will be provided to the County and the County will be advised, if: 1) the background check identifies any criminal history, including but not limited to, any warrants, misdemeanor or felony convictions/indictments/arrest/pending charges, deferred adjudication or community supervision, dismissals, or outstanding traffic tickets (3 months or older); or 2) the background check identifies any discrepancy or inconsistency in the information provided, including with the Social Security number or name provided. Copies of all background check results shall be made available to the County.

Contractor shall furnish the County with a completed verification certificate, Dallas County Background Check Verification Certificate ("Certificate"), signed by the Contractor containing the employee/personnel's full legal name, full address, date the background check was performed, and date of hire by the Contractor. The Certificate should be sent to the Dallas County Contract Manager or designated representative via E-mail or in a sealed envelope marked Confidential." The certificate must state that a background check has been performed on the employee/personnel and that the findings are satisfactory. If not satisfactory, the Certificate must state any potential problems (e.g. information discrepancies or inconsistencies, gaps in background, criminal felony or misdemeanor convictions/indictments/arrests/pending charges, outstanding warrants or traffic tickets, wrong or invalid Social Security number, deferred adjudication,



community supervision, etc.) discovered during *the background check. Upon receipt of a Certificate identifying problems with the background check: 1) the County department requesting the personnel will assess the identified issues, pursuant to Dallas County policies and other laws and regulations; and 2) Dallas County Contract Manager will advise the Contractor whether the County or Department will permit the personnel/employee to perform the service.*

- *County's Rights to Further Screen Personnel*
  - In evaluating Contractor's all employees and personnel providing services under this contract suitability for placement, certain County departments/divisions may require additional background checks, including but not limited to, criminal record checks and fingerprinting. These additional background check requirements do not waive any responsibility or obligation of the Contractor under Section 9.5.1, et. seq.
- Section 344.310 of the Texas Administrative Code requires criminal history searches to be conducted on all personnel who may have direct unsupervised contact with youth in juvenile justice facilities and programs prior to being granted access to juveniles, or facilities. Contractors including their employees or individuals who are not licensed by the Texas Department of State Health Services or other state agency must have a fingerprint-based criminal history search conducted from databases maintained by the State of Texas and the Federal Bureau of Investigations for each individual providing services under the Contractor's contract within two (2) years prior to the date of the most recent contract. Contractors including their employees providing services under this contract without a state professional license requirement must submit fingerprint-based criminal history searches through the Texas Department of Public Safety's Fingerprint Applicant Services of Texas (FAST) system. Contractor is responsible for all cost associated with FAST fingerprint based check and criminal record check.
- For positions with access (or potential access) to Criminal Justice Information (CJI) in accordance with the Federal Bureau of Investigation CJIS Security Policy 5.3, as amended, and the Texas Department of Public Safety's CJIS Policy; or (ii) as deemed necessary, at its sole discretion.
- Contractor shall inform all employees and personnel providing services of this contract of the additional background check screening requirements. The additional background check (including fingerprinting) will be the responsibility of the Contractor.

### **10.3 SCOPE OF SERVICES**

- a. Dallas County is seeking a third party solution provider of electronic payment services for integration into the County point-of-sale (POS) terminals for debit/credit transactions, web/on-line systems and pay-by-phone access for the purpose of processing electronic payments. The County anticipates accepting payments from major credit cards (MasterCard, VISA, American Express and Discover), debit cardholders, as well as in the form of electronic checks and Automated Clearing House (ACH) originations. The County will consider accepting other forms of payment the Proposer may offer if the County deems them a beneficial service to either the County or the public.

- b. The solution should maximize and improve the County's ability to efficiently and accurately conduct various types of credit card, debit card, e-check collection transactions, manage financial data, allow for integration into existing County operations, interact and interface with existing Dallas County payment processing and account management systems, improve workflow, maintain data integrity, etc.
- c. A key expectation of this RFP is that the selected Proposer must have the internal and non-delegable capacity to, and will assume direct responsibility for, receiving and processing all of Dallas County's electronic financial transactions and to maintain PCI compliance on all information collected. Proposer must be in compliance and certified compliant with all PCI standards. If circumstances exist where the County will be expected to maintain financial information, the circumstances must be clearly disclosed. The County will work with the awarded Proposer in developing appropriate customer and information links to allow the awarded Proposer to process the payment, provide the customer a confirmation, and provide payment information back to Dallas County for the updating of records.
- d. Dallas County intends to award a single Proposer. The Proposal should include interface solutions if a single or multiple third party application is presented.
- e. This RFP sets forth requirements for these services and solicits a detailed Proposal from Proposer(s) to include functional and technical requirements, implementation services, hardware installation, on-going software maintenance and support, and pricing.
- f. Proposer must be able to provide all services described in this RFP **at no cost to Dallas County**. Any and all fees to be charged for services rendered hereunder must be charged to the customer, in addition to the actual fee, tax, interest and/or penalty being paid to Dallas County. Proposer must describe the method of determining said customer fee as well as providing Dallas County the actual cost that will be charged to the customer.
- g. Proposer shall have a minimum of five (5) year's experience in the development, installation and operation of a credit and debit card processing services.
- h. Proposer will furnish and install all applicable software, hardware, equipment, card processing machines/terminals, data lines, cabling, internet and/or wireless connections, expendable supplies, and provide services related to the training including training material, installation and optimization of the system, subsystems, and other ancillary devices described by this RFP. Proposals must describe all software components, hardware components, services, and tasks required to implement a working, fully functional system, whether supplied by Proposer or Dallas County. Any and all components whether hardware or software required to make the system usable and fully operational that are not described in the Proposal documents as being necessary, shall be provided at Proposer's expense.
- i. Proposer must provide processing for multiple "brands" and types of cards such as, MasterCard, VISA, Discover and American Express. In addition, the Proposer must arrange for and support any agreements required to process debit/ACH transactions from multiple debit networks. Payment collection method type shall include point of sale, on-line internet/web based, and a pay-by-phone solution to be provided by the Proposers.
- j. Project Implementation Schedule
- k. The implementation of a service for an organization of this size and complexity is a significant undertaking. Consideration must be given to the day-to-day operations of Dallas

County, which must not be adversely disrupted. Proposer shall provide an estimate of the timeline needed to complete the system implementation and training, including any lead time before work can begin. Proposer shall not be held responsible for delays in implementation caused by the County. Proposer shall supply approximately two hundred (200) POS terminals at no charge to the County.

**l. System Functionality and Performance**

- m. In addition to basic electronic transaction presentment and processing functions, Proposer's systems shall provide the following minimum functionality:
  - n. At all times make available the option for a customer to stop the information gathering and transaction process.
  - o. Provide an active message to the customer indicating that a transaction has been either accepted or rejected.
  - p. Allow the customer to review charges before final submission.
  - q. Show Proposer fees separately from County charges.
  - r. Provide the capability for the customer to obtain a tangible order confirmation such as a printable form from a web page.
  - s. Allow the customer to try a different card or payment type if a transaction is rejected.
  - t. Provide continuity in appearance and sound of the County's web site to the Proposer's payment screens on their respective web site.
  - u. Populate information that is passed from the County's web site application so that taxpayers do not need to enter duplicate information that they have already provided to the County's application.
  - v. Provide the ability to block certain users, card numbers, account numbers, etc.,
  - w. Provide all services in both English and Spanish, at minimum, and possibly in other languages.
  - x. Processing cut-off periods must be in sync with payment requirements as stated in the Texas Property Tax Code – taxpayers can make payments up to 12 A.M. and receive same day credit.
  - y. Provide electronic acceptance files formatted for auto posting to financial application.
  - z. Provide option for settlement directly with Dallas County's designated depositories through ACH and next day transfer of funds.
- aa. Financial Requirements**
- bb. Settlement Time: Unless otherwise requested by Dallas County, all transaction funds shall be settled and in Dallas County's bank account(s) by ACH before 9:30 a.m. the next business day.

- cc. Separation of Fees from Charges: Proposer's financial systems shall have the ability to itemize separately the County's charges and the Proposer's fees. Dallas County will not be responsible for the collection or remittance of any Proposer fee.
- dd. Multiple Bank Accounts: Upon request of Dallas County, Proposer shall remit collected funds by daily ACH into several different depository bank accounts as defined by Dallas County.
- ee. Exceptions and Charge Backs: Proposer shall provide reasonable processes, systems, and data necessary for either the Proposer and/or Dallas County to adjust credits and debits to the accounts of both Dallas County and the party making the payment. Please describe how you will deal with these. Dallas County will not be responsible to Proposer for any fees or refunds or charge backs.
- ff. Billing Statements: Transaction information appearing on a paying party's monthly credit/debit card statement shall contain sufficient information to equip the paying party to contact either the Proposer or Dallas County to obtain detailed information about their transaction.
- gg. Effectiveness Level: The effectiveness level of a system is defined as the ratio of:
- hh. Effectiveness Level = Amount of time in given period that system is functioning correctly
  - 1. Total amount of time in that period
- ii. The proposed system shall perform at an effectiveness level of 99% or greater, including scheduled maintenance downtime, for each month during the entire Term of the Contract. In the event that the effectiveness level is not met for three (3) consecutive calendar months, Dallas County reserves the right to terminate the Contract without penalty. The system must be available for use 24 hours per day, 7 days per week, 365 days a year, less scheduled maintenance and downtime. Scheduled maintenance shall not occur at the end of any month, or any other time that is deemed critical by Dallas County, and the system must be available 24/7 during the months of October, December and January. The Proposer shall provide a copy of their annual maintenance schedule upon request.
- jj. Proposer must have the ability to process transactions and accept settlement files as required through the appropriate authorization and settlement networks. The method of application shall include standard point of sale equipment, on-line internet/web based application, and various types of software data capture via personal computer. The Proposer shall: (CHIP)
- kk. Provide a pay-by-phone solution.
- ll. Provide an Internet processing solution. Any Proposer's provided internet solution must employ current encryption standards established through ANSI, etc.
- mm. Provide their own merchant bankcard services provider or may choose to process merchant transactions through the County's merchant bankcard services provider (currently Bank of America).
- nn. Provide for the authorization and settlement of transactions through the appropriate authorization and settlement networks.
- oo. Provide research and problem resolution to transaction and/or settlement discrepancies such as copy requests and charge backs. Handle all charge backs and returns/reversals on behalf of the Dallas County.

pp. Payment file format must be compatible with the Dallas County Tax Office's Property Tax Collections System (ACT) in order to update tax accounts via daily lockbox files.

qq. Must have the capability to accept property tax account numbers up to 17 digits, both numeric and alpha characters.

rr. Transaction File/Lockbox File Layout:

Proposer shall provide to the County an electronic data file of all transactions. The file shall use the American Standard Code for Information Interchange (ASCII) standard, be fixed-length delimited, and contain the following minimum information:

<b>Field Name</b>	<b>Length</b>
Agency ID	6
Merchant ID	16
Application ID	6
Sub-application ID	6
Agency/Dept Defined 1	20
Agency/Dept. Defined 2	20
Agency/Dept. Defined 3	20
Transaction ID	23
Customer Name	25
Date and Time	14
Payment Type	2
Total Amount	13
County Charges Amount	8
Proposer Fees Amount	8
Card Type	2
IIN / BIN the first 6 digits	6
Last four digits of card number	4
Authorization Code	2

The transaction file shall contain all of a day's transactions up to an agreed upon time (e.g. 12:00 A.M.). All transactions after the agreed upon time shall appear in the next day's transaction file. Proposer shall make the transaction file available to the County departments no later than 8:00 A.M., Central Standard Time on the following business day. The file shall reside on computer equipment ("Transaction File Server") that is protected from unauthorized access by means of a firewall. Dallas County's access to the files shall be a password protected 128-bit encrypted, non-degradable, Secure Sockets Layer (SSL), connection. In no event shall the payer's full credit/debit card number be passed through the County's network. Upon request of Dallas County, and at the expense of Proposer, Proposer shall agree to have annual security audits conducted by a third party who shall be chosen by Dallas County.

#### **Data Capture Capabilities**

- Proposer will be responsible for customer authentication, payment authorization, security, error processing, and reports.
- Proposer shall have an automated system in place to capture all payment processing transaction data for descriptive billing, management reporting, and exception reporting purposes.

- Proposer shall provide the County with the capability to securely access, via password-protected site, real-time transaction information, generate reports with user defined parameters, exportable to excel and CRM (Customer Resource Management) a MicroSoft data base application.
- All financial data and information regarding actual collections provided to Dallas County from Proposer shall maintain an accuracy level of 100%. Proposer shall not be responsible for any data or information that it provides to Dallas County which reflects inaccurate information provided to it by either the County or a taxpayer.
- Payment history must be archived for no less than twelve months.

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### **Reporting Capabilities**

- Reporting capabilities must be flexible enough to allow Dallas County the option to choose the report that best meets their specific needs.
- Provide custom daily, weekly, and monthly detail and summary reports electronically to the Dallas County the information needed to receipt the payment to the proper accounts. Reports should also be available via facsimile or regular mail if electronic reporting is not available for all reports that may be needed. Reports should be available for download for 60 days.
- Provide a monthly report to the appropriate Accounting Divisions of Dallas County and the Auditor's Office summarizing the activity of all payment channels by card type and issuing agency that includes gross sales, returns, net sales, total transaction counts, transaction type (i.e. online, POS, debit cards, credit cards, ACH, e-check) as well as any declined, rejected and failed transactions. This report must include all card types.
- Provide exception reports of transactions that exceed control parameters to assist in the detection of fraud and misuse.
- Proposer shall retain authorization logs and transaction records for such period of time as required by applicable law, regulations, and Dallas County policies. The Proposer shall establish and maintain adequate records of all expenditures incurred under the Contract. All records shall be kept in accordance with generally accepted accounting principles. All procedures shall be in accordance with federal and State laws, local ordinances and County regulations. Throughout the Term of the Contract, Dallas County shall have the right at any time upon reasonable prior written notice to inspect Proposer's transaction records for Dallas County charges and associated Proposer fees. Any such inspection shall be made during regular business hours and comply with any reasonable security and confidentiality procedures of Proposer.

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### **Security, Back-up and Compliances**

- Proposer is responsible for ensuring that appropriate security and encryption technology measures, features, mechanisms, and assurances are in place to safeguard the County's, as well as the payers' public information assets. This does not replace the obligation of the Proposer to comply with all of the County's security policies and standards.
- Proposer shall have industry standard security and control procedures in place to ensure the use of the debit/credit card is legitimate.



- Proposer will be required to provide a description of downtime procedures in the event that POS terminals or communication links are not operational. Provide a detailed description of root cause of interruptions to operations.
- All networks being utilized to provide services and to process transactions pursuant to this RFP must meet or exceed industry standards and is audited annually for confirmation of PCI Level 1 compliance, the highest possible level.
- Proposer systems, software, processes and partners must adhere to the stringent requirements of the national Cardholder Information Security Program (CISP) and maintain full Payment Card Industry Data Security Standard (PCI DSS) compliance, AMEX Data Security Operations Policy (DSOP) and MasterCard Security Rules and Regulations. This insures that all transaction information will be protected from those not directly involved in the processing of a payment. The Proposer must include acknowledgement of responsibility for the security of cardholder data.
- All transactions processed must be in accordance with and governed by applicable federal, state and local statutes, rules and regulations, including NACHA operating rules and Federal Reserve Bank Regulation E.
- Provide a copy of privacy policy to all users and to payers upon request.
- Proposer must adhere to and abide by to the rules, requirements and restrictions of Visa, MasterCard, American Express and Discover as regards fees on debit cards, credit cards and other payments types.
- Must be fully in compliance with Texas Local Government Code, Sections 130.0045 and 130.0046.

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#### **Restrictions and Limits**

- Proposer shall set control parameters for all payment processing services to the Dallas County's specifications.

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#### **Liability**

- The County shall not be liable, nor shall it be financially responsible for any charges whatsoever that have been incorrectly authorized.
- Technical Support
- Proposer shall provide a single point of contact for account management during the hours 8:00 am-5:00 pm (CST) Monday through Friday.
- Proposer is responsible for providing live technical response to Dallas County and to the general public, i.e. payers, within one hour and resolution to problem or performance issues within 24 hours of the time the problem is reported. Technical response should be available from 6:00 a.m. – midnight (CST), daily, every day of the year, to Dallas County and the general public, i.e. payers.

- Any planned upgrades and/or maintenance of the system will require 72-hour advanced notice from the Proposer to Dallas County and the general public, via e-mail and posting on the all applicable payment website.
- Shall keep all appropriate Dallas County officers and officials informed in a timely manner of all process or system changes required by the payment credit card industry.
- Shall have adequate backup and Disaster Recovery plans as dictated by industry best practices and provide sample of plans.
- Responsible for coordinating repairs among multiple vendors.
- Shall assume responsibility for the performance of all online and backup equipment, materials, labor, software and programs
- Provide all updates and upgrades to the system during the Contract at no cost to Dallas County.

### **Customer Service Support**

- Proposer shall provide a Customer Support Center (CSC) that County constituents and payers may call. The CSC shall have the capability to answer questions from callers and Dallas County directly regarding the services provided by Proposer hereunder. The CSC shall also have the capacity and capability to direct callers and payers to the appropriate County offices and resources for non-billing issues. The CSC shall have the following minimum requirements:
- Toll free phone number(s) for access to CSC attendants and/or pay-by-phone services.
- CSC shall meet or exceed industry standard performance metrics for service levels including but not limited to the number of busy signals, average time that a call is placed on hold, average number of calls resolved on the first call, and call-back times.
- Self-serve options to customers via a website and/or pay-by-phone channel.
- Secure access to real-time transaction data, as necessary to research a given transaction.
- Maintain a log of all calls received.
- Attend phones at all times, that is every day of the year and around the clock availability.
- Support at minimum Spanish and English languages, with more being of greater service to County and its payers.

### **Personnel Resources**

- Proposer shall provide committed and dedicated appropriate personnel and other resources to ensure that services will be provided in an efficient and problem-free manner.
- Proposer shall have committed and dedicated assigned staff to handle account reconciliation and database issues, concerns and updates.

### **Training**

- Proposer shall provide appropriate and sufficient training as relates to payment and credit/debit processing requirements, such as procedures for handling retrieval requests, charge backs, accessing reports and transaction data, and/or other processes and procedures which may be required. Said training shall be at no cost to Dallas County.
- Proposer shall provide training on the utilization of the payments processing system software, hardware, terminals, and all other system functionalities. Said training shall be at no cost to Dallas County.
- Proposer shall provide full and comprehensive training regarding all aspects of its systems, services, operational protocols, and the like, to include the provision of all training materials. Said training shall be at no cost to Dallas County.
- Proposer shall continue to provide ongoing comprehensive training support for any new or expanded programs as well as other refresher courses to the Program Administrators as needed or requested by Dallas County. Said training shall be at no cost to Dallas County.
- Proposer shall coordinate training with Dallas County's designated representatives and liaisons.
- Dallas County shall provide training facilities.

## **11.0 STANDARD TERMS AND CONDITIONS**

### **11.1 INCORPORATION OF PROPOSAL INTO THE CONTRACT**

The contents of the RFP, and the selected Proposer's Proposal, cost, exhibits, and negotiated changes and any other attachments will be incorporated, in entirety, into the future formal Contract. The Contract constitutes the entire agreement between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written.

### **11.2 FORMAL REQUIREMENTS CONTRACT NECESSARY**

Proposer agrees that any Contract resulting from this RFP and award will be the formal requirements Agreement between Contractor and County.

The RFP or any resulting award does not guarantee any acceptance of products or services and does not guarantee that any purchases of products or services will be made.

### **11.3 BINDING EFFECT**

This Agreement and the respective rights and obligations of the Parties hereto shall inure to the benefit and be binding upon the successors and assigns of the Parties hereto, as well as the Parties themselves.

### **11.4 ACCEPTANCE – REJECTION**

County reserves the right to accept or reject any or all proposals, to waive any defect, irregularity, informality or technicality in any proposal submitted, and to accept any part of a proposal as deemed to be in the best interests of County.

### **11.5 COLLUSION**

Contractor expressly warrants and certifies that neither the Contractor/Proposer nor its employees or associates has directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competition in conjunction with the Proposal or Contract. This paragraph does not however, preclude two or more supplier of certain parts of the requirements from presenting a combined or joint proposal for the purpose of providing a complete Proposal.

#### 11.6 FISCAL FUNDING

Notwithstanding any provisions contained herein, the obligations of the County under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein for the Term of the Agreement and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to Contractor at the earliest possible time pursuant to Section 13.19.

#### 11.7 FEDERAL FUNDED PROJECT

If this Agreement is funded in part by either the State of Texas or the federal government, Contractor agrees to timely comply, without additional cost or expense to County, unless otherwise specified herein, with any statute, rule, regulation, grant, contract provision or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the work or services rendered under the terms of this Agreement.

#### 11.8 FEDERAL DEBARRED

No products or services utilizing Federal funds may be procured from Contractors that are listed (debarred or otherwise suspended) on System for Award Management (SAM) formerly known as the Federal Excluded Parties List. Government requirements for non-procurement suspension and debarment are contained in the OBM guidance 2CFR, part 180 that implements Executive Orders 12549 and 12689 Debarment and Suspension. County reserves the right to reject from award consideration and/or terminate any Agreement with any Contractor found to be suspended, ineligible or debarred as outlined herein.

#### 11.9 PREVENTION OF FRAUD AND ABUSE

Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or program abuse involving Contractor's employees or agents shall be reported immediately to the County by Contractor. Moreover, Contractor warrants to be not listed on a local, county, state or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Contractor and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Agreement does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Contractor shall, upon notice by County, refund expenditures of the Contractor that are contrary to this Agreement and deemed inappropriate by the County.

#### 11.10 FORCE MAJEURE

Neither party hereto shall be held responsible for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence"). Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

#### 11.11 FAIR LABOR STANDARDS

**CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE PROVISIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT AND SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM ANY AND ALL LIABILITY, INCLUDING, BUT NOT LIMITED TO, WAGES, OVERTIME PAY, LIQUIDATED DAMAGES, PENALTIES, COURT COSTS, AND ATTORNEYS' FEES ARISING UNDER ANY WAGE AND HOUR LAW, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL FAIR LABOR STANDARDS ACT, FOR WORK PERFORMED BY CONTRACTOR'S EMPLOYEES FOR WHICH THE COUNTY MAY BE FOUND JOINTLY OR SOLELY LIABLE.**

#### 11.12 DEFAULT/CUMULATIVE RIGHTS/MITIGATION

It is not a waiver of default if the non-defaulting Party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy at law or in equity. These rights and remedies are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. Contractor has a duty to mitigate damages.

#### 11.13 PERMITS AND LICENSES

Contractor shall secure and pay for all fees for all necessary statutory and regulatory authorizations, permits, approvals, certifications, licenses, and insurance required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations that are required in order to perform the work or services stated in Agreement. Contractor shall maintain these licenses and permits in effect for the Term of this Agreement and any renewals. Contractor will notify County immediately of loss or suspension of any such licenses and permits. Failure to maintain a required license or permit may result in immediate termination of this Agreement.

#### 11.14 COMPLIANCE WITH LAWS

In providing work and services required by this Agreement, Contractor must observe and comply with all applicable federal, State, and local statutes, ordinances, rules, regulations, licenses, legal certifications, or inspections required for the work or services, facilities, equipment, or materials, and all applicable federal, state, and local statutes, ordinances, rules, and regulations.

#### 11.15 AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto with final approval by the Dallas County Commissioners Court through Court Order. Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

#### 11.16 GOVERNING LAW AND VENUE

The validity and interpretation of this Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable and enforceable in Dallas County, Texas where the principal office of County is located and the state courts of Dallas County shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the Parties that may be brought, or arise out of, in connection with, or by reason of this Agreement

#### 11.17 INSURANCE – POLICIES, COVERAGE, ENDORSEMENT AND REQUIREMENT

11.17.1 Without limiting any of the other obligations or liabilities the Contractor at its own expense shall purchase and maintain for the duration of the Agreement the herein stipulated minimum levels of insurance coverage and shall likewise ensure that all of his Consultants, Subcontractors and their Sub-subcontractors (collectively own as “Contractor”) purchase and maintain such insurance, as will protect them from claims set forth below which may arise out of or result from the Contractor's operations under the Agreement, whether such operations are carried out by the Contractor, by any Consultant, Subcontractor, or by anyone directly or indirectly employed by the Contractor or any Subcontractor, or by anyone for whose acts any of them may be liable. Contractor is responsible for payment of all deductibles and retentions associated with the claims filed.

Contractor agrees that the insurance requirements specified herein do not reduce the liability Contractor has assumed in any indemnification or hold harmless section of this contract agreement.

11.17.2 As a condition precedent to commencement of any work or services under this Agreement, within ten (10) calendar days after the award or execution of the Agreement, Contractors’ shall furnish, to the Dallas County Purchasing Agent (at the same address given below under the Insurance heading) the following minimum insurance coverage that show County as the certificate holder and covers the period of the Term of this Agreement and any renewals:

11.17.2.1 **Workers’ Compensation Insurance:** That meets the statutory requirements of the Texas Workers’ Compensation Act, or if self-insured, then Contractor must provide to County evidence of a certificate issued by the Workers’ Compensation Commission approving such self-insurance. If Contractor has no employee (as defined by the Texas Workers’ Compensation Act), Contractor shall provide County with a sworn Affidavit stating that there is no employee in lieu of a Certificate of Insurance. In the event that any work is sublet, Contractor shall require the subcontractors to similarly provide Workers’ Compensation Insurance for all of the subcontractors’ employees unless such employees are afforded protection by Contractor. Contractor shall bear the burden of all workers compensation coverage for all of its subcontractors and the subcontractors’ employees who do not have workers’ compensation coverage. Contractor also represents that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with an appropriate insurance carrier, or in the case of self-insurance, with the Texas Workers’ Compensation Commission. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

Types of Coverage	Limits of Liability
Workers’ Compensation	Statutory
Employer’s Liability	
Bodily injury by Accident	\$500,000.00 Each Accident



Bodily injury by Disease	\$500,000.00 Each Employee
Bodily injury by Disease	\$500,000.00 Policy Limit

Policies under this Section shall apply to State of Texas and include the following endorsements in favor of Dallas County:

- a. Waiver of Subrogation
- b. Thirty (30) day Notice of Cancellation

- 11.17.2.2 **Commercial General Liability Insurance:** Contractor shall maintain Commercial General Liability or Broad Form Comprehensive General Liability (including a Broad Form CGL endorsement) Insurance coverage for the following: (a) Premises Operations; (b) Independent Contractors or Consultants; (c) Products and Completed Operations; (d) Personal injury; (e) Contractual Liability; (f) Broad form property damage, to include fire legal liability. Such insurance shall carry in an amount not less than One Million and 00/100 (\$1,000,000.00) for bodily injury (including death), property damage, and blanket contractual coverage per occurrence with a general aggregate of Two Million and 00/100 (\$2,000,000.00) and products and completed operations aggregate of Two Million and 00/100 (\$2,000,000.00).

Policies under this Section shall apply to State of Texas and include the following endorsements in favor of Dallas County:

- a. Waiver of Subrogation
- b. Thirty (30) day Notice of Cancellation
- c. Additional Insureds: Dallas County and its elected and appointed boards, officers, officials, agents, representatives, directors, employees and volunteers.

- 11.17.2.3 **Automobile Liability Insurance** covering all owned, hired and non-owned automobiles used in connection with work with limits not less than One Million 00/100 (\$1,000,000.00) Combined Single Limit of Liability for Bodily Injury and Property Damage. Such insurance is to include coverage for loading and unloading hazards.

Policies under this Section shall apply to State of Texas and include the following endorsements in favor of Dallas County:

- a. Waiver of Subrogation
- b. Thirty (30) day Notice of Cancellation
- c. Additional Insureds: Dallas County and its elected and appointed boards, officers, officials, agents, representatives, directors, employees and volunteers.

11.17.2.4 .

- 11.17.2.5 **Umbrella Liability Coverage (Excess Liability)** in an amount not less than \$10,000,000.00 per occurrence

- 11.17.2.6 **Crime Policy/Fidelity Bond:** Proposer shall procure and maintain, at its sole cost and expense, a Crime Policy/Fidelity Bond covering property of clients for inside/outside premises, including theft via electronic means; money & securities; depositors forgery; covering each employee of Proposer, whether or not they are compensated. The fidelity bond may be either a primary commercial blanket bond or a blanket position bond written by an insurer licensed by the Texas Insurance Commissioner. Proposer shall name Dallas County as Loss Payee. The fidelity bond shall provide a minimum coverage equivalent to Two Million Dollars (\$2,000,000) for each occurrence. Proposer shall maintain the fidelity bond for the duration of the Contract.

- 11.17.2.7 Should the County exercise any Agreement extension option for additional Agreement terms, it will be Contractor's responsibility to have the Surety Company provide to County confirmation of the existing bond or provide a new bond, if applicable
- Except Workers Compensation and Professional Liability, name Dallas County and its elected and appointed boards, officers, officials, agents, representatives, directors, employees and volunteers as additional insured(s) (as the interest of each insured may appear) as to all applicable coverage.
  - All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of the contract is satisfactorily completed and formally accepted.
- 11.17.2.8 All insurance coverage shall be on a per occurrence basis, if coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims -made and indicate the retroactive date. The coverage shall be continuous for the duration of the Agreement and for not less than three (3) years following the end of the Agreement. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the Agreement.
- 11.17.2.9 Contractor shall be solely responsible for the deductible and/or self-insured retention.
- 11.17.2.10 Contractor insurance policies will be written on a primary basis and be non-contributory with any other insurance coverages and/or self-insurance carried by Dallas County.
- 11.17.2.11 Provide for thirty (30) days' notice to County for cancellation, non-renewal or material change.
- 11.17.2.12 Provide for endorsement that the "other insurance" clause shall not apply to County where County is the additional insured on the policy.
- 11.17.2.13 Provide notice to the County of any material changes to policy.
- 11.17.2.14 Contractor agrees to waive subrogation against Dallas County, its officers and employees for injuries, including death, property damage or any other loss.
- 11.17.2.15 Default/Cumulative Rights/ Mitigation. It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. Contractor has a duty to mitigate damages.
- 11.17.2.16 Approval and acceptance of Contractor's services or work by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor for the accuracy and competency of Contractor's Services or Work; nor shall such approval and acceptance be deemed to be an assumption of such responsibility by County for any defect, error or omission in the services performed by Contractor in this regard.
- 11.17.2.17 Contractor shall provide that all provisions of this contract concerning liability, duty and standard of care, shall be underwritten by contractual liability coverage sufficient to include obligation within applicable policies.

- 11.17.2.18 Contractor and their freight contractors must be prepared to show coverage verification prior to entering upon County premises.
- 11.17.2.19 Failure to comply with lawful requirements or adequate liability requirements may result in delay of payments, subject to the orders of the Commissioners Court, not to exceed a period of up to two years from the termination of the contract, or cancellation of the contract or both (Dallas County Commissioners Court Order 2003-1792, September 30, 2003).
- Insurance Certificates: The certificates of insurance shall list County as the certificate holder. Any and all copies of Certificates of Insurance shall reference any applicable RFP (Request for Proposal) number for which the insurance is being supplied. All insurance policies or duly executed certificates for the same required to be carried by Contractor under this Agreement, together with satisfactory evidence of the payment of the premium thereof, shall be delivered to the **Dallas County Purchasing Agent located at the 900 Jackson St. Suite 680 Dallas, Texas 75202**, within ten (10) calendar days of execution and/or renewal of the Agreement and upon renewals and/or material changes of such policies, but not less than fifteen (15) calendar days prior to the expiration of the term of such coverage, or such non-delivery shall constitute a default of this Agreement subject to immediate termination at County's sole discretion.
  - All insurance required to be carried by Contractor and/or subcontractors under this Agreement shall be acceptable to County in form and content, in its sole discretion. All policies shall be issued by an insurance company acceptable and satisfactory to County and authorized to do business in the State of Texas. Acceptance of or the verification of insurance by County shall not relieve or decrease the liability of the Contractor.
  - Minimum insurance is a condition precedent to any work or services performed under this Agreement and for the entire Term of this Agreement, including any renewal or extension. In addition to any and all other remedies County may have upon Contractors failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, or such insurance lapses, is reduced below minimum requirements or is prematurely terminated for any reason, County shall have the right to:
    - Order Contractor to stop work hereunder, which shall not constitute a Suspension of Work and Services;
    - Withhold any payment(s) which become due to Contractor(s) until Contractor(s) demonstrates compliance with the requirements and assurance and proof acceptable to County that there is no liability to County for failure to provide such required insurance;
    - At its sole discretion, declare a material breach of this Agreement, which, at County's discretion, may result in:
      - Termination of this Agreement
      - Demand on any bond, as applicable;
      - The right of County to complete this Agreement by contracting with the "next low proposal." Contractor will be fully liable for the difference between the original Agreement price and the actual price paid, which amount is payable to County by Contractors on demand; or
      - Obtain such insurance and deduct from the payments to Contractor(s) the expense of obtaining such insurance and the cost of insurance premiums. However, neither Contractor(s) nor any third party shall have any recourse against County for payment of any premiums or assessment for any deductibles, or payment of any amount that would

have been payable by any such insurance, as all such liability, cost, expense, premiums and deductibles are the sole responsibility and risk of the Contractors; and Any combination of the above.

- Contractor shall promptly advise County in writing of any claim or demand, against County or Contractor, known to Contractor related to or arising out of Contractor's activities under this Agreement.
- Approval, disapproval or failure to act by County regarding any insurance supplied by Contractor shall not relieve Contractor of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Contractor from liability.
- Acceptance of the work or services, or failure to act by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, associates, agents or subcontractors for the accuracy and competency of their work or services; nor shall such acceptance be deemed an assumption of responsibility or liability by County for any defect in the services performed by Contractor, its employees, subcontractors, and agents.
- Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work or services covered under this Agreement.
- Survival: The provisions of this Section 13 shall survive completion, suspension, termination or expiration of this Agreement, or any determination that this Agreement or any portion hereof is void, voidable, invalid or unenforceable.
- Insurance Lapse: Pursuant to Section 94.73 of the Dallas County Code, in the event Contractor fails to maintain insurance as required by this Agreement, Contractor shall immediately cure such lapse in insurance coverage at Contractor's sole expense, and pay County in full for all costs and expenses incurred by County under this Agreement as a result of such failure to maintain insurance by Contractor, including costs and reasonable attorney's fees relating to County's attempt to cure such lapse in insurance coverage. Such costs and attorney's fees, not to exceed One Thousand Five Hundred Dollars and 00/100 dollars (\$1,500.00), shall be automatically deducted from monies or payments owed to Contractor by County. Moreover, the County shall retain five percent (5%) of the value of the Agreement that shall be placed into an account from monies or payments owed to Contractor by County to cover County's potential exposure to liability during the period of such lapse. The retainage shall be held by County until six (6) months after the Term of the Agreement has ended or has otherwise been terminated, cancelled, or expired and shall be released if no claims are received or lawsuits filed against County for any matter that should have been covered by the required insurance

**Contractor further agrees to indemnify County for any penalties, fines, jury awards, court costs, litigation expenses, and attorneys' fees incurred by County due to Contractor's failure to maintain the required insurance at all times during the Term of the Agreement. Contractor after proper notice, at its own expense with legal counsel of County's choice, will defend and hold County harmless in any claim or action against County that occurred as a direct or indirect result of Contractor's failure to maintain insurance at all times during the Term of the Agreement. Without waiving any rights under Sovereign Immunity, the County shall cooperate with and may monitor Contractor in the defense of any claim, action, or proceeding and will, if appropriate, make employees available as Contractor may reasonably request with regard to such defense, subject to the reimbursement by Contractor of all costs and**

expenses occasioned by the County's cooperation in such defense. Contractor agrees not to settle any such claim without the County's consent, which consent will not be unreasonably withheld or delayed.

#### 11.18 INDEMNIFICATION

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR CONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

IT IS MUTUALLY UNDERSTOOD AND AGREED THAT THE ASSUMPTION OF LIABILITIES AND INDEMNIFICATION PROVIDED FOR IN THIS AGREEMENT SHALL INDEFINITELY SURVIVE ANY EXPIRATION, COMPLETION OR TERMINATION OF THIS AGREEMENT. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

Approval and acceptance of Contractor's services by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor for the accuracy and competency of their services; nor shall such approval and acceptance be deemed to be an assumption of such responsibility by County for any defect, error or omission in the services performed by Contractor in this regard. Contractor shall defend, hold harmless and indemnify County for damages resulting from such defects, errors or omissions.

**No Indemnification by County:** Contractor acknowledges and agrees that County does not have the ability under Article XI, Section 7 of the Texas Constitution to indemnify Contractor or any other third party for damages arising under this Agreement.

Survival: These provisions shall survive completion, suspension, termination, expiration and/or cancellation of this Agreement, or any determination that this Agreement or any portion hereof is void, voidable, invalid or unenforceable.

#### 11.19 TERMINATION FOR CONVENIENCE

County may terminate the Agreement for convenience. County shall exercise its termination option by delivering to Contractor written notice of such termination identifying the termination date which shall be at least thirty (30) days after the date of such notice. In connection with any such termination County shall have no liability to Contractor for amounts in excess of the normal charges through the date of termination. After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall: (i) Stop work under this Agreement not less than fifteen (15) days from the date of the County's notice of termination to the extent specified in such notice, and (ii) Complete performance of such part of the work and services as shall not have been terminated by such notice.

If County determines that the Contractor's actions contribute to the curtailment of an essential service or pose an immediate threat to life, health or property, County may terminate this Agreement immediately without penalty upon issuing either oral or written notice to the Contractor and without any opportunity to cure. In no event shall the County be liable for costs incurred by the Contractor as a result of the termination or any loss of profits on the resulting order or portion thereof so terminated.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other materials (collectively referred to as "materials") prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County within ten (10) days.

Contractor shall have the right to terminate this Agreement for convenience with ninety (90) days written notice to County and shall include in such notice the reasons for cancellation. Upon cancellation or termination by Contractor, the Contractor shall bring buildings or facilities up to the County's required level of satisfaction.

Such notice of termination shall be by registered or certified mail, return receipts requested, and will be deemed given upon receipt of such notice by the other party.

#### 11.20 TERMINATION FOR INSOLVENCY

County shall have the option to terminate this Agreement in its entirety if Contractor: (i) becomes insolvent or is unable to meet its debts as they mature; (ii) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors; (iii) files an answer or other pleading admitting, or fails to deny or contest, the material allegations of an involuntary petition filed against it pursuant to any applicable statute relating to bankruptcy or reorganization; (iv) is adjudicated bankrupt or shall make an assignment for the benefit of its creditors generally; (v) applies for, consents to or acquiesces in the appointment of any receiver or trustee for all or a substantial part of its property any such receiver or trustee appointed is not discharged within thirty (30) days after date of such appointment.

#### 11.21 TERMINATION FOR DEFAULT OR NON-PERFORMANCE

County shall have the option to terminate this Agreement, for cause: (i) for a material breach or non-performance of this Agreement by Contractor that is not cured by Contractor within ten (10) days of the date on which County provides written notice of breach; (ii) for a material breach of this Agreement by Contractor that is not reasonably subject to cure within ten (10) days after its



occurrence; (iii) violation by Contractor of any applicable laws or regulations; (iv) assignment or delegation by Contractor of the rights or duties under this Agreement without the written consent of County; (v) less than perfect tender of delivery or performance by Contractor that is not in strict conformance with terms, conditions, specifications, covenants, representations, warranties or requirements in this Agreement or (vi) if it is determined by County, that there exists a plurality of non-material breaches by Contractor that have a material adverse impact on the work or services provided under this Agreement.

In the event that County terminates this Agreement in whole or in part as provided herein, the County may procure, upon such terms and in such manner as County may deem appropriate, goods and services similar to those so terminated. Contractor shall be liable to County for any and all excess costs incurred by County, as determined by County, for such similar goods and services. If a failure described in this Section 11.21 is not cured to the County's satisfaction within ten (10) days from the time of receipt of such notice as described in this Section 11.21, the County shall have the right to terminate immediately without the requirement of further notice. If, after notice of termination under the provisions of this clause, it is determined for any reason that the Contractor was not in default under this provisions of this clause, the County has the option to make its notice of termination pursuant to the Termination for Convenience clause in Section 11.19 above and the rights and obligations of the Parties would be in accordance with that provision.

In addition and as authorized by Commissioners Court, Contractors terminated for nonperformance will be disbarred from award consideration on future county solicitation for a period of thirteen (13) months (minimum)

#### 11.22 TERMINATION FOR LACK OF OR REDUCTION FUNDING

In the event that funds, in whole or in part, are not available to begin or to continue this Agreement at the level of services specified, the County may immediately terminate or amend this Agreement. The County shall not be obligated to pay for any services rendered after the Contractor has received written notice of termination pursuant to this section.

#### 11.23 MONETARY RESTITUTION

In the event this Agreement is prematurely terminated due to breach, non-performance or withdrawal by the Contractor, County reserves the right to seek monetary restitution (to include but not limited to; withholding of monies owed) from the Contractor to cover costs for interim services or to cover the difference of a higher cost (difference between termination Contractor's rate and new company's rate) beginning from the date of Contractor's termination through the Agreement expiration date. In the event civil suit is filed to enforce this provision, County will seek its attorney's fees and cost of suit from the Contractor.

#### 11.24 TAXES

The County, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Texas Local Government Code § 151.309, and shall therefore not be liable or responsible to Contractor for the payment of such taxes under this Agreement. The fees paid to Contractor pursuant to this Agreement are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable Effective Date of this Agreement and based upon or measured by Contractor's cost in acquiring or providing products or services and related materials and supplies furnished or used by Contractor in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor. Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or

hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by Contractor for work performed under the terms of this Agreement **AND AGREES TO INDEMNIFY AND SAVE HARMLESS THE COUNTY FROM ANY SUCH CONTRIBUTION OR TAXES OR LIABILITY.**

#### 11.25 AUTHORITY TO TRANSACT BUSINESS IN THE STATE OF TEXAS

Pursuant to Sec. 9.001 of the Texas Business Organization Code, non-Texas entities, including, but not limited to corporations, limited partnerships, and limited liability companies must have an application for registration filed with the Texas Secretary of State and shall provide to Dallas County a Certificate of Status issued by the Texas Secretary of State that serves as official evidence of the entity's existence or authority to transact business in Texas.

Contractor agrees, represents, and warrants it currently has the legal authority to transact business in the State of Texas as a domestic corporation. Contractor shall maintain the legal authority to transact business in the State of Texas for the Term of this Agreement. Contractor shall provide proof of Contractor's current registration status from the Texas Secretary of State and the Comptroller for the State of Texas.

#### 11.26 SALARIES AND EXPENSES RELATING TO THE SUCCESSFUL CONTRACTOR EMPLOYEES

Contractor shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the Agreement. The successful Contractor further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.

#### 11.27 WITHHOLDING OR RETURN OF PAYMENT

Dallas County reserves the right to withhold payment to the Contractor or to require Contractor to return payment(s) received from Dallas County in the event Contractor performance does not comply with the provision of this agreement. Contractor agrees to return any unearned amounts paid by Dallas County within thirty (30) days following the final date of the Agreement period or within thirty (30) days following Dallas County delivery of a notice to the Contractor that amounts paid to be returned.

#### 11.28 BILLING

Contractor will invoice Dallas County on a monthly basis. Invoices shall be submitted to the Dallas County Auditor's Office at 1201 Elm Street, 23<sup>rd</sup> Floor, Suite 2300, Dallas, Texas 75270.

#### 11.29 PAYMENT TERMS

Payment will be made upon receipt and acceptance by County of completed services and/or products ordered and receipt of a valid invoice, in accordance with the Texas Government Code, Chapter 2251.

Invoices shall be verified and approved by the Dallas County authorized representative and subject to routine processing requirements. Payments made by County shall not preclude the right of Dallas County from thereafter disputing any items involved or billed under this Agreement and shall not be construed as acceptance of any part of the services and/or goods. Dallas County requires timely and accurate accounting and billing information.

County reserves the right to withhold payment for incomplete or unacceptable work. County shall provide notice of any work that is deemed to be incomplete or unacceptable, for which the Contractor shall rectify that condition to the satisfaction of County. County will also reduce the bill for any services deemed unsatisfactory. At no time will penalty assessment be recoverable by the Contractor. The Contractor shall take all proper precautions to protect County and private property from damage and/or loss. Should any damage to, and/or loss of, property be caused by the Contractor, the Contractor will be required to make repairs and/or restitution immediately at its own expense.

All invoices must reference the Dallas County Purchase Order Number (if applicable)

#### 11.30 PROMPT PAYMENT ACT

Contractor agrees that a temporary delay in making payments due to the County's accounting and disbursement procedures shall not place the County in default of this Agreement and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) days after its due date. Any payment not made within thirty (30) days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

#### 11.31 INDEPENDENT CONTRACTOR

Contractor, including its agents or employees, agree Contractor is an independent contractor and not an agent, servant, joint enterpriser, joint venture or employee of the County, and is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work and services covered under this Agreement.

#### 11.32 SUBCONTRACTING

Contractor may not enter into agreements with subcontractors or consultants for delivery of the designated work and services outlined in this Agreement without prior written consent of the County, which consent shall not be unreasonably withheld. The costs of all subcontracted services are included in the fees paid herein. Subcontracts or Consulting agreements, if any, entered into by the Contractor will be in writing and subject to all requirements herein. Contractor agrees that Contractor is solely responsible to County for the performance of this Agreement. Contractor shall pay all subcontractors and consultants in a timely manner. County shall have the right to prohibit Contractor from using any subcontractor or consultant.

#### 11.33 ASSIGNMENT

Contractors' assures that it will not transfer, assign any of rights, obligations or its interest in this Agreement without prior written consent and approval by the Dallas County Commissioners Court. Contractors' understands that in the event that all or substantially all of Contractors' assets are acquired by another entity, Contractors' is still obligated to fulfill the terms and conditions of this Agreement. County approval to transfer or assign Contractors' interest in this Agreement to an entity that acquires all or substantially all of Contractors' assets is subject to formal approval by the Dallas County Commissioners Court.

#### 11.34 THIRD PARTIES

The obligations of each Party to this Agreement shall inure solely to the benefit of the other Party, and no other person or entity shall be a third party beneficiary of this Agreement or have any right to enforce any obligation created or established under this Agreement.

#### 11.35 NON EXCLUSIVITY

This Agreement is non-exclusive and shall not in any way preclude County from entering into similar agreements or arrangements with other vendors, contractors, or from acquiring similar, equal or like goods or services from other entities or sources including state contracts.

#### 11.36 LITIGATION

In the best interest of the Dallas County, any Contractor who is currently involved, either directly or indirectly, with any litigation against or involving Dallas County may be disqualified and/or not considered for an award.

#### 11.37 SOVEREIGN IMMUNITY

This Agreement is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the County has by operation of law. Nothing in this Agreement is intended to benefit any third party beneficiary.

#### 11.38 NON-WAIVER OF DEFAULT

- The waiver of a breach of any term or condition of this contract is not a waiver of a subsequent breach of that term or condition, or a breach or subsequent breach of any other term of condition. No official, agent, employee, or representative of County may waive any breach of any term or condition of this Agreement unless expressly granted that specific authority by Commissioner Court.
- All rights of County under this Agreement are expressly reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

#### 11.39 NOTICES

Any and all notices, correspondence, requests demands and other communications contemplated, called for, permitted, or required to be given under this Agreement shall be in writing, except through the course of the Parties' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by U.S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

#### 11.40 CONTRACTOR'S PROFESSIONAL WARRANTIES

- No Actions, Suits, or Proceedings: Contractor warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a material adverse effect on Contractor's ability to fulfill its obligations under this Agreement. Agreement further warrants that it will notify County immediately if Contractor becomes aware of any action, suit, or proceeding, pending or threatened, which will have a material adverse effect on Contractor's ability to fulfill the obligations under this Agreement.
- Warranty of Contractor's Capability: Contractor warrants that it is financially capable of fulfilling all requirements of this Agreement and that Contractor is a validly organized entity that has the authority to enter into this Agreement. Contractor warrants that it is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this Agreement.

- Professional Quality: Contractor warrants to County that all materials, work, and services will be of professional quality conforming to generally accepted practices, and that all work and services provided under this Agreement will be performed in a manner consistent with that degree of care, qualification and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. If there are no applicable or recognized professional standards in the applicable area or areas of expertise required to perform such work or services, then Contractor will perform all services in a good and professional manner that meets County's goals and objectives as stated herein as well as otherwise adds value to or improves the performance of County's expectations, objectives, and purposes as stated in this Agreement. Any work that is determined by County to be less than professional quality will be corrected without charge. This warranty extends for ninety (90) business days past termination or expiration of this Agreement. This warranty is limited to rework of the unsatisfactory service or product without change to the original specifications and without regard to the amount of the effort expended on the original service or work product.
- Collusion: Contractor expressly warrants and certifies that neither the Contractor nor its employees or associates has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competition in conjunction with the competitive bidding process for this Agreement or this Agreement itself.
- Sectarian Activity: Contractor expressly warrants and certifies that no funds under this Agreement are used either directly or indirectly, in the support of any religious or anti-religious activity, worship, or instruction.

#### 11.41 ASSURANCES

- Contractor agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- Contractor assures that neither it nor its employees, volunteers, agents or officers shall receive personal benefits, commission, consideration, or gains in performance of the work or services outlined in this Agreement. Furthermore, Contractor agrees to disclose prior to commencement of a particular assignment any material or financial interests that it or a third party may have in the work or services required under this Agreement.
- Contractor assures that funds received pursuant to this Agreement will not be used for lobbying the Texas legislature or any governmental agency in connection with a particular contract.
- Contractor shall pay all subcontractors and consultant in a timely manner. County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors. At termination or expiration of this Agreement, Contractor shall deliver to County an affidavit of all bills paid. Final payment shall be contingent upon receipt of such affidavits as resolution of all accounting for which County is or may be liable under this Agreement.
- Under Section 231.006, Texas Family Code, Contractor certifies to County that the owner(s) of at least a 25% interest in the organization is not delinquent in any child support obligation that renders him/her ineligible to receive payment under the terms of this Agreement. Contractor hereby acknowledges that this Agreement may be terminated and payment may be withheld if this Certification is inaccurate.
- Contractor certifies that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency.
- Best Efforts to Minimize Costs to County: Contractor shall use its best efforts to complete

each assigned task in as economical a manner as possible and to minimize any charges incurred in connection therewith to the maximum extent possible, consistent with Contractor's other obligations under this Agreement.

- Failure to comply with any of these assurances or any other requirements specified within this Agreement will put Contractor in default and material breach of this Agreement and may result, at the sole discretion of County, in the disallowance of funds and the withholding of future awards, in addition to any other remedies permitted by law.
- Governmental Consent: Contractor warrants that no consent, approval, or withholding of objection is required from any governmental authority with respect to the entering into or the performance of this Agreement.
- Corporate Good Standing: Contractor represents and warrants that it: (i) is a corporation duly incorporated, validly existing and in good standing; (ii) has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (iii) is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it except when the failure to be so licensed, authorized or qualified would not have a material adverse effect on Contractor's ability to fulfill its obligations hereunder.

#### 11.42 REPORTING

- Reporting. Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames pursuant to this Agreement. Penalties for delinquent reporting may include withholding of payments until such time all reports are received, cancellation or termination of this Agreement with no obligation to pay for undocumented work or services, or both.
- Access to Records. Contractor agrees that County, or any of its duly authorized representatives, has the right of timely and unrestricted access to any books, documents, papers, reports, or other records of Contractor that are pertinent to the fulfillment of the requirements of this Agreement, in order to make audit, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to Contractor's personnel for the purpose of reviewing, interviewing, evaluating, and monitoring related to such documents. All such items shall be furnished to the requesting party in Dallas County, Texas within a reasonable time.
- Ownership. Contractor agrees that all information, data, and supporting documentation that relates to the work or services provided hereunder shall remain the property of County.

#### 11.43 AUDIT, AVAILABILITY AND RETENTION OF RECORDS

At any time during the term of this Agreement all financial books, records, data, documents, statistical and management books and records pertaining to the work or services delivered and all financial books, records, data, documents, statistical and management books and records and records shall be available for unrestricted review, examination and audit by Dallas County Auditor, Federal, State or the County's duly authorized representatives for a period of not less than five (5) years after final payment of the Contractor's fee expenses under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain until all pending County, State, and Federal audits are completed, whichever is later. All records related to this Agreement must be kept in a single location, either at Contractor's principle place of business or its place of business where the work or services are performed. If this is not practical, the Contractor will assume the cost of collecting, organizing, and relocating the records and any technology needed to access the records to the Contractor's office nearest Dallas County, Texas whenever County or anyone else with audit rights



requests access to the Contractor's records associated with the services covered under this Agreement. The Contractor will do so with all due speed, not to exceed fifteen (15) business days or a mutually convenient time within a reasonable time by all parties. In the event such an audit by the County reveals any material deviation from the Agreement, errors/overpayments, disallowed cost or expenses by the County, Contractor shall refund the County the full amount of such overpayments plus damages within thirty (30) days of such audit findings as well the cost of the audit at the County discretion, or the County, at its option, reserves the right to deduct such amounts owing the County from any payments due to the Contractor.

#### 11.44 AUDIT DISALLOWANCE

In the event an audit by the County reveals any errors/overpayments, disallowed cost or expense by the County, Contractor shall refund the County the full amount of such overpayments and plus damages within thirty (30) days of such audit findings as well the cost of the audit at the County discretion, or the County, at its option, reserves the right to deduct such amounts owing the County from any payments due to the Contractor. The County shall notify the Contractor in writing of the disallowance and the required course of action.

#### 11.45 CONFLICT OF INTEREST

No County elected or appointed official or representative, or any employees shall have any financial interest, direct or indirect, in any contract with the County or be financially interested, directly or indirectly, in the sale to the County of any land, materials, supplies, goods or services, except on behalf of the County as an official or employee. Any violation of this Section, with knowledge, expresses or implied, of the person or corporation contracting with the County shall render this Agreement involved voidable by the Commissioners Court of Dallas County. It is the responsibility of Contractor during all phases of this Agreement to notify the County in writing of any potential conflict of interest. Contractor covenants that neither it nor any member of its corporation presently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that in the performance of this Agreement no person having such interest shall be employed or appointed by Contractor.

#### 11.46 TRANSITION SERVICES REQUIRED OF CONTRACTOR

Upon notice of termination or expiration of this Agreement, the County shall immediately have the right to audit any and all records of Contractor relating to this Agreement. Moreover, upon the termination or expiration date of this Agreement, Contractor agrees to transition the services provided herein in a cooperative manner and provide anything requested from the County at no additional cost, including, but not limited to the following, upon date of termination or expiration: (i) All contract and services documentation, including all records, books and data reasonably related to this Agreement, maintained in accordance with Section 9 (Reporting and Accountability) of this Agreement and identified in a complete, neat and orderly manner; (ii) A good faith pledge to cooperate with County upon transition of services to another contractor or County department providing the same or similar services; (iii) Records, books and data, including electronic data, in a format compatible within County's information technology capabilities, or in a format compatible with a succeeding contractor's information technology capabilities, as determined by County; (iv) Final accounting of all income derived from the Agreement; (v) Downloading and removal of all County information from Contractor's equipment and software; and (vi) Removal of Contractor's services without degradation or other adverse effect on County's system. This provision shall survive termination or cancellation of this Agreement.

#### 11.47 USE OF AGREEMENT BY OTHER POLITICAL JURISDICTIONS

In accordance with Article 791.025 of the Texas Government Code, governmental agencies (local,

state) may request to utilize the County's contract by executing an interlocal agreement with Dallas County to do so. Contractor agrees this Agreement may be extended, with the authorization of the Contractor, to others. If any other jurisdiction or political jurisdictions is authorized, their ordering of services or goods shall be at the prices, terms and conditions as this Agreement. The Contractor must deal directly with that jurisdiction or political subdivision concerning the placement of orders, services, issuance of purchase orders, contractual disputes, invoicing and payment. The County acts only as the "Contracting Agent" for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on this Agreement. Each participating jurisdiction and political subdivision has the option of executing a separate contract with the Contractor. Contracts entered into with them may contain general terms and conditions unique to those jurisdictions and political subdivisions covering minority participation, non-discrimination, etc. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that jurisdiction.

**THE COUNTY IS INDEMNIFIED AGAINST ANY AND ALL CLAIMS THAT MAY ARISE FROM INTERLOCAL AGREEMENTS ENTERED INTO BY THE CONTRACTOR AND BY ANOTHER JURISDICTION AS A RESULT OF ANY AWARD EXTENDED TO THAT JURISDICTION OR POLITICAL SUBDIVISION BY CONTRACTOR.**

#### 11.48 ANTI-KICKBACK CLAUSE

Contractor hereby certifies that it will comply with all applicable "Anti-Kickback" Laws (including (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3), and shall insert appropriate provisions in all subcontracts covering work under this Agreement.

#### 11.49 POLITICAL ACTIVITY PROHIBITED

None of the funds provided under this Agreement shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent the Parties' compliance with the Texas Public Information Act. No funds provided under this Agreement may be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government, the State of Texas, or the government of the United States. None of the funds provided under this Agreement shall be paid to any official or employee who violates any of the provisions of this Section.

#### 11.50 NEPOTISM

No person (1) who is an employee, agent, consultant, officer, or official of the contractor and who exercises or has exercised any functions or responsibilities with respect to assisted contract activities; or (2) who is in a position to participate in a decision making process or gains inside information with regard to such activities, may obtain a personal or financial interest or benefit, direct or indirect, in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure.

#### 11.51 TITLE VI ASSURANCES/COMPLIANCE POLICY

The County, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Pursuant to Title VI requirements, any entity or person that enters into a contract with Dallas County including, but not limited to prime contractors, sub-contractors, and sub-recipients, may not

discriminate on the basis of race, color, national origin, age, sex, disability, or religion in their selection and retention of subcontractors (including consultants), in connection with any federally funded program or activity (including any program or activity undertaken/funded by a Dallas County Division/Department that receives federal funds).

This solicitation packet contains information concerning Dallas County's Title VI Assurances/Compliance Policy - Appendix A and Contractor responsibilities.

#### 11.52 DISCLOSURE FORM CIQ

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any Proposer or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the Proposer or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of County no later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 178.008.

Texas Local Government Code, A person commits an offense if the person violates Section 178.006, Texas Local Government Code. An offense under this section is a Class C misdemeanor. The questionnaire is included in this solicitation. By submitting a response to this request, the Proposer represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code. Please send completed forms to the Dallas County Clerk at 1201 Elm Street, 21<sup>st</sup> Floor, Suite 2100, Dallas, Texas 75270.

#### 11.53 Dallas County Purchasing Department and Dallas County Minority/Woman Owned Business Office implemented an electronic reporting system (Vendor Tracking System) to streamline the current manual process of tracking payments to all tier subcontractors/sub-consultants by performing all tracking procedures electronically. The Contractor is responsible for the use of the system.

Training and additional information regarding the use of this system will be provided to the Contractor by Dallas County Purchasing Department and Dallas County Minority/Woman Owned Business Office staff after contract award.

#### 11.54 TWELVE (12) MONTH WAITING PERIOD FOR EMPLOYMENT OF CERTAIN FORMER COUNTY EMPLOYEES

In accordance with the County's Transparency Policy, any firm awarded a contract for the Procurement of goods or services shall be prohibited from hiring any individual who has previously worked for County and in that capacity either evaluated, recommended, approved, monitored, or managed a contract involving that firm no sooner than twelve months after that individual has ceased to work for or be employed by County. Failure to adhere to such a contractual requirement may result in the termination of the contract with County.

#### 11.55 COUNTERPARTS, NUMBER/GENDER AND HEADINGS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

#### 11.56 SEVERABILITY

If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions in this Agreement. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

#### 11.57 ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, written or oral, between Contractor and County and will constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions and Exhibits will be binding upon the Parties and may not be waived, modified, amended, or altered except by a writing signed by both Contractor and County with formal approval by the Dallas County Commissioners Court.

#### 11.58 SIGNATORY WARRANTY

The person or persons signing and executing this Agreement on behalf of Contractor, or representing themselves as signing and executing this Agreement on behalf of Contractor, do hereby warrant and guarantee that he, she, or they have been duly authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all terms, conditions and provisions herein set forth. Contractor shall furnish to County a corporate resolution authorizing signatory authority.



## GOOD FAITH EFFORT PLAN

THE GOOD FAITH EFFORT PLAN IS REVIEWED BY THE DALLAS COUNTY OFFICE OF SMALL BUSINESS ENTERPRISE. THE SBE DIRECTOR OR DESIGNEE WILL EVALUATE THE "GOOD FAITH EFFORTS" OF A FIRM. THE GOOD FAITH EFFORT MUST BE APPROVED BY THE OFFICE OF SMALL BUSINESS OF ENTERPRISE PRIOR TO AWARD.

NAME OF PROJECT: \_\_\_\_\_

### SECTION A – PRIME CONTRACTOR INFORMATION

NAME OF FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_ FAX: \_\_\_\_\_

IS YOUR FIRM CERTIFIED: NO \_\_\_\_\_ YES \_\_\_\_\_ CERTIFICATION NUMBER: \_\_\_\_\_

TYPE OF CERTIFICATION: SBE \_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_ AAB \_\_\_\_\_ HUB \_\_\_\_\_ DBE \_\_\_\_\_

#### 1. LIST ALL FIRMS TO BE UTILIZED ON THIS PROJECT/CONTRACT.

	SUBCONTRACTORS/SUPPLIERS	SCOPE OF WORK/SUPPLIES TO BE PERFORMED/PROVIDED BY THE FIRM	ESTIMATED CONTRACT AMOUNT ALLOCATED TO THE FIRM	IF FIRM IS CERTIFIED, LIST CERTIFICATION NUMBER <u>AND</u> ATTACH A COPY OF THE CERTIFICATION AFFIDAVIT
1.	NAME: ADDRESS:			
2.	NAME: ADDRESS:			
3.	NAME: ADDRESS:			
4.	NAME: ADDRESS:			
5.	NAME: ADDRESS:			
6.	NAME: ADDRESS:			

### SECTION B – SBE COMMITMENTS

**THE SMALL BUSINESS ENTERPRISE (SBE) ASPIRATIONAL GOAL FOR THIS PROJECT IS 40%**

1. THE UNDERSIGNED CONTRACTOR HAS SATISFIED THE REQUIREMENTS OF THE BID SPECIFICATIONS IN THE FOLLOWING MANNER (*PLEASE CHECK THE APPROPRIATE SPACE*):

\_\_\_\_\_ *THE CONTACTOR IS COMMITTED TO A MINIMUM OF 40 % SBE UTILIZATION ON THIS CONTRACT*

\_\_\_\_\_ *THE CONTRACTOR (IF UNABLE TO MEETING THE SBE GOAL OF 40 %) IS COMMITTED TO A MINIMUM*  
\_\_\_\_\_ *% SBE*  
\_\_\_\_\_ *UTILIZATION ON THIS CONTACT*

***MANDATORY PAYMENT REPORTING***

DURING THE TERM OF THE CONTRACT, THE CONTRACTOR MUST REPORT THE ACTUAL PAYMENTS TO ALL THE SBE SUBCONTRACTORS ON A MONTHLY BASIS IN THE SPECIFIED TIME INTERVALS AND FORMAT PRESCRIBED BY DALLAS COUNTY. ANY UNJUSTIFIED FAILURE TO COMPLY WITH THE LEVELS OF SBE PARTICIPATION IDENTIFIED IN THE BID AND AFFIRMED IN THE GOOD FAITH EFFORT PLAN SHALL BE CONSIDERED A MATERIAL BREACH OF CONTRACT. DALLAS COUNTY RESERVES THE RIGHT, AT ANY TIME DURING THE TERM OF THE CONTRACT TO REQUEST ADDITIONAL INFORMATION, DOCUMENTATION OR VERIFICATION OF PAYMENTS MADE TO ALL SUBCONTRACTORS IN CONNECTION WITH THE CONTRACT. VERIFICATION OF AMOUNT BEING REPORTED MAY TAKE THE FORM OF REQUESTING COPIES OF CANCELED CHECKS PAID TO THE SBE PARTICIPANTS AND/OR CONFIRMATION INQUIRIES DIRECTLY TO SBE PARTICIPANTS. PROOF OF PAYMENTS, SUCH AS COPIES OF CANCELED CHECKS MUST PROPERLY IDENTIFY THE PROJECT NAME OR PROJECT NUMBER TO SUBSTANTIATE SBE PAYMENTS FOR THIS PROJECT.

2. NAME AND PHONE NUMBER OF PERSON APPOINTED TO COORDINATE AND ADMINISTER THE SBE REQUIREMENTS ON THIS PROJECT

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DIRECT \_\_\_\_\_ EMAIL: \_\_\_\_\_  
PHONE: \_\_\_\_\_

➡ IF THE SBE GOAL WAS MET, PROCEED TO GOOD FAITH EFFORT AFFIRMATION

➡ IF THE SBE GOAL WAS NOT MET, PROCEED TO SECTION C – DOCUMENTATION OF GOOD FAITH EFFORTS  
FOUND ON PAGE

**3. SECTION C – DOCUMENTATION OF GOOD FAITH EFFORTS** (TO BE FILLED OUT ONLY IF SBE ASPIRATIONAL GOAL WAS NOT ACHIEVED.)

1. LIST ALL FIRMS CONTACTED WITH SUBCONTRACTING/SUPPLY OPPORTUNITIES FOR THIS PROJECT THAT WILL NOT BE UTILIZED FOR THE CONTRACT BY CHOICE OF THE CONTRACTOR, SUBCONTRACTOR, AND/OR SUPPLIER. WRITTEN NOTICES TO FIRMS CONTACTED BY THE CONTRACTOR FOR SPECIFIC SCOPES OF WORK IDENTIFIED FOR SUBCONTRACTING/SUPPLY OPPORTUNITIES MUST BE PROVIDED TO SUBCONTRACTOR/SUPPLIERS NOT LESS THAN FIVE (5) BUSINESS DAYS PRIOR TO BID/PROPOSAL DUE DATE. THE FOLLOWING INFORMATION IS REQUIRED FOR ALL FIRMS WHAT WERE CONTACTED OF SUBCONTRACTING/SUPPLY OPPORTUNITIES. MAY USE ADDITIONAL SHEETS IF NEEDED.

	NAME & ADDRESS OF SUBCONTRACTOR(S)/SUPPLIER(S)	SCOPE OF WORK/SUPPLIES TO BE PERFORMED/PROVIDED BY THE FIRM	IS FIRM SBE OR M/WBE CERTIFIED?	DATE OF WRITTEN NOTICE SENT & METHOD USED (FAX, LETTER, EMAIL, ETC.)	REASON AGREEMENT NOT REACHED
1.	NAME: ADDRESS:			DATE: METHOD:	
2	NAME: ADDRESS:			DATE: METHOD:	
3.	NAME: ADDRESS:			DATE: METHOD:	
4.	NAME: ADDRESS:			DATE: METHOD:	
5.	NAME: ADDRESS:			DATE: METHOD:	

IN ORDER TO VERIFY A CONTRACTOR'S GOOD FAITH EFFORTS, PLEASE PROVIDE COPIES OF ALL WRITTEN NOTICES TO ALL FIRMS OF CONTACTED BY THE CONTRACTOR FOR SPECIFIC SCOPES OF WORK IDENTIFIED IN RELATIONS TO THE SUBCONTRACTING/SUPPLY OPPORTUNITIES IN THE ABOVE NAMED PROJECT. COPIES OF SAID NOTICES MUST BE PROVIDED TO DALLAS COUNTY'S OFFICE OF SMALL BUSINESS ENTERPRISE WITHIN FIVE (5) BUSINESS DAYS AFTER THE BID/PROPOSAL IS DUE. SUCH NOTICES SHALL INCLUDE INFORMATION ON THE SCOPE OF WORK TO BE PERFORMED AND/OR SUPPLIES TO BE PROVIDED.

2. DID YOU ATTEND THE PRE-PROPOSAL CONFERENCE SCHEDULED FOR THIS PROJECT? YES \_\_\_\_\_ NO \_\_\_\_\_
3. LIST ALL LISTINGS, DIRECTORIES, CONTRACTOR ASSOCIATIONS, AND/OR ANY OTHER ASSOCIATIONS UTILIZED TO SOLICIT SBE SUBCONTRACTOR/SUPPLIERS.

NAME	CONTACT PERSON	PHONE
		( )
		( )
		( )
		( )

4. DISCUSS EFFORTS MADE TO DEFINE ADDITIONAL ELEMENTS OF THE WORK PROPOSED TO BE PERFORMED BY SBEs IN ORDER TO INCREASE THE LIKELIHOOD OF ACHIEVING THE GOAL.


5. INDICATE ADVERTISEMENTS MEDIUMS USED FOR SOLICITING BIDS FROM SBEs (PLEASE ATTACH A COPY OF THE ADVERTISEMENTS).





## GOOD FAITH EFFORT

### AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT/AGREEMENT.

NAME OF AUTHORIZED  
OFFICIAL: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE DATE:  
: \_\_\_\_\_

FOR USE ONLY BY THE OFFICE OF SMALL BUSINESS ENTERPRISE

#### GOOD FAITH EFFORT RECOMMENDATION:

APPROVED: \_\_\_\_\_ NOT APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

SBE DIRECTOR: \_\_\_\_\_



## SMALL BUSINESS THRESHOLD AFFIDAVIT

Name of Contractor: \_\_\_\_\_

Principal Place of Business (address): \_\_\_\_\_

Project Name & Number: \_\_\_\_\_

Tax ID Number (if applicable): \_\_\_\_\_

I \_\_\_\_\_ am the majority owner (51%) of the Prime Contractor listed above and own \_\_\_\_\_ percent of \_\_\_\_\_.

I hereby certify that my firm/company's gross revenues and/or number of employees averaged over the past three years are equal to or below 20% of the Small Business Administrations (SBA) standards, in accordance with 13 CFR 121 et. al.<sup>1</sup> and Dallas County's Small Business Enterprise Program.

The number of employees employed during the previous three (3) years are as follows:<sup>2</sup>

Employee Workplace Demographics by year	Full Time	Part Time	Contract
20__			
20__			
20__			

I also hereby certify that my personal net worth ("PNW") does not exceed \$3.2 million (excluding primary personal residence<sup>3</sup> and ownership interest in business), including any assets held on my behalf by any person or entity domestically or internationally. I also certify that I have not transferred ownership of assets for the purpose of qualifying as an SBE.

I understand and acknowledge that the County reserves the right to conduct an investigation and request additional information regarding the representations herein. I agree to allow a County representative to perform an onsite audit of my firm/company's tax returns for the past three years, upon request, , including information from third parties (e.g., accountant, IRS), to confirm my gross revenues, number of employees, or PNW, including federal tax return (including schedules), W2s, and other relevant documentation.

<sup>1</sup> See, generally, 13 CFR § 121 et. al, including 13 CFR § 121.201 and 13 CFR § 121.104.

<sup>3</sup> Note: portions of equity in your primary residence attributable to excessive withdrawals from the participating SBE firm/company is not excluded.

*I, \_\_\_\_\_, hereby certify, under penalty of perjury, that the above-stated facts are true and correct and understand that any misrepresentations may be grounds for initiating action under federal or state law, including state law concerning false statements in a government document.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**STATE OF TEXAS**

**COUNTY OF** \_\_\_\_\_

BEFORE ME, A NOTARY PUBLIC, ON THIS DAY PERSONALLY APPEARED \_\_\_\_\_, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING DOCUMENT AND, BEING BY ME FIRST DULY SWORN, DECLARED THAT THE STATEMENTS THEREIN CONTAINED ARE TRUE AND CORRECT.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

(PERSONALIZED SEAL)

\_\_\_\_\_  
NOTARY PUBLIC'S SIGNATURE

## TITLE VI ASSURANCES/COMPLIANCE – APPENDIX A

### A. *Assurances*

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient

to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### *B. Nondiscrimination Authorities*

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

##### **Pertinent Nondiscrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

#### *C. Representations/Warranties*

The Contractor also makes the following representations and warranties to Dallas County:

1. It has taken the steps necessary to effectuate Title VI requirements.

2. Disadvantaged business enterprises are afforded equal opportunity to submit bids/proposals as sub-contractors or sub-consultants and will not be discriminated against on the grounds of race, color, sex, age, disability, religion, veteran status, or national origin in consideration of a selection or award.
3. Neither contractor or any subcontractors or sub-recipients that will participate in activities to be funded as a result of this contract/bid/solicitation, are listed on the debarred list due to violations of Title VI or VII of the Civil Rights Act of 1964, nor are any proposed parties to this contract, or any subcontract resulting therefrom, aware of any pending action which might result in such debarment or disqualification.

*D. Title VI Complaints*

Any person, contractor, or subcontractor who believes that they have been subjected to an unlawful discriminatory practice under Title VI will be notified of their right to file a formal complaint within one hundred eighty (180) days following the alleged discriminatory action or the date the person(s) became aware of the alleged act(s) of discrimination. Any such complaint must be filed in writing or in person with the Dallas County Title VI Coordinator:

Dallas County Human Resources  
c/o: Dallas County Director of Human Resources and Title VI Coordinator  
Renaissance Tower  
1201 Elm Street, 23rd Floor, Suite 2300-B  
Dallas, Texas 75270  
(214) 653-7638 (phone)  
(214) 653-7608 (fax)

A copy of Dallas County Title VI Non-Discrimination Plan and Documents, and complaint forms, may be obtained at [http://www.dallascounty.org/departments/HR/title\\_vi.html](http://www.dallascounty.org/departments/HR/title_vi.html) or at the address above.

A complainant may also contact the Federal Coordination and Compliance Office, Civil Rights Division at the Title VI Hotline: 888-TITLE-06 (888-848-5306) or send a letter to: U.S. Department of Justice Civil Rights Division Federal Coordination and Compliance Section, NWB 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530. More information on Title VI is available from the Justice Department online at [www.justice.gov](http://www.justice.gov).

Contractor shall comply with all reasonable requests made in the course of an investigation of Title VI and these assurances by Dallas County, the Texas Department of Transportation, the US Department of Transportation, the US Department of Justice, or any other federal or state agency. Failure to comply with such reasonable requests will be deemed a breach of this contract/bid/solicitation.

*E. Enforcement*

The contractor affirmatively acknowledges that it will be subject to Title VI, and implementing regulations, and any enforcement measures therein. In addition to any enforcement action by Dallas County, the contractor acknowledges that the United States and the State of Texas has a right to seek judicial enforcement with regard to any matter arising under Title VI, including the assurances herein.

**Contractor's Full Name:** \_\_\_\_\_

\_\_\_\_\_  
**Signature, Authorized Representative of Contractor**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

## OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

\_\_\_\_\_  
Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date



## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

<b>CERTIFICATE OF INTERESTED PARTIES</b>			<b>FORM 1295</b>	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.			<b>OFFICE USE ONLY</b> <b>CERTIFICATION OF FILING</b> Certification Number: 2016-9999  Date Filed: 01/19/2016 Date Acknowledged:	
<b>1 Name of business entity filing form, and the city, state and country of the business entity's place of business.</b> ABC Company <-- Your Company Name and Location Dallas, Texas, United States				
<b>2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.</b> Dallas County Purchasing Department <-- Governmental Entity Name				
<b>3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.</b> <-- Dallas County Solicitation Number 2015-081-6535 Central Intake Restroom Renovation Project at the Lew Sterrett Complex				
<b>4</b>	<b>Name of Interested Party</b>	<b>City, State, Country (place of business)</b>	<b>Nature of Interest (check applicable)</b>	
			<b>Controlling</b>	<b>Intermediary</b>
	Jane Doe	Dallas, Texas, United States	x	
	John Doe	Dallas, Texas, United States		x
<b>5 Check only if there is NO Interested Party.</b> <input type="checkbox"/>				
<b>6 AFFIDAVIT</b> I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.				
_____ Signature of authorized agent of contracting business entity				
AFFIX NOTARY STAMP / SEAL ABOVE				
Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20_____, to certify which, witness my hand and seal of office.				
_____ Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath				
<b>ADD ADDITIONAL PAGES AS NECESSARY</b>				



**VOLUNTARY MORATORIUM ON CAMPAIGN CONTRIBUTIONS**

In accordance with Dallas County's Transparency Policy, parties interested in responding to this RFP/RFQ are encouraged to sign this statement indicating your willingness to temporarily refrain from making any donation to any Dallas County elected official or candidate for office whose office (or potential office) has any involvement in the selection process for the associated contract during the pendency of the RFP/RFQ through thirty (30) days after the contract is awarded.

We hereby agree as stated;

Firm Name: \_\_\_\_\_

Signature and Title of Individual Authorized to Bind Company:

\_\_\_\_\_ Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_



**DALLAS COUNTY  
INSURANCE REQUIREMENT AFFIDAVIT**

**THIS FORM IS NOT A SUBSTITUTE FOR THE REQUIRED POLICY AND/OR STATE APPROVED CERTIFICATE OF  
INSURANCE FORM**

**To Be Completed By Insurance Agent/Broker and Bidder**

**I, the undersigned Agent/Broker, reviewed the insurance requirement contained in this bid document. If the Bidder shown below is awarded this contract by Dallas County, I will be able to, within ten (10) days after contract award and prior to commencement of services, meet all of the insurance requirements in this bid.**

Insurance Coverage Reviewed: \_\_\_\_\_

Agent's Name: \_\_\_\_\_

Agency Name: \_\_\_\_\_

Address: \_\_\_\_\_

County/State/Zip: \_\_\_\_\_

Telephone No: (\_\_\_\_) \_\_\_\_\_

Fax No: (\_\_\_\_) \_\_\_\_\_

Bidder's Name and Company: \_\_\_\_\_

Project/Bid No. and Title: \_\_\_\_\_

**By submitting a bid and signing below I affirm the following: I am aware of all costs to provide the required insurance, will do so pending contract award, and will have my insurance agent provide this information to Dallas County, meeting all requirements within ten days of notification of award.**

If the above ten day requirement is not met, Dallas County reserves the right to cancel the contract for non-performance. If you have any questions concerning these requirements, please contact the Dallas County Human Resource / Civil Service's Risk Manager at 214-653-7668.

Insurance Agent/Broker Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Bidder's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**WAIVER OF WORKERS' COMPENSATION INSURANCE AFFIDAVIT**

STATE OF TEXAS                   §  
   §  
COUNTY OF DALLAS           §

BEFORE ME, the undersigned authority personally appeared \_\_\_\_\_, individually and doing business as \_\_\_\_\_, who after being by me first duly sworn, deposed and stated as follows:

1.        “My name is \_\_\_\_\_ appearing herein individually and as president and sole owner of \_\_\_\_\_. I am over 21 years of age, of sound mind, authorized and fully competent to make this affidavit. I have never been convicted of a felony or misdemeanor involving moral turpitude. I have personal knowledge of the facts and representations stated for the reasons stated herein, and such facts and representations are true and correct.

2.        “My name is \_\_\_\_\_. I am president and sole owner of \_\_\_\_\_ located at \_\_\_\_\_ Dallas County issued Solicitation No. \_\_\_\_\_ (hereinafter “Bid/RFP”). Bid/RFP provisions required the successful contractor to maintain Workers’ Compensation Insurance Coverage meeting the requirements and coverage amounts as established by the Texas Workers’ Compensation Act, Title 5, Subtitle A, Texas Labor Code. I do not maintain Workers’ Compensation Insurance as required by the proposed bid. I am ineligible for purchasing Workers’ Compensation Insurance as required by the proposed bid in that I do not meet the minimum requirements to purchase such insurance for the following reasons: \_\_\_\_\_.

Further affiant sayeth not.”

\_\_\_\_\_  
Name

\_\_\_\_\_  
Company

SWORN TO AND SUBSCRIBED TO BEFORE ME, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Commission Expires



## Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type See Specific Instructions on page 2	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only <b>one</b> of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 1.2em; vertical-align: middle;"></span> <b>Note.</b> For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ <span style="border: 1px solid black; display: inline-block; width: 150px; height: 1.2em; vertical-align: middle;"></span>	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) <span style="border: 1px solid black; display: inline-block; width: 100px; height: 1.2em; vertical-align: middle;"></span> Exemption from FATCA reporting code (if any) <span style="border: 1px solid black; display: inline-block; width: 100px; height: 1.2em; vertical-align: middle;"></span> <small>(Applies to accounts maintained outside the U.S.)</small>
	5 Address (number, street, and apt. or suite no.)	Requestor's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number	
<div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div>	<div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div>
or	
Employer identification number	
<div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div>	<div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="border: 1px solid black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div>

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here**

Signature of  
U.S. person ▶

Date ▶

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

#### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exemption (under paragraph 2 of the first protocol) and is relying on this exemption to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; do not leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note.** **ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.



**Line 2**

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

**Line 3**

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

**Limited Liability Company (LLC).** If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

**Line 4, Exemptions**

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

**Exempt payee code.**

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note.** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

**Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

**Line 6**

Enter your city, state, and ZIP code.

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code earlier*.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. \*Other payments\* include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>2</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor <sup>2</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>1</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships on page 2*.

<sup>5</sup> Note. Grantor also must provide a Form W-9 to trustee or trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN.
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, *Identity Theft Prevention and Victim Assistance*.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4009.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-368-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@ftc.gov](mailto:spam@ftc.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

## **DALLAS COUNTY PURCHASING CODE OF ETHICS**

1. **Purpose.** Dallas County (the “County”) requires ethical conduct from those who represent the County and those who do business with the County. It is a breach of the public trust to subvert the procurement process, including the competitive bidding process, whether by bribes, kickbacks, preferential treatment, or any other means. To improve procurement practices, the Dallas County Purchasing Code of Ethics, outlined below, is being adopted by the County.
2. **Statement of Purchasing Ethics Policy.** It is the policy of the County to ensure that the following ethical principles govern the conduct of all individuals and entities involved in the County’s procurement process, including, but not limited to, solicitations for bids for goods or services, request for proposals (RFPs), and request for Proposals (RFPs). The County Purchasing Code of Ethics (“Code of Ethics”) shall be committed to and upheld by any individual engaged with this process. This Code of Ethics applies to:
  - i. *Vendor.* Any individual or entity, or any individual’s or entity’s employees, agents, representatives, or any other individuals or entities acting on their behalf (whether paid or unpaid), not employed by the County but involved, directly or indirectly, currently or prospectively, in bidding or contracting with the County.
  - ii. *Procurement Professional.* Any County employee involved, directly or indirectly, with the development, preparation, solicitation, negotiation, evaluation, recommendation, approval of, or contracting of County purchasing projects, excluding County Elected Officials (as defined below). County Procurement Professionals include, but are not limited to, members of the County Purchasing Department, the head of the Purchasing Department (called herein the “Purchasing Director” or otherwise known as the “Purchasing Agent”), members of the evaluation committee, county administrators, department heads, and staff.
  - iii. *Elected Official.* Any County elected official involved, directly or indirectly, with the development, preparation, solicitation, negotiation, evaluation, recommendation, approval of, or contracting of County purchasing projects. County Elected Officials may include, but are not limited to, the County Commissioners Court (the “Commissioners Court”), the County Judge, and any other County elected officials.
3. **Active Solicitations.** A contract solicitation is considered active in terms of this Code of Ethics from the time it is briefed to the Commissioners Court until ten (10) days after (a) the contract has been awarded by the Purchasing Department or the Commissioners Court, (b) the contract is executed between the County and the winning Contractor, or (c) the Commissioners Court determines not to go through with the solicitation, whichever represents the final act in any procurement process (an “Active Solicitation”). If the County withdraws a solicitation or rejects all responses with the stated intention to reissue the same or a similar solicitation for the same or a similar project (a “Related Solicitation”), the solicitation remains an Active Solicitation during the time period between the withdrawal and the reissue. Whether a solicitation constitutes a Related Solicitation will be determined at the discretion of the Purchasing Director.
4. **Conflicts of Interest.** Vendors, Procurement Professionals, and Elected Officials shall avoid any activities, transactions, contacts, or communications that compromise the interests of the County or the procurement process, or give the appearance of impropriety. Conflict of interests may include, but are not limited to, instances in which:
  - i. Procurement Professionals, Elected Officials, or any of their respective relatives (which, for



purposes of this Code of Ethics, shall include any person within a third degree of consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code), significant others/partners, other close personal relations, business partners, staff, or other agents acting on their behalf, have an interest in, or are connected with, a contract or solicitation for the purchase of goods or services by the County;

- ii. Vendors, Procurement Professionals, Elected Officials, or any of their respective relatives, significant others/partners, other close personal relations, business partners, staff, or other agents acting on their behalf, solicit, offer, give, accept, or receive anything of value (including a promise, obligation, loan, reward, gift, or compensation) to or from a person who is involved with, or intending to be involved with, whether directly or indirectly, a current or future contract or solicitation with the County;
- iii. Procurement Professionals, Elected Officials, or any of their respective relatives, significant others/partners, other close personal relations, business partners, staff, or other agents acting on their behalf, are involved with a business or organization that has a financial interest in the outcome of any particular solicitation or contract selection process with the County;
- iv. Procurement Professionals, Elected Officials, or any of their respective relatives, significant others/partners, other close personal relations, business partners, staff, or other agents acting on their behalf, are involved in negotiating for prospective employment, or are currently employed with, an individual, business, or organization that has a financial interest in the outcome of any particular solicitation or contract selection process.
- v. Vendors, Procurement Professionals, Elected Officials, or any of their respective relatives, significant others/partners, other close personal relations, business partners, staff, or other agents acting on their behalf, use confidential information (as defined in Section 11) acquired from the County for actual or anticipated gain or benefit in a current or future contract or solicitation with the County.

*Notice Required.* If a Vendor, Procurement Professional, or Elected Official obtains knowledge of a potential conflict of interest, that individual shall notify the Purchasing Director in writing within seven (7) business days after receiving such knowledge, unless circumstances (such as a pending vote on a solicitation by an evaluation committee or the awarding of a contract by the Commissioners Court and/or the Purchasing Department) require immediate notice. The County Administrator shall be copied on the notice.

*Recusal.* If the Purchasing Director (or, in the event that the Purchasing Director may have a potential conflict of interest, the Commissioners Court) determines that a conflict of interest does exist, the conflicted individual must recuse himself or herself from the contract or procurement process and any related activities, including, but not limited to, any duties imposed by this Section.

*Conflict of Interest Questionnaire.* As required by Chapter 176 of the Texas Local Government Code, certain Vendors, Procurement Professionals, and Elected Officials are required to complete and file a Conflict of Interest Disclosure with the County Clerk at 1201 Elm Street, 21<sup>st</sup> Floor, Suite 2100, Dallas, Texas 75270 (the form is available online at [www.dallascounty.org/departments/countyclerk/countyclerk.php](http://www.dallascounty.org/departments/countyclerk/countyclerk.php)). It is the duty and responsibility of anyone required to file a Conflict of Interest Disclosure under Chapter 176 to

keep this Disclosure up-to-date and accurate. Failure to do so may lead to disqualification from a contract or procurement process, and may void current contracts with the County.

*Disclosure of Interested Parties.* As required by Chapter 2252 of the Texas Government Code, Vendors who are awarded contracts by the Commissioners Court on or after January 1, 2016 must disclose a list of interested parties to the County before they are allowed to enter into the contract. The disclosure must include a list of any party who has a controlling interest in the Vendor or who actively participates in facilitating the contract or negotiating its terms. The required form will be available through the Texas Ethics Commission's website at [www.ethics.state.tx.us/](http://www.ethics.state.tx.us/).

5. **Gratuities.** Procurement Professionals and Elected Officials involved in the procurement decision-making process shall not solicit or accept money, loans, gifts, meals, entertainment, lodging, favors, offers of employment (for themselves or for other individuals or entities), promises, obligations, or anything of value from Vendors during a Restricted Contact Period (other than as allowed in Dallas County Code Section 86-752) that could influence or appear to influence a specific purchasing decision. Generally, goods or services with a value of \$75 or less in the aggregate from a Vendor during a year do not violate this prohibition unless they influence or appear to influence a specific purchasing decision.

Notwithstanding the above, Elected Officials may (a) solicit and accept campaign contributions as allowable by law and this Code of Ethics, and (b) attend an association, civic, charitable, or community event sponsored in whole or in part by a Vendor, and Procurement Professionals may attend an association, civic, charitable, community, or training event subject to the approval of the Purchasing Director or the Commissioners Court.

When responding to an Active Solicitation, Vendors shall be required to disclose donations and campaign contributions by the Vendor or any individual or entity acting on the Vendor's behalf to any Procurement Professional or Elected Official (as defined herein) involved in the procurement decision-making process made within one (1) year prior to the date of the Active Solicitation. Failure by a Vendor to fully and accurately disclose such contributions may result in the Vendor's disqualification, debarment, or contract voidance as per Section 20 below.

6. **Restricted Contact Period.** Vendors, Procurement Professionals, and Elected Officials shall not violate the Restricted Contact Period as set forth herein.

*Contact Person and Designated Representatives.* All solicitations will include a designated contact person in the Purchasing Department and provide appropriate contact information for that person at the time the solicitation is issued (the "Contact Person"). All Vendor communications regarding the solicitation shall be to the Contact Person or the Contact Person's designated representatives, as defined by the Contact Person on a question-by-question basis (the "Designated Representatives").

*Restricted Contact Period.* The Restricted Contact Period for any solicitation shall be in effect during the time the solicitation is considered an Active Solicitation under this Code of Ethics (regardless of when a Vendor submits a proposal or bid for the solicitation). **All Vendor communications including, but not limited to, questions, comments, requests for clarification, and general information requests, during the Restricted Contact Period, regarding any Active Solicitation, must be directed solely to the Contact Person and the**

**Contact Person's Designated Representatives (as defined by the Contact Person on a question-by-question basis).** The Contact Person for any specific solicitation can be identified by visiting [www.dallascounty.org/departments/purchasing](http://www.dallascounty.org/departments/purchasing) to view the solicitation or the Restricted Contact List (as defined below) or by calling the Purchasing Department at 214-653-7431.

*Violations.* Any communication by Vendors with any Procurement Professionals, Elected Officials, or any of their respective staff members, agents, or representatives (excluding the Contact Person and Designated Representatives), regarding an Active Solicitation, will be considered a violation of the Restricted Contact Period unless the Vendor receives express written permission from the Contact Person for the communication.

It is not a violation of the Restricted Contact Period for Vendors to discuss an existing contract or business relationship not related to any Active Solicitation. However, communications between Vendors and Procurement Professionals and/or Elected Officials regarding Vendor Proposals, Proposals of other parties, past contract performance, or relevant experience could be deemed a violation of this rule if the Vendor is participating in, or considering participating in, an Active Solicitation. Prohibited communications include those initiated by the Vendor (or others on behalf of the Vendor), as well as Vendor responses to communications initiated by other parties.

Whether a violation of the Restricted Contact Period has occurred for an Active Solicitation is subject to the discretion of the Purchasing Director and the Commissioners Court. Vendors (including any employees, agents, representatives, or any other individuals or entities acting on their behalf) that are found to have violated the Restricted Contact Period will be automatically disqualified from any Active Solicitations at the time of the violation and may be subject to debarment or contract voidance per Section 20 below. Disqualification, debarment, and/or contract voidance under this Section shall apply to those individuals or entities that committed the violation, as well as any individual or entity on whose behalf the violation occurred. A Procurement Professional who is found to have violated the Restricted Contact Period will be removed from all Active Solicitations and will be subject to discipline at the discretion of the Purchasing Director and the Commissioners Court, which may include termination of employment. **If you are unsure whether a potential contact or communication violates the Restricted Contact Period, contact your Contact Person, the County Purchasing Department, or the Purchasing Director before that contact or communication occurs.**

*Weekly Notification.* Notice of Active Solicitations subject to the Restricted Contact Period shall be provided weekly by the Purchasing Department to all Procurement Professionals and Elected Officials in a format similar to Appendix A attached hereto (the "Restricted Contact List"). Procurement Professionals and Elected Officials (except for the Contact Person and Designated Representatives) shall refrain from contacting Vendors regarding any Active Solicitation on the Restricted Contact List during the Restricted Contact Period. (This prohibition also includes any Procurement Professionals and Elected Officials with actual knowledge that a Vendor is involved, whether currently or prospectively, in an Active Solicitation, regardless of whether the Active Solicitation is on the Restricted Contact List.) The Restricted Contact List shall also be posted weekly online on the County Purchasing website at [www.dallascounty.org/departments/purchasing](http://www.dallascounty.org/departments/purchasing).

*Communications Between Vendors and Procurement Professionals.* Communications between Vendors and Procurement Professionals related to an Active Solicitation will be in writing and posted online at [www.dallascounty.org/departments/purchasing](http://www.dallascounty.org/departments/purchasing) subject to the discretion of the Purchasing Director. By way of example and not limitation, communications between Vendors and Procurement Professionals during an Active Solicitation regarding proprietary details, trade secrets, Vendor-specific solicitation response clarifications, or any other information which may give an unfair competitive advantage to other Vendors if made publically available may be deemed confidential by the Purchasing Director and not be posted online.

7. **Anti-Lobbying.** Prior to engaging in any Lobbying Activities related to bidding or contracting with the County, Lobbyists should voluntarily file a Lobbyist Registration Form with the County Administrator and provide a copy to any and all Elected Officials or County employees the Lobbyist intends to contact (the "Lobbyist Registration Form"). For purposes of this Code of Ethics, an individual is considered a Lobbyist (and therefore is engaging in Lobbying Activities) when that individual (or that individual's employer, entity, firm, association, or group) receives compensation, directly or indirectly, whether paid, received, or reimbursed, to communicate with an Elected Official or Procurement Professional on behalf of a Vendor in return for, or in connection with, that compensation.

*Lobbyist Registration Form.* The Lobbyist Registration Form shall include, but is not limited to, such information as the name of the Lobbyist (including the individual's name as well as the names of any individual, entity, firm, association, or group he or she is employed with and/or representing), the Lobbyist's client(s), the issue(s)/subject(s) which the Lobbyist anticipates discussing, and the Elected Official(s) and/or Purchasing Professional(s) that the Vendor intends to visit. The Lobbyist must submit a new form each time prior to engaging in any lobbying activity regarding bidding or contracting with the County, whether that activity is by person, through email, by phone, or otherwise. The Lobbyist Registration Form is available online at [www.dallascounty.org/departments/comcrt/documents/lobbyist\\_form.pdf](http://www.dallascounty.org/departments/comcrt/documents/lobbyist_form.pdf) and can be submitted by mail or in person to the County Administrator at 411 Elm Street, 2nd Floor, Dallas, TX 75202 or electronically to [Darryl.Martin@dallascounty.org](mailto:Darryl.Martin@dallascounty.org). All

received forms will be forwarded to the Commissioners Court and posted online at [www.dallascounty.org/departments/comcrt/LobbyistRegistration.php](http://www.dallascounty.org/departments/comcrt/LobbyistRegistration.php).

*Lobbyist Restricted Contact.* Lobbyists for Vendors shall not contact Procurement Professionals or Elected Officials regarding any Active Solicitation during the Restricted Contact Period except for the Contact Person or the Contact Person's Designated Representatives.

*Violations.* Lobbyists who, on a Vendor's behalf, contact a Procurement Professional or Elected Official regarding an Active Solicitation during the Restricted Contact Period (except for the Contact Person or the Contact Person's Designated Representatives) will be considered in violation of this Code of Ethics, and the Vendor will be automatically disqualified from any Active Solicitation(s) at the time of the violation and may be subject to debarment or contract voidance as per Section 20 below.

8. **Impartial Decision-Making and Perception.** It is the duty of Procurement Professionals and Elected Officials to discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible Vendors and to provide the greatest value possible to the County. Vendors, Procurement Professionals, and Elected Officials shall conduct



themselves in such a manner as to foster public confidence in the integrity of the County and the County Purchasing Department. It is the goal of the County to avoid not only actual impropriety in the procurement process, but also any appearance of impropriety.

9. **Undue Influence.** Vendors, Procurement Professionals, and Elected Officials will not use arbitrary or unfair leverage or influence to cause a result (a) that is not in the best interest of the County or (b) to further the private interest of a Procurement Professional or Elected Official. Vendors, and any of their respective relatives (as defined herein), significant others/partners, other close personal relations, business partners, staff, or other agents acting on their behalf, that participate, on behalf of any Procurement Professional or Elected Official, in the development, preparation, or evaluation of any Active Solicitation, shall not be eligible to submit a proposal or bid on that Active Solicitation.
10. **Equal Opportunity.** Procurement Professionals and Elected Officials shall select Vendors on the basis of appropriate and fair criteria that afford all Vendors equal opportunity to compete for County contracts. It is the duty of Procurement Professionals and Elected Officials to use their best efforts to ensure that all segments of society are able to participate in County contracting processes by demonstrating support for, and encouraging the participation of, small, disadvantaged, and minority and women-owned businesses.

*Title VI.* Vendors, Procurement Professionals, and Elected Vendors shall comply with Title VI of the Civil Rights Act of 1964 and related statutes, which ensure that no person shall, on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County contracts, programs, or activities.

11. **Confidential Information.** During any contract or procurement process, certain confidential or proprietary information may be disclosed. Confidential Information includes any information that is disclosed from one party to another that is either (a) marked as being “confidential” or “proprietary,” (b) otherwise reasonably identifiable as being confidential or proprietary information, or (c) under the circumstances of the disclosure should be reasonably considered as confidential or proprietary information. Confidential Information includes, but is not limited to, responses to Active Solicitations and the evaluation process thereof.

*Treatment and Protection.* Vendors, Procurement Professionals, and Elected Officials shall take all measures necessary to ensure that any Confidential Information provided during any contract or procurement process is held in strict confidence, and is not disclosed unless necessary for the furtherance of the procurement or contracting process or otherwise required by law, rule, regulation, subpoena, or other court authority or governmental action. Confidential Information shall not be used for the actual or anticipated personal gain of any Procurement Professionals or Elected Officials.

12. **Professional Conduct.** Vendors, Procurement Professionals, and Elected Officials shall maintain high standards of honesty, integrity, and impartiality throughout the solicitation and contracting process, and shall conduct all contract and solicitation-related activities in accordance with any governing laws, regulations, and this Code of Ethics.
13. **Responsibility.** Vendors, Procurement Professionals, and Elected Officials must ensure that they, along with their agents, representatives, employees, and other representative individuals or

entities, conduct themselves in compliance with this Code of Ethics to the best of their ability. Lack of knowledge will not be considered a defense to a violation of the Code of Ethics.

**14. Duty to Report.** It is the duty and obligation of Vendors, Procurement Professionals, and Elected Officials to report any potential or suspected Code of Ethics violations, whether personal or by a third party, to the County Purchasing Director or to the Civil Division of the County District Attorney's Office. Your report should include a reference to the Active Solicitation number at issue (if applicable). To report a potential violation by mail, send any relevant information to the Purchasing Director at 900 Jackson st. Suite 680, Dallas, TX 75270 or to the District Attorney's Office, Civil Division at 411 Elm St., 5th floor, Dallas, TX 75202. You can also report by visiting any of the offices above, calling the Purchasing Office at (214) 653-7431 or the District Attorney's Office at 214-653-7358, or emailing the Purchasing Director at [charles.price@dallascounty.org](mailto:charles.price@dallascounty.org). **If you become aware of a potential or suspected violation and fail to report it, you may be subject to discipline under this Section.**

**15.** A Commissioners' Hearing may take place at the discretion of the Commissioners Court. A single vote of a Commissioner on the Commissioners Court is required for a Hearing to be granted. The Commissioners may, at any time during the process, review the written record of the previous decisions on the matter. All decisions of the Commissioners Court, including whether to allow a Commissioners' Hearing, are final.

*Right to Appear before the Commissioners Court.* All individuals and entities have the right to an appearance before the Commissioners Court subject to the rules of the Court, this Code of Ethics, and, during an Active Solicitation, the Restricted Contact Period provisions in Section 6 herein. However, a protesting Vendor does not have an automatic right to a Commissioners' Hearing on any protest appeal under this Code of Ethics, which will be granted only at the discretion of the Commissioners Court.

*Notification.* Protest hearings are open to the public. Public notification of any hearings, including Appeals Hearings and Commissioners' Hearings, shall be posted on the Dallas County Purchasing website at [www.dallascounty.org/departments/purchasing](http://www.dallascounty.org/departments/purchasing).

*Solicitations and Contracts Pending.* Filing a protest under this Section will not trigger an automatic stay of any procurement process or contract award. It is in the discretion of the Purchasing Director and the Commissioners Court whether to stay any procurement process or contract award with respect to any Vendor protest. Whether a stay is granted shall not compromise any protesting Vendor's right to the protest procedures outlined herein.

*Records.* Records of all protests, including the protest filed, related evidence, and any Written and Final Decisions (including the outcome of any Commissioners' Hearing, if applicable) will be maintained by the Purchasing Department for a period of no less than four (4) years.

**16. Training.** Procurement Professionals shall participate in regular training courses to ensure their knowledge and understanding of this Code of Ethics, as well as to enhance their skills, learn best practices, and better perform their duties related to contracting and contract solicitation.

**17. Notice and Affidavit of Compliance.** A copy of this Code of Ethics shall be included with each public solicitation request. Vendors that submit a response to an Active Solicitation must include an Affidavit of Compliance with this Code of Ethics in order for the response to be eligible. Upon contract award, Vendors shall include a copy of this Code of Ethics as an attachment to any subcontract awarded under a County contract. Procurement Professionals will be required to sign an Acknowledgement of this Code of Ethics, which will be kept in the employee's file, and once a year, or upon any updates or revisions, whichever is sooner, this Code of Ethics will be sent by the

Purchasing Department to all Dallas County employees and Elected Officials in a broadcast email. Copies of this Code of Ethics shall be available on the County Procurement website at [www.dallascounty.org/department/](http://www.dallascounty.org/department/) purchasing and at the County Purchasing Department at 900 Jackson St. Suite 680 Dallas, Texas 75202.

1. **Affidavit of Compliance.** Vendors that participate in a solicitation will be required to submit an Affidavit of Compliance with this Code of Ethics as part of the finalization of any bid or proposal. Vendors who choose not to submit an Affidavit of Compliance will not be eligible to compete for a contract award, and any of the Vendors' submitted bids or proposals on that solicitation will be deemed ineligible.
2. **Audit.** Procurement Professionals shall develop regular internal and external audit programs to ensure compliance with this Code of Ethics.
3. **Vendor Disqualification, Debarment, and Contract Voidance.** The Commissioners Court and the Purchasing Director may disqualify or debar a Vendor, its partners, principals, members, directors, officers, responsible managing employees, agents, successors-in-interest, and other affiliates from bidding on or entering into contracts with the County (including participating as a sub-consultant or sub-contractor, or providing goods, services, materials, equipment, or other benefits to any County project). Successors-in-interest include, but are not limited to, any person with interlocking management or ownership, identity of interests among relatives (as defined herein), shared facilities and equipment, common use of employees, or a business entity organized subsequent to the debarment or other action under this Section that has the same or similar management, ownership, or principal employees as the debarred Vendor.

*Disqualification.* A Vendor may be disqualified from submitting a bid or proposal on and/or competing for any Active Solicitation(s). Vendor's disqualification includes any Related Solicitations.

*Debarment.* A Vendor may be debarred from participating in the County procurement process and from signing any new contracts with the County for a period of no more than three (3) years per violation. If a Vendor has been disqualified more than three times in a three year period, the Vendor will be automatically debarred provided that the Vendor is given written notice and an opportunity for a hearing in advance of the debarment.

*Contract Voidance.* Any contracts awarded to a Vendor who is subsequently disqualified or debarred are voidable at the discretion of the Commissioners Court.

*Grounds.* The following actions constitute a nonexclusive list that may be grounds for disqualification, debarment, or voidance of a contract:

- i. Unsatisfactory performance of a contract or a history of unsatisfactory performance;
- ii. Continued acceptance of goods, services, or Vendor performance under the contract that may constitute a hazard to health, safety, welfare, or property;
- iii. Failure to provide contracted services or failure to comply with the terms and conditions of any contract;

- iv. Refutation of an offer by failure to provide bonds, insurance, or other required certificates within a reasonable time period;
- v. Unwillingness to honor a binding bid;
- vi. Knowingly and intentionally providing false information, whether during the procurement process or otherwise;
- vii. Violation of the Restricted Contact Period;
- viii. Violation of any other statute, rule, regulation, or order related to gifts, gratuities, favors, or bribes;
- ix. Debarment by any other local, state, or federal governmental entity;
- x. Violation of this Code of Ethics;
- xi. A finding of guilt, whether by verdict or plea or nolo contendere, to a felony or Class A or B misdemeanor for any violation involving charges of fraud, bribery, collusion, larceny, theft of services, coercion, conspiracy, payment of kickbacks, violation of antitrust laws, or any charges involving moral turpitude, or any other criminal act based on an intent to commit fraud in the procurement or performance of any governmental contract or to defraud any governmental entity in the provision of goods or services; or
- xii. Commission of any of the above acts in any other contracting or procurement process with any other governmental entity.

**While these actions may be grounds for disqualification or debarment, the Commissioners Court and the Purchasing Director may decide to disqualify or debar a Vendor or other individual for any reason at any time.**

*Notice.* The Purchasing Director will notify the Vendor by the most expeditious method available, including, but not limited to, telephone, e-mail, and fax, of the potential disqualification, debarment, or contract voidance. In addition to the most expeditious method, the Purchasing Director shall also notify the Vendor in writing via certified mail, return receipt requested.

- Debarment/Disqualification Procedure.* The Purchasing Director will notify the Vendor that
- (a) the Vendor is subject to being disqualified or debarred; (b) the basis for the potential disqualification or debarment, which shall be in terms sufficient to apprise the Vendor of the conduct or transaction(s) upon which the disqualification or debarment is based; (c) the effective date of the potential disqualification or debarment, which may be immediately, and if applicable, the duration of the debarment; and (d) that the Vendor has seventy-two (72) hours to respond from the time of notice, upon which, if no response has been received by the Purchasing Director, no further action may be taken by the Vendor and the disqualification or debarment shall be in effect. The Vendor is presumed to have received notice upon receipt of fax or email confirmation or receipt returned by U.S. mail, whichever period is shorter. The Vendor response, if any, should include a response to each reason for the disqualification or debarment that the Purchasing Director cites in the notice and shall include all facts and evidence that the Vendor believes are relevant, including any supporting documentation. The Purchasing Director will review the Vendor's response, if any, and shall determine within three (3) business days of the response

deadline if the disqualification or debarment shall be in effect (the "Final Decision"). The Purchasing Director will notify the Vendor of the Final Decision by the most expeditious method available, and in writing via certified mail, return receipt requested.

*Contract Voidance Procedure.* The Purchasing Director (with the Commissioners Court's approval) will notify the Vendor that (a) it is being investigated for a potential contract voidance; (b) the basis for the contract voidance, which shall be in terms sufficient to apprise the Vendor of the conduct or transaction(s) upon which the contract voidance is based; and

(c) that the Vendor has ten (10) business days to respond from the time of notice, upon which, if no response has been received by the Purchasing Director, no further action may be taken by the Vendor, and the contract will be void. The Vendor is presumed to have received notice upon receipt of fax or email confirmation or receipt returned by U.S. mail, whichever period is shorter. The Vendor response, if any, should include a response to each reason for the contract voidance that the Purchasing Director cites in the notice and shall include all facts and evidence that the Vendor believes are relevant, including any supporting documentation. The Purchasing Director and the Commissioners Court will review the

Vendor's response, if any, and shall determine within fourteen (14) business days of the response deadline if the Vendor's contract should be voided (the "Final Decision"). The Purchasing Director will notify the Vendor of the Final Decision by the most expeditious method available, and in writing via certified mail, return receipt requested.

*Appeals Process.* Vendors who submit an initial response to a disqualification, debarment, or contract voidance notice may appeal any Final Decision within five (5) business days after notice of the Final Decision is received. All appeals under this Section shall be subject to the *Appeals Process* as described in Section 15 above.

Appeal requests should include the following information:

- i. The Vendor's name, address, telephone number, fax number, and email address;
- ii. The Vendor's response to each complaint or allegation forming the basis of the disqualification, debarment, or contract voidance, including all facts and evidence that the Vendor believes are relevant and any supporting documentation;
- iii. Any mitigating circumstances, including impossibility, force majeure, or mutual mistake;
- iv. Any remedial measures taken by the Vendor, including immediately identifying and remedying the cause of the failure to perform, disciplinary actions against responsible individuals, or cooperation with County investigations; and
- v. A sworn certification that the appeal is brought in good faith and that the factual statements in the appeal are true and correct.

Failure to file a timely, compliant appeal of any disqualification, debarment, or contract voidance (including providing the sworn certification as described above) waives any right to an appeal.

- 4. Violations of the Code of Ethics.** Whether a violation of this Code of Ethics has occurred will be determined by the Purchasing Director and the Commissioners Court, subject to the Appeals

Process as stated below.

*Vendors.* A Vendor that is alleged to have violated the Code of Ethics will be (a) disqualified, debarred, and/or or have its contract(s) voided as set forth in Section 20, or (b) subject to other disciplinary action deemed in the best interest of the County.

*Procurement Professionals.* A Procurement Professional who is found to have violated the Code of Ethics will be removed from all Active Solicitations and subject to discipline at the discretion of the Purchasing Director and the Commissioners Court.

*Elected Officials.* Elected Officials who are found to have violated the Code of Ethics with respect to an Active Solicitation must recuse themselves from that Active Solicitation and may be subject to any other actions authorized by state and local rules as the Commissioners Court deems advisable.

*Appeals Process.* Any appeals regarding violations of this Code of Ethics and/or any disciplinary actions taken as a result thereof shall be subject to the *Appeals Process* as described in Section 15 above. Appeals must be made within five (5) business days of receipt of notice of the decision, action, or inaction giving rise to the appeal.

5. **Questions Regarding the Code of Ethics.** If a Vendor has a question regarding any provision in this Code of Ethics unrelated to an Active Solicitation, the Vendor should contact the Purchasing Director. If a Vendor has a question regarding or relating to an Active Solicitation, the Vendor should contact the Contact Person or the Designated Representatives as per the Active Solicitation requirement. Questions from Procurement Professionals and Elected Officials regarding any provision in this Ethics Code should be directed to the Dallas County District Attorney's office, Civil Division or the Purchasing Director.
6. **Other Laws/Policies.** If a conflict exists between this Code of Ethics and any federal or state statute, the stricter of the two provisions prevails. If this Code of Ethics conflicts with any County purchasing processes or purchasing ethics rules, the provisions in this policy control, including but not limited to any conflict with:
  - i. Gift Policy, Dallas County Code, Section 86-752;
  - ii. Conflicts of Interest, Dallas County Code, Section 74-742 and 86-758;
  - iii. Personal Financial Reporting, Dallas County Code, Section 74-742.1 and 86-759;
  - iv. Dallas County Transparency Policy; and
  - v. Procurement requirements, Dallas County Code.

Compliance with this Code does not abrogate the duty of Vendors, Procurement Professionals, and Elected Officials to comply with the County Code and the Transparency policy, to the extent it does not conflict with this Code of Ethics.

7. **Remedies Cumulative.** The remedies provided for in this Code of Ethics are cumulative, and no action taken by the County constitutes an election by the County to pursue any remedy to the exclusion of any other remedy, whether provided by law, equity, statute, federal/state grant, or in any contract with the Vendor. This Code of Ethics is intended to be in addition and supplementary to other local, state, or federal law or grant requirements and shall not be

construed to repeal any provisions of the Dallas County Code.

8. **No Waiver.** The County's failure to exercise or delay in exercising any right, power or privilege under this Code of Ethics shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege, by the County, preclude any other or further exercise thereof.
9. **Severability.** If any provision or any part of a provision of this Code of Ethics is determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable legal requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of a provision of this Code of Ethics, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
10. **Effective date.** This Code of Ethics takes effect on October 06, 2015\_\_\_\_. The provisions of this Code apply to: a) transactions entered into after the effective date; b) events occurring after the effective date; c) renewals or extensions of current contracts after the effective date; and d) events occurring before the effective date, which give rise to a duty to report by any current Vendors, Procurement Professionals, or Elected Officials, as set forth in Sections 4 and 14.



## REFERENCES

### Appendix 1

Proposer shall complete and return concurrently with this solicitation to the Dallas County Purchasing Department. At least five references must be identified. References listed must have done similar JOC services with the Proposer within the past four (4) years and are similar size to Dallas County. County reserves the right to contact customer references listed and to use this information as a consideration when making a procurement decision. Offers will be considered only from contractors who, in the judgment of County, are able to show evidence of responsibility through their satisfactory past performance and demonstrated competence. Failure to complete and include the Dallas County reference form with this RFP will cause your proposal response be considered non-responsive.

4. **Company/Agency Name:**\_\_\_\_\_

Contact Person:\_\_\_\_\_ Title:\_\_\_\_\_

Phone Number:\_\_\_\_\_ E-mail Address: \_\_\_\_\_

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): \_\_\_\_\_

Service Site Address including Room/Suite Number: \_\_\_\_\_

County/State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contract Time Period: Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Contract Dollar Value: \$ \_\_\_\_\_

2. **Company/Agency Name:**\_\_\_\_\_

Contact Person:\_\_\_\_\_ Title:\_\_\_\_\_

Phone Number:\_\_\_\_\_ E-mail Address: \_\_\_\_\_

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): \_\_\_\_\_

Service Site Address including Room/Suite Number: \_\_\_\_\_

County/State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contract Time Period: Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Contract Dollar Value: \$ \_\_\_\_\_

## REFERENCES

5. **Company/Agency Name:**\_\_\_\_\_

Contact Person:\_\_\_\_\_ Title:\_\_\_\_\_

Phone Number:\_\_\_\_\_ E-mail Address: \_\_\_\_\_

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): \_\_\_\_\_

Service Site Address including Room/Suite Number: \_\_\_\_\_

County/State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contract Time Period: Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Contract Dollar Value: \$ \_\_\_\_\_

6. **Company/Agency Name:**\_\_\_\_\_

Contact Person:\_\_\_\_\_ Title:\_\_\_\_\_

Phone Number:\_\_\_\_\_ E-mail Address: \_\_\_\_\_

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): \_\_\_\_\_

Service Site Address including Room/Suite Number: \_\_\_\_\_

County/State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contract Time Period: Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Contract Dollar Value: \$ \_\_\_\_\_

7. **Company/Agency Name:**\_\_\_\_\_

Contact Person:\_\_\_\_\_ Title:\_\_\_\_\_

Phone Number:\_\_\_\_\_ E-mail Address: \_\_\_\_\_

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): \_\_\_\_\_

Service Site Address including Room/Suite Number: \_\_\_\_\_

County/State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contract Time Period: Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Contract Dollar Value: \$ \_\_\_\_\_

## Cost/Payment Fee Work Sheet

Payment, processing and convenience cost for **On-Line Web- Based** transactions for the following card types and applications

Type	Payment	Processing	Convenience Cost	Total Fee
1. ACH	\$_____	\$_____	\$_____	\$_____
2. Electronic Check	\$_____	\$_____	\$_____	\$_____
3. Mastercard	\$_____	\$_____	\$_____	\$_____
4. Visa	\$_____	\$_____	\$_____	\$_____
5. Discover Card	\$_____	\$_____	\$_____	\$_____
6. American Express	\$_____	\$_____	\$_____	\$_____
7. Debit Card	\$_____	\$_____	\$_____	\$_____
			<b>Total</b>	\$_____

## Cost/Payment Fee Work Sheet

Payment, processing and Convenience Cost for **Pay-by-Phone** transactions for the following card types and applications

Type	Payment	Processing	Convenience Cost	Total Fee
1. ACH	\$_____	\$_____	\$_____	\$_____
2. Electronic Check	\$_____	\$_____	\$_____	\$_____
3. Mastercard	\$_____	\$_____	\$_____	\$_____
4. Visa	\$_____	\$_____	\$_____	\$_____
5. Discover Card	\$_____	\$_____	\$_____	\$_____
6. American Express	\$_____	\$_____	\$_____	\$_____
7. Debit Card	\$_____	\$_____	\$_____	\$_____
			Total	\$_____

## Cost/Payment Fee Work Sheet

Payment, processing and convenience cost for **Point of Sale** transactions for the following card types and applications

Type	Payment	Processing	Convenience Cost	Total Fee
1. ACH	\$ _____	\$ _____	\$ _____	\$ _____
2. Electronic Check	\$ _____	\$ _____	\$ _____	\$ _____
3. Mastercard	\$ _____	\$ _____	\$ _____	\$ _____
4. Visa	\$ _____	\$ _____	\$ _____	\$ _____
5. Discover Card	\$ _____	\$ _____	\$ _____	\$ _____
6. American Express	\$ _____	\$ _____	\$ _____	\$ _____
7. Debit Card	\$ _____	\$ _____	\$ _____	\$ _____
			Total	\$ _____

Please list Other Cost Associated with Proposal:

Example:

- Returned ACH
- Monthly Account Charges
- Gateway Transaction Fees
- All other potential cost and fees associated with the proposed solutions

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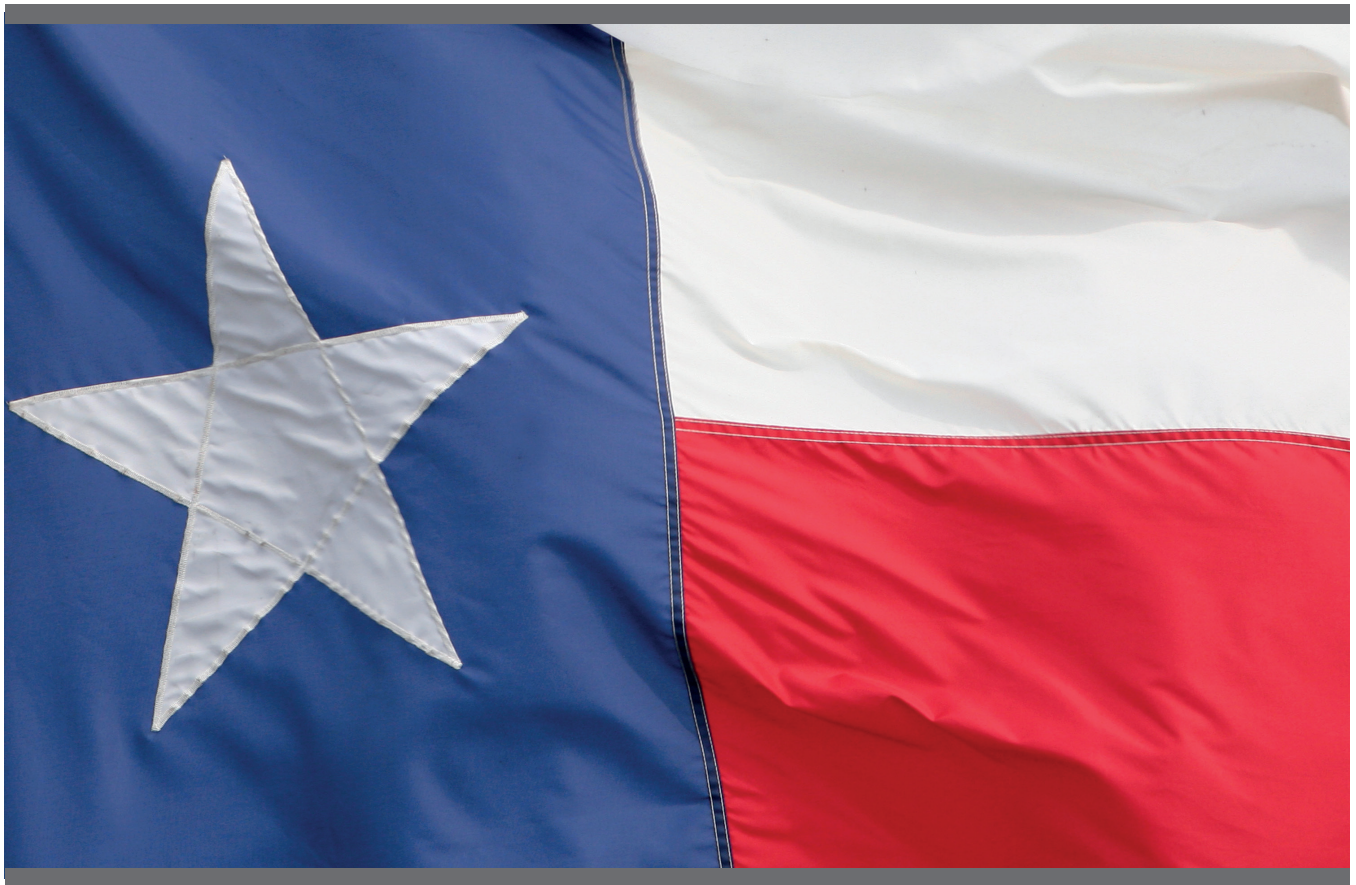
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DRAFT



## Dallas County, Texas

### Proposal for Electronic Payment Services and E-Commerce Solutions

RFP No. 2018-048-6741

**Prepared by:**

**Kevin Shepherd**

Treasury Management Officer  
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**Keba Batie**

Relationship Manager  
2200 Ross Avenue, Floor 8  
Dallas, TX 75201  
(214) 965-3695  
keba.batie@jpmorgan.com

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August 30, 2018

**J.P.Morgan**



### DISCLOSURE STATEMENT

This document was prepared exclusively for the benefit and internal use of the party to whom it is directly addressed and delivered (the “Organization”) in order to assist the Organization in evaluating certain products or services that may be provided by J.P. Morgan.

Chase, J.P. Morgan and JPMorgan Chase are marketing names for certain businesses of JPMorgan Chase & Co. and its subsidiaries worldwide (if and as used herein may include as applicable employees or officers of any or all of such entities irrespective of the marketing name used). Products and services may be provided by commercial bank affiliates, securities affiliates or other J.P. Morgan affiliates or entities. In particular, securities brokerage services other than those which can be provided by commercial bank affiliates under applicable law will be provided by registered broker/dealer affiliates such as J.P. Morgan Securities LLC, J.P. Morgan Institutional Investments Inc. or by such other affiliates as may be appropriate to provide such services under applicable law. Such securities are not deposits or other obligations of any such commercial bank, are not guaranteed by any such commercial bank and are not insured by the Federal Deposit Insurance Corporation. We are not responsible for the performance of our partners, their continued service levels, or their ability to provide services.

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This proposal is subject to and conditioned upon a mutually agreeable contract between the Organization and J.P. Morgan. J.P. Morgan also requires execution of all applicable product and service agreements. Implementation of products and services is subject to and conditioned upon the condition of satisfactory completion of J.P. Morgan’s “Know Your Customer” due diligence and meeting product requirements. These steps are included in J.P. Morgan’s client onboarding process.

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To help the United States government fight the funding of terrorism and money laundering activities, U.S. law (Section 326 of the USA PATRIOT Act) requires banks and certain other financial institutions to obtain, verify, and record information that identifies each client that opens an account. What this means for our clients: Before opening a new account, we will require you to provide name, address, taxpayer identification number, and other information and/or documentation that will allow us to identify the account owner(s), as required by law.

Please note that we do not issue cards and prohibit use of our cards in any country against which the United States has imposed sanctions. A current list of such sanctioned countries, as well as information

## Proposal to Dallas County, Texas

about sanctions, is available on the U.S. Department of the Treasury website: [treas.gov/offices/enforcement/ofac](https://treas.gov/offices/enforcement/ofac).

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J.P. Morgan supports sustainable business practices and adheres to the principles of environmental sustainability wherever possible.

**(To be included in the Original Hard Copy Proposal Response)**

J.P. Morgan has identified below the terms or conditions that we respectfully request be modified in accordance with our recommended revisions. We are willing to discuss mutually agreeable modifications to the contract terms. The proposed changes are indicated by comments in **red text**; additions *in italic*, underlined text; and deletions by ~~strikethrough, red text~~.

The undersigned firm proposes to furnish and deliver any and all of the deliverables and services named in the attached Request for Proposals ("RFP"), unless otherwise provided in the Offeror's proposal. It is understood and agreed that this proposal, including the price or prices offered herein, shall be valid and apply for a period One Hundred and Eighty (180) day's from proposal opening date.

The undersigned firm further agrees to strictly abide by all the terms and conditions contained in the RFP and Dallas County ("County") purchasing policies, contingent upon a formal review, modification and mutual acceptance of modifications of such purchasing policies, and as modified by any attached special terms and conditions of the County, all of which are made a part hereof. Any exceptions to the terms and conditions contained in the RFP are noted in writing and included with this proposal.

It is understood and agreed that this proposal constitutes an offer, which when accepted in writing by the Purchasing Office, Dallas County Commissioner Court, and subject to the terms and conditions of such acceptance, shall constitute a valid and binding contract between the undersigned and the county.

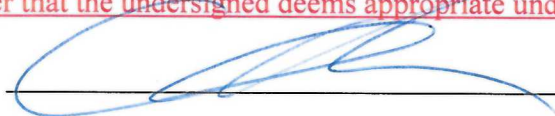
It is understood and agreed that authorized representatives of the undersigned firm have read the County specifications shown or referenced in the RFP and that this proposal is made in accordance with the provisions of such specifications, unless otherwise provided in the Offeror's proposal. By written signature of an authorized representative on this proposal, the undersigned firm guarantees and certifies that all items included in this proposal meet or exceed any and all such County specifications, unless otherwise provided in the Offeror's proposal. The undersigned further agrees, if awarded a contract, to deliver goods and/or services which meet or exceed the specifications. The County reserves the right to reject any or all proposals, waive technicalities, and informalities, and to make an award in the best interest of the County, or to make no award.

**PROPOSAL SIGNATURE AND CERTIFICATION**

I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal ("Offeror") for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of the proposal and certify that I am authorized to sign this proposal for the firm.

The statements made in this Certification are based upon information and belief and the undersigned's due inquiry of employees and agents of bidder that the undersigned deems appropriate under the circumstances.

Authorized Signature:



Print/Type Name:

Keba Batie

Print/Type Firm/Company Name: Date:

JPMorgan Chase Bank, N.A.

# Proposal to Dallas County, Texas

## Cover Letter

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August 30, 2018

Dallas County Purchasing Department  
Attn: Charles Price  
Founder Square  
900 Jackson St., Suite 680  
Dallas, TX 75202

*Re: Request for Proposal for Electronic Payment Services and E-Commerce solution, RFP No. 2018-048-6741*

Dear Mr. Price,

On behalf of J.P. Morgan, I am pleased to present to you our proposal for the County of Dallas. Our industry thought leadership, financial capacity, product platforms and dominance in treasury management set us apart from other firms offering similar services.

### **Why J.P. Morgan?**

#### **Our Commitment to Dallas County:**

JPMorgan Chase & Co. is one of the world's oldest, largest and best-known financial institutions. Since our founding in New York in 1799, we have succeeded and grown by listening to our customers and meeting their needs. Today, JPMorgan Chase & Co. is a leading global financial services firm with operations in more than 60 countries and assets of \$2.6 trillion. We have raised capital and provided credit of \$92 billion for nonprofit and U.S. government entities in 2017, including states, municipalities, hospitals and universities.

J.P. Morgan raised more than \$12.8 billion in financing for local governments and nonprofit organizations in Texas in 2017. We have more than 2,400 employees working in the County, with 3,700 resident employees in the County. We have 92 branches, 314 ATM's 1.3 million consumer customers and 119,700 business customers in the County. We have contributed to \$514.9 million in goods and services purchased in the County in 2017. J.P. Morgan is committed to boosting small business and building thriving communities. We have a \$1 billion commitment over 5 years to corporate responsibility. Our Corporate Responsibility initiatives help identify solutions to some of the most pressing global economic and social challenges. We are leveraging our core strengths, capabilities and expertise to boost economic growth and build resilient communities. Within the



## Proposal to Dallas County, Texas

County, the firm has contributed \$2 million to nonprofits in support of Workforce Readiness, \$826,400 to nonprofits in support of Community Development, \$527,200 to nonprofits in support of Business Development and \$244,600 to nonprofits in support of Financial Capability. To complement the financial contributions within the County, the firm has donated 2,800 employee volunteer hours to nonprofits.

### Relationship Team:

Dallas County's relationship team will consist of experienced banking and treasury professionals dedicated to serving public funds and government segments. We recognize it is critical to deliver outstanding local products and services while taking advantage of the experience and technology of a world class bank.

The County has expressed an interest in a financial institution that has a strong reputation, quality products and services and the ability to perform the required and requested services at a reasonable cost. We have put together a proposal that addresses each of these areas related to J.P. Morgan.

J.P. Morgan appreciates this opportunity and wants to grow our relationship with the County of Dallas. We feel we are the perfect choice to continue as your e-Commerce services provider and as your electronic payments processor. We are happy to provide additional information and we are available if you would like to set-up a post bid interview. All furnished information in this proposal for the County of Dallas, including pricing, is valid for 180 days from the submission date. I will serve as your primary contact/relationship manager, and the person authorized to contractually obligate the organization and negotiate the contract on behalf of the organization. Contact information regarding the proposal is provided below.

Sincerely,



Keba Batie  
Vice President  
Relationship Manager  
Government Banking  
Phone: 214.965.3695  
Email: keba.batie@jpmorgan.com

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### 6.3.5.4 Executive Summary

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J.P. Morgan is proud to be the current provider for electronic payments and e-commerce for all of Dallas County. Our relationship over the past eight years has grown immensely and is a solid foundation for the cohesive working relationship we have today and for tomorrow. We highly value our relationship with Dallas County and desire to continue working in collaboration to assist the Tax and Treasurer Offices in delivering flexible payment options, through multi-channel and multi-payment types to its constituents.

We understand the County's objectives to be the following and believe J.P. Morgan, as the incumbent provider, is best positioned to meet or exceed all of your objectives.

**Financial Strength** – We provide the financial strength and stability Dallas County seeks and the local presence you desire. J.P. Morgan is the largest U.S. Bank, with a global and a very large local presence. We are a financially conservative, sound firm, with over \$2.6 trillion in assets. We know the County has vast sums of collection dollars throughout the year, but particularly during tax season and specifically the last days of January. We have the ability to collect, process and deposit those large dollars with ease. We take pride in being able to deliver your processing needs year-over-year with our end-to-end processing. You want a provider who can handle your annual volumes exceeding \$892 million as the County continues to grow.

**Next Day Settlement** – We understand the Tax Office has contracted with its entities to settle funds next day. Given our size and scale, as well as our wholly-owned merchant processing arm, we are able to deliver next day settlement for all major card brands; Visa, MasterCard and Discover, as well as ACH/eCheck. Currently, AMEX settlement is two days and accounts for just under 8% of all County credit card transactions, 17% of all credit card dollars (2% of all combined payment dollars and 3% of all combined transactions).

**Reduction in Convenience Fees** – It is imperative that Dallas County not have any direct cost associated with the electronic payment collections, but we know it is highly important to offer your constituents the most cost effective way to pay. We continue to extend to the County payers, a zero cost option via ACH/eCheck. We know that cost ultimately drives behavior. ACH collection accounts for 87% of online payments and 82% of all payments combined, at over \$733 million. For those who prefer to make card payments, we have reduced fees from 2.25% to 2.15% for credit and debit (payer present), and from \$3.50 to \$2.95 for Signature Debit and the minimum fee charge. We have also added a new PIN-less Debit Card option, which would be at the new reduced rate of 2.15%.

**Enhancements to Point-of-Sale** – Point of sale enhancements targeted for release in 2H18, the new features for Point-of-Sale transactions include new Verifone MX925 PIN pads. During the transaction the device can capture information from payer via: EMV (chip), NFC (contactless), magnetic stripe, touch-screen display, on-board keypad (PIN entry), and electronic signature capture.

**One team, Local presence, Government Focused** – Your relationship team is just blocks away. Led by Relationship Manager, Keba Batie, Treasury Management Officer, Kevin Shepherd, and Client Service Professional, Janice Baker. We will continue to meet in person on a monthly basis to discuss



## Proposal to Dallas County, Texas

current services, industry trends, new ideas for how to process receivables and addressing any concerns or questions the County may have. We have 2,400 employees working in the County, with 3,700 resident employees in the County. We are not only providing electronic and e-commerce services for your receivables, but we are living and working in the County. We are also customers of the County and user of the services you provide. This gives us deeper insight being on both sides of the transaction and believe this adds value to the relationship. Our team only works with public sector clients, so that allows us to better understand your business over others who are diversified and multi-focused.

**Communication and Proven Track Record** – We have an efficient and established communication model that includes monthly in person meetings, and we communicate frequently via phone and email. We strive to always exceed standard response times and follow-up promptly when a question or concern arises. We provide automated communications for scheduled maintenance. We complete annual reviews to make sure the contacts on file are up to date for distribution. We have a proven track record of being responsive and will continue to provide the best level of service we can offer to exceed your expectations.

**End-to-End Processing** – We have a distinct advantage over others in that we wholly-own our merchant processing. This allows us to handle end-to-end receivables processing and reduces counter party risk to the County. This also facilitates next day settlement of funds for major brands such as Visa, MasterCard and Discover.

**Innovation & Security** – Technology and security is a key component of our business and we are constantly evaluating new ways to improve on current services. J.P. Morgan currently spends \$2 billion a year on technology and security to protect our clients and ourselves from potential threats. This is a very important consideration when evaluating who you are doing business with to understand the level of risk associated with third parties.

**Cost of Change** – While there are no direct costs to the County for electronic payments, there is an internal cost of time, implementation and training. By staying with J.P. Morgan, the County will benefit greatly from staying with what is familiar: software, custom remittance files, relationship team, and day-to-day servicing. There will be some change as mentioned for the new features for Point-of-Sale, however, that will be minimal compared to changing to entirely new vendor(s).

On behalf of your entire J.P. Morgan team, we thank you for your consideration to continue as your electronic payments provider. We welcome all opportunities to answer questions or provide other clarification as needed. We believe J.P. Morgan is best positioned to continue the current relationship as we offer the financial stability and strength you need and deserve, we bring longevity of providing electronic payments with end-to-end processing, we have an attentive relationship team that works closely with the County's staff, and we are offering price reductions with more cost effective payment options to the constituents of the County while providing a no cost option as well. We look forward to continuing our long-standing relationship with Dallas County and building on the foundational successes we have built together.

### 6.3.5.6 Organizational Information/Qualification

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#### REFERENCES – Appendix 1

## REFERENCES

### Appendix 1

Proposer shall complete and return concurrently with this solicitation to the Dallas County Purchasing Department. At least five references must be identified. References listed must have done similar JOC services with the Proposer within the past four (4) years and are similar size to Dallas County. County reserves the right to contact customer references listed and to use this information as a consideration when making a procurement decision. Offers will be considered only from contractors who, in the judgment of County, are able to show evidence of responsibility through their satisfactory past performance and demonstrated competence. Failure to complete and include the Dallas County reference form with this RFP will cause your proposal response be considered non-responsive.

**4. Company/Agency Name:** Tarrant County

Contact Person: Tom Spencer Title: Chief Deputy

Phone Number: (817) 884-1107 E-mail Address: tspencer@tarrantcounty.com

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): Office Building

Service Site Address including Room/Suite Number: 100 East Weatherford, Fort Worth

County/State: Tarrant County/TX Zip Code: 79196

Contract Time Period: Start Date: 09/01/2011 End Date: 06/30/2019

Contract Dollar Value: \$ N/A

**2. Company/Agency Name:** Galveston County

Contact Person: Crystal Cooper Title: Assistant Treasurer

Phone Number: (409) 770-5428 E-mail Address: crystal.cooper@galvestoncountytexas.gov

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): Office Building

Service Site Address including Room/Suite Number: 722 21<sup>st</sup> Street, Galveston

County/State: Galveston County/TX Zip Code: 77550

Contract Time Period: Start Date: 05/01/2009 End Date: N/A

Contract Dollar Value: \$ N/A

## REFERENCES

5. **Company/Agency Name:** Nassau County

Contact Person: Rolando Fernando Title: Deputy Treasurer

Phone Number: (516) 571-7711 E-mail Address: rfernando@nassaucountyny.gov

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): Office Building

Service Site Address including Room/Suite Number: 1 West Street, Floor 1, Mineola

County/State: Nassau/NY Zip Code: 11501

Contract Time Period: Start Date: 08/31/2015 End Date: 12/31/2018

Contract Dollar Value: \$ N/A

6. **Company/Agency Name:** DuPage County

Contact Person: Gwen Henry Title: Treasurer

Phone Number: (630) 407-5998 E-mail Address: gwen.henry@dupageco.org

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): Office Building

Service Site Address including Room/Suite Number: 421 North County Farm Road, Wheaton

County/State: DuPage/IL Zip Code: 60187

Contract Time Period: Start Date: 07/09/2014 End Date: 07/08/2019

Contract Dollar Value: \$ N/A

7. **Company/Agency Name:** City of Baytown

Contact Person: Brent Yowell Title: Treasurer

Phone Number: (281) 420-6552 E-mail Address: brent.yowell@baytown.org

Specify Type of Complex/Facility (i.e. Office Building, Hospital, Manufacturing Warehouse, etc.): Office Building

Service Site Address including Room/Suite Number: 2401 Market Street, Baytown

County/State: Harris County/TX Zip Code: 77522

Contract Time Period: Start Date: 07/24/2016 End Date: 09/30/2021

Contract Dollar Value: \$ N/A

### 10.3 Scope of Services

---

**a. Dallas County is seeking a third party solution provider of electronic payment services for integration into the County point-of-sale (POS) terminals for debit/credit transactions...**

As the current provider, the County can be certain we will continue our high level service and enhance the current solution. Today, the County knows the service as “Pay Connexion” which we have rebranded to “Connect” as part of our overall Integrated Receivables platform. The County can be confident in J.P. Morgan’s ability to continue enabling its payers to make all multi-channel electronic payments.

Connect is a feature rich and highly configurable end-to-end solution, fully hosted by J.P. Morgan for processing card and ACH payments initiated via the Internet, Interactive Voice Response Unit (IVR) and customer service representative (by phone), Call Center, Application Programming Interface (API) and Point-of-Sale (POS) card device payment channels.

The configuration of Connect that supports the County’s existing applications is uniquely tailored to the County’s business and technical needs. The existing application configurations, as well as potential configuration changes and product enhancements can continue to support the County’s constituent responsiveness, efficiency, security, compliance, business, and technical, as well as other objectives.

The County will appreciate key solution enhancements related to in-person card payment collection at the point of sale (POS), with enhancements targeted for release in 2H18. Our Integrated Receivables solution will support credit/debit card transactions initiated via POS utilizing Verifone MX925 PIN Pad hardware (see Appendix 1 - Figure 1).

During POS transactions, the County’s authorized clerks will interact via the browser-based Administrative website. There is no need for the cashier to physically handle the payer’s credit/debit card, nor the device itself. The sensitive card account data is not exposed to the cashier and is encrypted upon capture at the device.

During POS transactions, the Verifone MX925 device can capture information from the payer via: 1) Magnetic stripe, 2) Europay MasterCard Visa (EMV) “chip”, EMV-compliant, 3) Near Field Communication (NFC) for support of credit/debit cards that are stored in mobile. Phone based digital “wallets” (e.g., Apple Pay), 4) touch-screen display, 5) On-board keypad supports easy cardholder PIN entry, and 6) electronic signature image capture on screen with stylus.

To support the County’s PCI-DSS and security objectives, Point to Point Encryption (P2PE) ensures that sensitive credit/debit card data is encrypted upon capture at the device before transmission for processing.

The clerk can print hardcopy receipts utilizing a network printer. If needed, J.P. Morgan can provide an Epson TM-T88V POS thermal printer.

For proper system interaction, including but not limited to the security benefits of Point to Point Encryption (P2PE), and because a proprietary dongle is required for devices to operate with our

## Proposal to Dallas County, Texas

Integrated Receivables solution, it is necessary for J.P. Morgan to provide related POS hardware. Manufacturers' warranties apply.

The devices are IP-based. The County is responsible for providing electrical power and Internet connectivity at all locations and workstations where the devices are installed. Additional terminal device consumables, such as paper receipts will be the County's responsibility to provide.

**POS Methods of Payment** — The County can choose to accept Visa credit or signature debit cards, Mastercard credit or signature debit cards, Discover or American Express credit cards and PIN debit cards (Star, Nyce, Pulse, Accel).

**POS Device Screens** — Please refer to Appendix 1 - Figure 2 for sample screens that the County personnel would navigate to complete a POS payment.

**POS Receipts** — Please refer to Appendix 1 - Figure 3 for a sample receipt. The receipts indicate the convenience fee is being charged by J.P. Morgan. County-defined parameter data (e.g., parcel number, property address, owner name) may be written to the receipt.

**POS Signage** — The County must confirm payers clearly understand a convenience fee will be applied to their payments. Our solution discloses the convenience fee to the payer prior to submission of the payment, on signage displayed at the point of sale, verbally by the clerk that is facilitating the payment, on the POS device screen, and the printed receipt.

Payment brand rules require that signage disclosing the convenience fee be posted at the point of sale. It is a contractual obligation for merchants to deliver all required disclosures relating to convenience fees to each payer. Periodically, J.P. Morgan will ask you to certify compliance with proper convenience fee disclosures.

We welcome the opportunity to discuss how integrated POS can be incorporated into each of the County's distinct applications to achieve the greatest efficiencies.

### **b. The solution should maximize and improve the County's ability to efficiently and accurately conduct various types of credit card, debit card...**

With above-mentioned POS enhancements, valid data (e.g., amount due, parcel number, property address, owner name) can be provided by the County's systems (ACT), in real-time (with ACT development for integration), and/or the County's clerk/cashier via the browser-based Administrative website, and be associated with the POS transaction and printed on the POS transaction receipt. As in the existing configuration for web and phone, this data will be returned to the County's systems in the same remittance file and real time payment confirmation messaging as other payments our solution supports. It is reflected, reported, administered, reconciled and supported via the same browser-based Administrative website as other payments supported today. This integration across all payment channels with the County's systems provides an improved user experience, efficiency and data integrity during payment acceptance, cash application, administration and support. The County's migration to the integrated POS solution, including deployment of any changes in service/convenience fees will be implemented via Change Request.

## Proposal to Dallas County, Texas

**c. Proposer must be in compliance and certified compliant with all PCI standards**

Connect is compliant with the Payment Card Industry (PCI) Data Security Standards (DSS) and is subject to routine audit by an independent Qualified Security Assessor (QSA). During the April 2018 audit, Connect, formerly known as “Pay Connexion”, received a favorable rating. Criteria included in the PCI-DSS review are: establishing and maintaining a secure network, protection of cardholder information, data access and controls, and consistent system and network monitoring.

**d. Dallas County intends to award a single Proposer. The Proposal should include interface solutions if a single or multiple third party application is presented.**

Please see above responses to items #10.3.a and #10.3.b. All payment channels and payment methods offered herein specifically, including web and phone payments, as well as the enhanced integrated POS capabilities are provided via J.P. Morgan’s Integrated Receivables solution and utilize a common product, database and administrative capabilities, user interfaces and system interfaces implementation and support processes.

**e. This RFP sets forth requirements for these services and solicits a detailed Proposal from Proposer(s) to include functional and technical requirements, implementation services, hardware installation, on-going software maintenance and support, and pricing.**

Within the allowable page limit of this RFP, our proposal outlines key functional and technical capabilities, implementation, training and support processes and pricing. We welcome the opportunity to discuss our solution at a more detailed level and/or answer any questions that the County may have.

**f. Proposer must be able to provide all services described in this RFP at no cost to Dallas County.**

Our no-cost, managed model option enables the County to pay no fees relating to collecting payments from payers. With this option, J.P. Morgan collects the fee from the payer, and bears all costs associated with the e-payment solution and transaction processing. Costs associated with the e-payment solution include implementation, hosting and transaction initiation. Interchange, dues, assessments and merchant processing and/or ACH service are fees associated with transaction processing.

**g. Proposer shall have a minimum of five (5) year’s experience in the development, installation and operation of a credit and debit card processing services.**

Connect is a proven and well established platform and has successfully provided electronic payments processing to the County’s constituents since 2010 and our solution and experience pre-dates that to the mid-1990s. As the incumbent e-payment services provider to the County, our experience with your processes and requirements make us uniquely qualified to address your ongoing needs as they evolve.

**h. Proposer will furnish and install all applicable software, hardware, equipment, card processing machines/terminals...**

As the incumbent e-payment services provider to the County, J.P. Morgan has already delivered applicable service, integration and related training for the Web and phone payments. Regarding deployment of integrated POS enhancements, please see our response to items #10.3.a and #10.3.b. Please also see our response to items #10.3.j and #10.3.h.



## Proposal to Dallas County, Texas

For the proposed application configuration changes, as well as other changes or new application setups the general implementation model encompasses five phases: Configuration Requirements, Build, User Acceptance, Testing (Presentation, Integration/Functional, End-to-End), Training and Production Support.

The Integrated Receivables Connect implementation timeline ranges from eight to 20 weeks. The timeline can vary based upon the scope and complexity of the required feature set, as well as your availability, timeliness of decision making during requirements definition, and resource dedication to County testing. Depending on the scope defined, third party system (e.g., ACT) provider development may be needed to facilitate integration. As the long-time incumbent provider, we will be able to minimize project impact to the County, because we understand the County's technical systems environment, operational procedures objectives and requirements and can leverage existing integration with the County's systems and procedures. Retaining J.P. Morgan minimizes the time, effort, money and other project risks associated with a transitioning to a new service provider.

**i. Proposer must provide processing for multiple “brands” and types of cards such as, MasterCard, VISA, Discover and American Express...**

Connect web and phone channels currently supports Mastercard, Visa, Discover and American Express card payments in coordination with the payment brand networks and issuers, as well as ACH debits. At the County's option, PIN-less Debit Cards (i.e., Star, Nyce, Pulse and Accel) may be added for Web and Phone in the County's applications in which processing is supported on our e-Commerce Global Merchant Services platform (e.g., property taxes) by way of a Change Request project.

**j. Project Implementation Schedule**

Please see our response to item #10.3. h. Unless new applications are boarded or scope is otherwise modified, implementation may be limited to Change Request project to: 1) migrating to the enhanced integrated POS solution, 2) if desired, add PIN-Less Debit Cards to Web and phone payment applications with merchant processing on our e-Commerce Global Merchant Services platform, and 3) modify service/convenience fees to those proposed herein.

To the extent the County's target state will entail integration and/or interfacing with third party systems (e.g., ACT), we encourage the County to anticipate engaging those third party providers in the implementation project work.

An implementation project manager, with end-to-end ownership and accountability for the process, is responsible for communicating regularly with you and coordinating activities. The project manager will work with the County to establish timelines for additional phases of service and then coordinate with the appropriate teams across both organizations to complete the setup.

**k. Proposer shall provide an estimate of the timeline needed to complete the system implementation and training, including any lead time before work can begin.**

Please see our responses above. Specific project initiation dates will be coordinated, as will be a specific subsequent project task line and timeline. While subject matter experts are available to discuss our solutions at any time, whether prior to or during or after the implementation project, it is anticipated the County will not seek to initiate Change Request project work until after the property tax season, October 2018-January 2019. While the above-stated timelines reflect experienced-based

## Proposal to Dallas County, Texas

guidance, project initiation as soon as feasible after one period of peak activity may be best to ensure project completion, administrator acclimation, and communication to payers with as much time remaining as possible prior to the next peak period.

### **l. System Functionality and Performance**

Connect provides 24/7 availability and has a history of reliability and accuracy on a platform designed and tested for redundancy and disaster recovery with Service Level availability target at 99% of the total minutes in each month, excluding planned outages. Connect has managed availability well in excess of the 99% target for the past eight years. Please see Appendix 1 - Figure 5 for system availability metrics for the past eight years.

**m. In addition to basic electronic transaction presentment and processing functions, Proposer's systems shall provide the following minimum functionality:**

**n. At all times make available the option for a customer to stop the information gathering and transaction process.**

With Connect, a payer may quit a payment prior to payment confirmation. Further information will not be gathered.

**o. Provide an active message to the customer indicating that a transaction has been either accepted or rejected.**

Every successfully completed payment will result in a confirmation being presented to the payer in real time. Any declined transaction will result in notification to the payer in real-time.

**p. Allow the customer to review charges before final submission.**

The payment amount, service/convenience fee and their sum (i.e., the total cost to the payer) are each presented to the payer who is given an opportunity to cancel or confirm the payment.

**q. Show Proposer fees separately from County charges.**

Please see Financial Requirements item #cc below, as well as #p immediately above.

**r. Provide the capability for the customer to obtain a tangible order confirmation such as a printable form from a web page.**

Regardless of the payment method used, once a payment transaction is completed, a unique confirmation number is presented to the payer, which can be printed. The payer also has the option of providing an email address to receive confirmations.

**s. Allow the customer to try a different card or payment type if a transaction is rejected.**

After a decline, the payer may attempt another payment with a different card or payment method.

**t. Provide continuity in appearance and sound of the County's web site to the Proposer's payment screens on their respective web site.**

Connect web supports County branding and certain levels of customization (e.g., web page logo, labels), providing the payer with a consistent look and feel.

**u. Populate information that is passed from the County's web site application so that taxpayers do not need to enter duplicate information that they have already provided to the County's application.**

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Connect can pre-populate data fields with valid information provided from the County's systems (e.g., ACT) via real-time interfaces. This optimizes payer convenience, efficiency and data integrity by minimizing manual data entry during payment initiation.

**v. Provide the ability to block certain users, card numbers, account numbers, etc.,**

When integrated with County systems (e.g., ACT) Connect can support the enforcement of the County's business rules with respect to which account numbers (e.g., parcel number) may or may not be paid. Moreover, Connect enables the County's authorized customer service representatives to enable/disable payment methods (e.g., ACH, credit/signature debit card, PIN-less debit card) for any individual registered payer.

**w. Provide all services in both English and Spanish, at minimum, and possibly in other languages.**

The default language of the Connect website is English; however, it can be configured to display in both English and Spanish, which affects web and phone channels and emails.

**x. Processing cut-off periods must be in sync with payment requirements as stated in the Texas Property Tax Code – taxpayers can make payments up to 12 A.M. and receive same day credit.**

All transactions are date and time-stamped. All payments in card and ACH batches closed prior to remittance file generation will be reflected in the remittance file. Remittance files available at start of day, are cut at 12:00 a.m. CT for date alignment, and include details of each payment made during the processing day. This allows the County to automatically post the payments to your customer accounts.

**y. Provide electronic acceptance files formatted for auto posting to financial application.**

Please see our response to #x immediately above.

**z. Provide option for settlement directly with Dallas County's designated depositories through ACH and next day transfer of funds.**

Because the County requires concentration of funds at Bank of America (your depository bank), funds from payments initiated via Connect can be automatically swept from a settlement account(s) at J.P. Morgan daily to the target account at no cost to the County. Using Standing Order Funds Transfer Initiation (SOFTI), all funds settled into the J.P. Morgan demand deposit account (DDA) will be wired to your depository bank. An imprest balance must be maintained at J.P. Morgan to fund returns, refunds and chargebacks.

**aa. Financial Requirements**

**bb. Settlement Time: Unless otherwise requested by Dallas County, all transaction funds shall be settled and in Dallas County's bank account(s) by ACH before 9:30 a.m. the next business day.**

Connect's settlement processing and timing is in accordance with the time frames indicated below:

**eCheck/ACH:** All eCheck payments made each business day before 8:00 p.m. CT will be processed in a batch as ACH debit transactions. The Connect system will debit funds from the payers' accounts and

## Proposal to Dallas County, Texas

credit the County's J.P. Morgan demand deposit account. Funds will settle on the next business day morning, taking into account weekends and Federal Reserve holidays.

- **Credit and Debit Card:** Payments are processed by J.P. Morgan with authorization taking place in real-time and funds are settled in batch.

For Dallas County's specific applications refer to customized settlement processing in Appendix 1 - Figure 6.

### **cc. Separation of Fees from Charges: Proposer's financial systems shall have the ability to itemize separately the County's charges and the Proposer's fees.**

Service/Convenience fees (which automatically settle directly to J.P. Morgan) are separated from the charges (which settle to the County) during payment acceptance, in remittance, reporting, payment inquiries, and on the payer's credit/debit card or bank account statement.

### **dd. Multiple Bank Accounts**

Connect applications are organized within a highly configurable and expandable logical hierarchy that can support each of the County's departments, divisions, products, services, bill types and revenue streams. Different features are configurable at different levels in Connect. Configurations can support County's business processes that are unique to their divisions. For example:

- Different "biller groups" (Tax Office, Treasurer) may have distinct branding or holiday schedules.
- Different "billers" (e.g., Property Taxes, Special Inventory Tax) may have segregated groups of administrative users or distinct remittance files.
- Different "products" (e.g., Property Tax payments for a single parcel, Portfolio payments for multiple parcels) may have unique payment methods, payment channels, parameter data elements, single/recurring payment characteristics, business rules or settlement account(s).
- Different "parameters" (e.g., parcel number, address, owner name) may have unique attributes, such as character length/format, passed/collected, required/optional, or presented/hidden.
- Different "administrative organizations" can align to just one "biller" or a set of "billers."

This hierarchy provides a tremendous degree of versatility in mapping Connect's extensive feature set to the County's target business processes.

The County is able to designate the settlement accounts at the "product" level and by payment method (i.e., credit/debit card or ACH). During the implementation for each County application, J.P. Morgan will work with the County to define the required settlement model and identifiers.

### **ee. Exceptions and Charge Backs**

Dallas County will not be responsible for any fees for refunds, returns nor chargebacks.

Chargeback retrieval requests are typically initiated upon a cardholder's request. The cardholder may contact the bank that issued their card and request additional information.

According to the payment brands' (Visa, Mastercard and Discover) Operating Regulations, an acquirer has 30 calendar days from the date when the issuer's request is processed by the issuer. Billers are given until day 21 of the 30-day life cycle to fulfill ticket retrieval requests. If a request is unfulfilled as

## Proposal to Dallas County, Texas

of day 7, we will send a second request, and if not fulfilled on day 14, a third request will be sent via fax or mail, provided that the biller is set up for fax delivery of their retrieval request notifications. Generally, if a retrieval request is not fulfilled (i.e., copy of receipt is not presented), the retrieval becomes a chargeback. Facsimile and scanned images are acceptable means of producing the requested drafts.

Our operating procedures for exception processing, including retrievals and chargebacks, are designed to minimize impact while addressing cardholder issues. Our processing rules are written to generate a retrieval or chargeback response without your involvement, if we are able to access the required information.

J.P. Morgan receives retrieval requests electronically as part of our daily incoming chargeback files. They are automatically matched against our transaction history database. If the transaction was for a card-not-present transaction, a facsimile draft is produced which is sent to the payment brands as an image. If a sales draft is required, J.P. Morgan will forward the retrieval requests via fax or mail to the biller in order to obtain the required sales slip. For faster notification and resolution, billers are encouraged to sign up for access to the Online Chargeback Management System which is an application from our reporting tool. This application allows responses to be uploaded directly to the system alleviating the need for faxing or mailing the response.

**ACH/eCheck Payments:** ACH return items will be debited to the County's J.P. Morgan demand deposit account according to standard ACH processing rules. These returns will be presented back to Connect and included in the next remittance file, labeled as returns. The original transaction will be updated to reflect the return and an email notification sent to the Payer.

### **ff. Billing Statements**

The payer will see two transactions listed on their card or bank account statement, one representing the main payment with the County as the merchant of record, and the other representing the convenience fee with J.P. Morgan as the merchant processor.

**gg. Effectiveness Level: The effectiveness level of a system is defined as the ratio of:**

**hh. Effectiveness Level = Amount of time in given period that system is functioning correctly**

#### **1. Total amount of time in that period**

Please see our above response to item #l. on page 7.

**ii. The proposed system shall perform at an effectiveness level of 99% or greater, including scheduled maintenance downtime, for each month during the entire Term of the Contract.**

Please see our above response to item #l. on page 7.

**jj. Proposer must have the ability to process transactions and accept settlement files as required through the appropriate authorization and settlement networks.**

**kk. Provide a pay-by-phone solution.**

With Connect the following pay-by-phone options are available: 1) Interactive Voice Response, (IVR) Payments, 2) County Customer Service Representative Payments, and, 3) J.P. Morgan Call Center Payments - Our Call Center solution is used by Dallas County Tax Office for phone payments.

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Connect provides an interactive voice response (IVR) payment channel, for payers who wish to make electronic payments using the telephone that operates 24/7. IVR payers may be unregistered or pre-registered, and can initiate credit card, debit card and eCheck/ACH payments over the phone. Numeric data input is via the phone keypad.

The IVR can support custom phrases and optional messages scripted and recorded during implementation, to maintain the County's branding and provide additional details to the payer. To record custom phrases, J.P. Morgan uses voice talent that conforms to the base phrases of the full Connect IVR call flow. This provides a consistent and favorable user experience. The IVR may be configured to support English only, or both English and Spanish languages.

Connect can be configured for support by the County or by call center agents provided by J.P. Morgan that are based in the U.S. The call center is operational from 6:00 a.m. CT through 1:00 a.m. CT, 7 days per week including U.S. holidays. Calls may be routed selectively to bilingual agents (English-Spanish).

Please note that because J.P. Morgan's call center do not have access to the County's internal customer service-related information systems, training or policies, it should be noted that the scope of payer service they can provide is limited to that which is related to Connect, not the products and services provided by the County.

### **II. Provide an Internet processing solution. Any Proposer's provided internet solution must employ current encryption standards established through ANSI, etc.**

Please see our response to item #10.3.c.

### **mm. Provide their own merchant bankcard services provider or may choose to process merchant transactions through the County's merchant bankcard services provider (currently Bank of America).**

The strength of J.P. Morgan's Connect offering surpasses others offering similar services as the only third-party provider that is completely owned and operated by a bank. This gives the County a single, proprietary point of accountability throughout the entire process. JPMorgan Chase Bank, N.A., a full member of both Visa and Mastercard, acts as the sponsoring bank.

J.P. Morgan provides all services including:

- Direct links to major card payment brands and several private label credit card organizations, providing direct settlement without any intermediaries.
- Direct connections to major and secondary debit networks for authorizations, funding, reporting and transaction reconciliation.
- Product development, sales, implementation and support.
- Merchant services, processing of both credit/debit card and eCheck/ACH payments.

We are a leading merchant processor and has been consistently rated as a top originator of ACH transactions since the founding of the ACH network in 1972. In 2017, Merchant Services' processing volume was more than \$1.19 trillion. As of second quarter of 2018, we reported year-to-date processing volume of \$647.1 billion.



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### **nn. Provide for the authorization and settlement of transactions through the appropriate authorization and settlement networks.**

Connect processes credit and debit cards through J.P. Morgan's Merchant Services. As such, the County will be working with a single provider, J.P. Morgan, for all payments processed through Connect, including ACH and all credit/debit cards.

### **oo. Provide research and problem resolution to transaction and/or settlement discrepancies such as copy requests and charge backs. Handle all charge backs and returns/reversals on behalf of the Dallas County.**

Authorized County personnel have access to the administrative site to research transactions and initiate refunds for erroneous, duplicate or incorrect payments. The refund functionality is available immediately for credit card payments and after 10 days for eCheck/ACH payments. Users can post either partial or full refund amounts, though not for more than the total original payment amount, including a convenience fee, if applicable. The bank will then automatically process the refund and credit the payer through the account from which the original payment was initiated.

### **pp. Payment file format must be compatible with the Dallas County Tax Office's Property Tax Collections System (ACT) in order to update tax accounts via daily lockbox files.**

Connect has successfully interfaced with many tax systems, including ACT, specifically for the County's single parcel tax payments and portfolio payments and will continue, unless the County submits a change request, in the event your requirements change.

### **qq. Must have the capability to accept property tax account numbers up to 17 digits, both numeric and alpha characters.**

The existing Connect platform is configured with parameters defined by the County, including Property Account Number (up to 17 alpha/numeric characters), Owner Name and Property Address, to continue to support the County. Parameters may vary by "product" (e.g., "single parcel tax payments" versus "portfolio payments"). We currently accept the County's property tax account numbers as stated and will continue, unless the County submits a change request, in the event your requirements change.

### **rr. Transaction File/Lockbox File Layout:**

Field Name	Length
Agency ID	6
Merchant ID	16
Application ID	6
Sub-application ID	6
Agency/Dept Defined 1	20
Agency/Dept. Defined 2	20
Agency/Dept. Defined 3	20
Transaction ID	23
Customer Name	25
Date and Time	14
Payment Type	2



## Proposal to Dallas County, Texas

Field Name	Length
Total Amount	13
County Charges Amount	8
Proposer Fees Amount	8
Card Type	2
IIN / BIN the first 6 digits	6
Last four digits of card number	4
Authorization Code	2

The County will continue to receive remittance data in the above-outlined existing Connect formatted remittance file unless the County submits a change request, in the event your requirements change.

**The transaction file shall contain all of a day's transactions up to an agreed upon time (e.g. 12:00 A.M.).**

Connect will continue to provide remittance data via remittance file, real-time payment confirmation (RTPC). Dallas County Tax Office currently utilizes a split remittance file for property tax payments cutting each day's payment activity files at 12:00 a.m. CT for import into ACT. This file is available automatically via secure FTP or other supported connectivity protocol. Please see our response to item #x above.

- **Proposer shall provide the County with the capability to securely access, via password-protected site...**

The County controls the level of access allowed by individual employees. The County's authorized security officers established during implementation define which administrative functions align to which administrative roles, and can assign individual employees to those roles. User names and passwords are established for individuals to access the administrative application.

- **All financial data and information regarding actual collections provided to Dallas County from Proposer shall maintain an accuracy level of 100%.**

Connect will continue to convey to the County accurate data for association with payments as furnished by the County (ACT) and/or the payer.

- **Payment history must be archived for no less than twelve months.**

Transaction data is available online to your authorized administrative users for the first 24 months after a transaction is initiated. After this period, transaction data is archived offline, but is available to the County's authorized administrative users by request to the Connect Client Services team.

Statement/bill/invoice data is retained online for 18 months. This data retention policy survives the contract term and deactivation of service.

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### Reporting Capabilities

- **Reporting capabilities must be flexible enough to allow Dallas County the option to choose the report that best meets their specific needs.**

Connect reports can be generated and accessed online by the County's authorized administrative users. Reports are available on demand through the administrative web site. Standard reports include payment detail, payment summary, credit card batch and settlement reports. Administrative users provide the criteria for the report, submit the request and name the report. Reports can be viewed in HTML format or exported in a comma separated value (CSV) format. Reports remain available for 180 days.

Connect provides flexible filtering capabilities that enable users to customize reporting criteria. Payment reports, whether summary or detail, reflect real-time data. Reports can be generated with specific criteria such as date and value ranges, amount ranges, product types; Payment types: Card, and eCheck/ACH; Payment channels: Online, Interactive voice response (IVR) system and Call Center Agent; and single/recurring payments. Detail reports offer multi-tiered sorting capabilities for report results (e.g., by payment channel, then method, then by client defined parameter).

Please refer to Appendix 1 - Figure 8 for a list of standard reports with a brief descriptions and available formats for each.

- **Provide custom daily, weekly, and monthly detail and summary reports electronically to the Dallas County the information needed to receipt the payment to the proper accounts**

We will continue to provide the County with existing reporting capabilities.

- **Provide a monthly report to the appropriate Accounting Divisions of Dallas County and the Auditor's Office summarizing the activity of all payment channels by card type and issuing agency that includes gross sales, returns, net sales, total transaction counts, transaction type as well as any declined, rejected and failed transactions.**

We will continue to provide the County with existing reporting capabilities.

- **Provide exception reports of transactions that exceed control parameters to assist in the detection of fraud and misuse.**

The Fraud Detection report is provided to help the County detect suspicious user activity from recent transactions using seven distinct criteria. The report is generated overnight, on bank business days, and is available for download through the Administrative website.

- **Proposer shall retain authorization logs and transaction records for such period of time as required by applicable law, regulations, and Dallas County policies.**

J.P. Morgan will retain credit card authorization logs and transaction records as required by applicable law and the rules, regulations and operating procedures of the respective card organizations.

Connect follows all appropriate standards, including compliance with various credit card associations, federal privacy rules, as well as NACHA rules and regulations. In addition, we constantly review web development standards, such as the Americans with Disabilities Act, to ensure for compliance and accessibility. Annual internal audits are performed to monitor policy changes. This compliance

## Proposal to Dallas County, Texas

includes payments, returns, and chargebacks. We also are fully PCI-DSS compliant and adhere to all applicable Federal, state, and banking regulations.

J.P. Morgan acknowledges that the County reserves the right to inspect the transaction records for the County upon mutually agreed upon time and scope. As a matter of policy, J.P. Morgan does not permit third-party general audits. The bank will make available records specific to the services provided to and the accounts of the County. This is due to the confidentiality and security obligations related to financial and customer data required of a financial institution.

### Security, Back-up and Compliances

- **Proposer is responsible for ensuring that appropriate security and encryption technology measures, features, mechanisms, and assurances are in place to safeguard the County's, as well as the payers' public information assets.**

Please see our above response to item #10.3.c. All pages within both the public-facing Connect site and the administrative site are accessed through a secure URL. Each session is secured using Secure Sockets Layer (SSL) with 128-bit encryption technology.

- **Proposer shall have industry standard security and control procedures in place to ensure the use of the debit/credit card is legitimate.**

Please see our above response to item #10.3.c.

- **Proposer will be required to provide a description of downtime procedures in the event that POS terminals or communication links are not operational.**

Connect targets 24 hour accessibility, 365 days a year, with a history of reliability and accuracy on a platform designed and tested for redundancy and disaster recovery.

- **All networks being utilized to provide services and to process transactions pursuant to this RFP must meet or exceed industry standards and is audited annually for confirmation of PCI Level 1 compliance, the highest possible level.**

Connect is PCI Level 1 compliant and hosted within J.P. Morgan's technology environment.

- **Proposer systems, software, processes and partners must adhere to the stringent requirements of the national Cardholder Information Security Program (CISP) and maintain full Payment Card Industry Data Security Standard (PCI DSS) compliance, AMEX Data Security Operations Policy (DSOP) and MasterCard Security Rules and Regulations.**

The Cardholder Information Security Program (CISP) was established by Visa to provide standards to protect the security of cardholder information. CISP has been replaced by the PCI Data Security Standard (PCI-DSS), which aligned the standards of four card associations (Visa, Mastercard, Discover and American Express) into a single standard.

- **All transactions processed must be in accordance with and governed by applicable federal, state and local statutes, rules and regulations, including NACHA operating rules and Federal Reserve Bank Regulation E.**

Please see our above response to the last bullet on page 14 above.

## Proposal to Dallas County, Texas

- **Provide a copy of privacy policy to all users and to payers upon request.**

The privacy policy is available to all users and payers via the Web.

- **Proposer must adhere to and abide by to the rules, requirements and restrictions of Visa, MasterCard, American Express and Discover as regards fees on debit cards, credit cards and other payments types.**

Our solution complies.

- **Must be fully in compliance with Texas Local Government Code, Sections 130.0045 and 130.0046.**

J.P. Morgan is fully in compliance with Texas Local Government Code, Sections 130.0045 and 130.0046.

### Restrictions and Limits

- **Proposer shall set control parameters for all payment processing services to the Dallas County's specifications.**

Acknowledged.

### Liability

- **The County shall not be liable, nor shall it be financially responsible for any charges whatsoever that have been incorrectly authorized.**

Dallas County will not be responsible for any fees for refunds, returns nor chargebacks.

Please also refer to our response to item #ee "Exceptions and Charge Backs" on page 9.

### Technical Support

- **Proposer shall provide a single point of contact for account management during the hours 8:00 am-5:00 pm (CST) Monday through Friday.**

The Connect Client Services team is available to answer general servicing inquiries from 8:00 a.m. to 6:00 p.m. CT, Monday through Friday. This team serves as the County's primary point of contact for all Connect related matters, and will engage functional experts as needed.

- **Proposer is responsible for providing live technical response to Dallas County and to the general public, i.e. payers, within one hour and resolution to problem or performance issues within 24 hours of the time the problem is reported.**
- The County can submit issues to the client services team via email at [pay.connexion.client.services@jpmchase.com](mailto:pay.connexion.client.services@jpmchase.com) or for urgent issues (866) 282-1981 which is available 24/7/365. An agent will review the details of your inquiry and escalate urgent issues to a supervisor. Non-urgent issues will be held for an agent to research during the service team's hours of operation.
- **Day to Day Inquiries:** Shared mailbox 24/7 support, administrative user maintenance, balancing/remittance issues, payment research, chargeback inquiries.

## Proposal to Dallas County, Texas

- **Connectivity Issues:** Preregistration file support, remittance file questions, Certificate renewal management, file transmission change requests, requests to retest, update or add connectivity for inbound/outbound files.
- **Change Requests:** Suggest and consult on application changes, receive change requests and coordinate with Technology and Implementation teams, schedule testing, on request.
- **Application Notifications:** Planned system maintenance, unscheduled outages, application upgrade releases, notice of Federal holidays, daily exception items.
- **Any planned upgrades and/or maintenance of the system will require 72-hour advanced notice from the Proposer to Dallas County and the general public, via e-mail and posting on the all applicable payment website.**

Connect's upgrade release schedule varies based on market and industry needs. Release information is typically distributed to clients four to six weeks prior to any planned upgrade. The releases do not typically impact clients. The County can submit a change request to client services after a release if you choose to take advantage of configurable functionality. Notice of scheduled maintenance is sent via email at least 24 hours in advance.

- **Shall keep all appropriate Dallas County officers and officials informed in a timely manner of all process or system changes required by the payment credit card industry.**

The County can be confident that J.P. Morgan will keep the County informed in a timely manner of all process or system changes required by the payment credit card industry.

- **Shall have adequate backup and Disaster Recovery plans as dictated by industry best practices and provide sample of plans.**

A summary overview of J.P. Morgan's business resiliency planning is provided for your review in Appendix 2.

- **Responsible for coordinating repairs among multiple vendors.**

J.P. Morgan is the sole vendor to the County participating in this proposal.

If the County seeks for J.P. Morgan to work with the County's third party systems providers (e.g., ACT), then J.P. Morgan can do so at the County's authorized direction.

- **Shall assume responsibility for the performance of all online and backup equipment, materials, labor, software and programs**

The Connect Service Terms and Service Level is included in Appendix 3.

- **Provide all updates and upgrades to the system during the Contract at no cost to Dallas County.**

Please see our response above in regard to planned upgrades.

## Proposal to Dallas County, Texas

### Customer Service Support

- **Proposer shall provide a Customer Support Center (CSC) that County constituents and payers may call. The CSC shall have the following minimum requirements:**

Connect's Client Services team provides the County with customer support, including assistance answering technical and transactional questions. Our support team provides an immediate answer or opens a reference ticket to research the specific question and return your call. This team is available by a shared email, and supports a Connect Client Services hotline that is available 24 hours a day, every day via a toll free telephone number.

The dedicated Connect Client Service team is managed by Brian McGoldrick. Specific clients are supported by the entire team, rather than by any assigned individual. This approach optimizes continuity of support around the clock, around the calendar and through personnel turnover.

- **Toll free phone number(s) for access to CSC attendants and/or pay-by-phone services.**

The County CSC's can continue to use the existing Connect toll-free number.

- **CSC shall meet or exceed industry standard performance metrics for service levels including but not limited to the number of busy signals, average time that a call is placed on hold, average number of calls resolved on the first call, and call-back times.**

Call center standard service levels include 70% of calls answered within 30 seconds and a call abandonment rate of less than 4%.

- **Self-serve options to customers via a website and/or pay-by-phone channel.**

#### Web-Based Payer Self-Service

Besides enabling the County's payers to initiate payments, Connect also allows payers to use a standard or mobile web browser to access numerous optional self-service functions including:

- Initiate a payment
- View a historical payment
- Cancel a pending payment (e.g., a future-dated "warehoused" payment)
- Designate language preference, English or Spanish

In addition, self-registered and the County pre-registered payers may:

- Edit a pending payment (e.g., a future-dated "warehoused" payment)
- View payment history
- View and edit profile information
- Establish, edit and stop recurring payment enrollments
- Add, delete and edit saved credit card, debit card and bank account information

If bill/invoice/statement presentment is elected, the County pre-registered payers may:

- View their bill, invoice or statement history
- Designate paperless preference

These self-service capabilities support both payer convenience and preferences. Additionally, because payers can efficiently help themselves with basic information about their payments, instead of

## Proposal to Dallas County, Texas

contacting the County's customer service staff, Connect can support the County's staff productivity and efficiency objectives.

### IVR-Based Payer Self-Service

Besides enabling the County's payers to initiate payments, Connect also provides payers optional self-service functions from the IVR. Based on the County's configuration, actions for payers can include:

- Select English or Spanish language
- Initiate a payment
- Review, edit or cancel a pending payment (e.g., a future dated "warehoused payment")
- Edit saved credit card, debit card and bank account information
- Change password
- Option to speak with an operator

### County CSRs and J.P. Morgan Call Center Agents Service

Connect enables the County's authorized customer service representatives and/or J.P. Morgan Call Center agents to execute a suite of functions on behalf of the payer (as applicable to the County's configuration). Refer to Appendix 1- Figure 9 for an outline of these functions.

- **Secure access to real-time transaction data, as necessary to research a given transaction.**

Authorized the County administrators access the Connect administrative site from a standard web browser. The administrative site enables authorized the County call center agents to generate a wide range of reports, make payments on payers' behalf, execute refunds and perform other administrative functions.

- **Maintain a log of all calls received.**

J.P. Morgan has an internal case management tool to assist with managing the end-to-end client experience. The Service Portal tool captures communications between the County and the J.P. Morgan client service teams. This tool is used to log inquiries and track to resolution. It is also available for management reporting.

Upon receipt of an inquiry, the email is assigned and logged into Service Portal. Our highly trained service representatives have the authority to engage with management and IT on your behalf. You will be notified of resolution by email.

- **Attend phones at all times, that is every day of the year and around the clock availability.**

Please see our above response.

- **Support at minimum Spanish and English languages, with more being of greater service to County and its payers.**

Connect's payer facing channels Web, Call Center and IVR, may be configured English-only or English-Spanish.



## Proposal to Dallas County, Texas

### Personnel Resources

- **Proposer shall provide committed and dedicated appropriate personnel and other resources to ensure that services will be provided in an efficient and problem-free manner.**

The County will continue to have the full support your familiar core relationship team.

- **Proposer shall have committed and dedicated assigned staff to handle account reconciliation and database issues, concerns and updates.**

Our Connect Client Services team has dedicated staff to handle account reconciliation and database issues, concerns and updates.

### Training

- **Proposer shall provide appropriate and sufficient training as relates to payment and credit/debit processing requirements, such as procedures for handling retrieval requests, charge backs**

The Connect implementation process for new applications and subsequent Change Request projects includes at no cost overview training to the primary members of the County's project team and "train-the-trainer" training to provide a solid understanding of the overall application and process flows, as well as User Guides and training materials. We can provide the County with additional training sessions upon request at no cost. Should additional training be required at Dallas County facilities, please contact your designated CSP, Janice Baker.

- **Proposer shall provide training on the utilization of the payments processing system software, hardware, terminals, and all other system functionalities**

Please see our above response.

- **Proposer shall provide full and comprehensive training regarding all aspects of its systems, services, operational protocols, and the like, to include the provision of all training materials**

Please see our above response.

- **Proposer shall continue to provide ongoing comprehensive training support for any new or expanded programs**

Please see our above response.

- **Proposer shall coordinate training with Dallas County's designated representatives and liaisons.**

- **Dallas County shall provide training facilities.**

Please see our above response

### 6.3.5.11 Additional Information

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**Provide any additional information deemed necessary by the Proposer believes to be pertinent but specifically requested elsewhere in the RFP including any value added services.**

J.P. Morgan is rebranding our “Pay Connexion” solution and incorporating it into our Integrated Receivables service is comprised of four modules, Connect, Collect, Reconcile and Report (see Appendix 1 - Figure 10).

While we welcome the opportunity to discuss the full Integrated Receivables platform, that is beyond the scope of this RFP. Rather, our focus here is on the County’s specific requirements as identified in the RFP and how the existing application configurations, as well as potential configuration changes and product enhancements can continue to support the County’s constituent responsiveness, efficiency, security, compliance, business, technical and other objectives.

### **6.3.5.12 Signed Addendum(s)**

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**Addendum 1. Title VI ASSURANCES / COMPLIANCE – APPENDIX A**

## TITLE VI ASSURANCES/COMPLIANCE – APPENDIX A

### A. *Assurances*

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient

to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### *B. Nondiscrimination Authorities*

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

##### **Pertinent Nondiscrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

#### *C. Representations/Warranties*

The Contractor also makes the following representations and warranties to Dallas County:

1. It has taken the steps necessary to effectuate Title VI requirements.

2. Disadvantaged business enterprises are afforded equal opportunity to submit bids/proposals as sub-contractors or sub-consultants and will not be discriminated against on the grounds of race, color, sex, age, disability, religion, veteran status, or national origin in consideration of a selection or award.
3. Neither contractor or any subcontractors or sub-recipients that will participate in activities to be funded as a result of this contract/bid/solicitation, are listed on the debarred list due to violations of Title VI or VII of the Civil Rights Act of 1964, nor are any proposed parties to this contract, or any subcontract resulting therefrom, aware of any pending action which might result in such debarment or disqualification.

**D. Title VI Complaints**

Any person, contractor, or subcontractor who believes that they have been subjected to an unlawful discriminatory practice under Title VI will be notified of their right to file a formal complaint within one hundred eighty (180) days following the alleged discriminatory action or the date the person(s) became aware of the alleged act(s) of discrimination. Any such complaint must be filed in writing or in person with the Dallas County Title VI Coordinator:

Dallas County Human Resources  
c/o: Dallas County Director of Human Resources and Title VI Coordinator  
Renaissance Tower  
1201 Elm Street, 23rd Floor, Suite 2300-B  
Dallas, Texas 75270  
(214) 653-7638 (phone)  
(214) 653-7608 (fax)

A copy of Dallas County Title VI Non-Discrimination Plan and Documents, and complaint forms, may be obtained at [http://www.dallascounty.org/departments/HR/title\\_vi.html](http://www.dallascounty.org/departments/HR/title_vi.html) or at the address above.

A complainant may also contact the Federal Coordination and Compliance Office, Civil Rights Division at the Title VI Hotline: 888-TITLE-06 (888-848-5306) or send a letter to: U.S. Department of Justice Civil Rights Division Federal Coordination and Compliance Section, NWB 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530. More information on Title VI is available from the Justice Department online at [www.justice.gov](http://www.justice.gov).

Contractor shall comply with all reasonable requests made in the course of an investigation of Title VI and these assurances by Dallas County, the Texas Department of Transportation, the US Department of Transportation, the US Department of Justice, or any other federal or state agency. Failure to comply with such reasonable requests will be deemed a breach of this contract/bid/solicitation.

**E. Enforcement**

The contractor affirmatively acknowledges that it will be subject to Title VI, and implementing regulations, and any enforcement measures therein. In addition to any enforcement action by Dallas County, the contractor acknowledges that the United States and the State of Texas has a right to seek judicial enforcement with regard to any matter arising under Title VI, including the assurances herein.

**Contractor's Full Name:** JPMorgan Chase Bank (TX)

  
**Signature, Authorized Representative of Contractor**

Vice President

  
**Date**

**Title**

### 6.3.5.13 Proposal Exceptions

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J.P. Morgan has identified below the terms or conditions that we respectfully request be modified in accordance with our recommended revisions. We are willing to discuss mutually agreeable modifications to the contract terms. The proposed changes are indicated by comments in **red text**; additions *in italic*, underlined text; and deletions by ~~strikethrough, red text~~.

#### 4.6 DISCLOSURE OF PROPOSAL CONTENT

**4.6.2 Ownership of Materials:** ~~Any materials submitted to County shall become the property of County and will be subject to the Texas Public Information Act. All documents that you send to County will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement. Therefore, any proposal which contains language purporting to render all or significant portions of their proposal “Confidential”, “Trade Secret” or “Proprietary”, or fails to provide the exemption information required will be considered a public record in its entirety. Do not mark your entire proposal as “confidential”.~~

*The County may retain Proposer’s response and all documents provided by Proposer and destroy them pursuant to the County’s records retention policies should the parties not enter into a contractual relationship.*

#### 6.2 SUBMISSION

**6.2.5** By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the services required under this RFP and that it is capable of providing the services that will achieve County’s task and objectives: *unless otherwise indicated in Proposer’s proposal.*

#### 6.3 PROPOSAL FORMAT

**6.3.2** Proposer must submit its Proposal in strict accordance with all requirements of this RFP, and an agreement to fully comply with the requirements must be stated in the Proposal. Deviations, clarifications and/or exceptions must be clearly identified and listed separately as alternative items for County’s consideration: *unless otherwise indicated in Proposer’s proposal.*

**6.3.5.4** The summary should also indicate the proposer’s commitment to accept the terms and conditions in the RFP: *unless otherwise indicated in Proposer’s proposal.*

**6.3.5.11 Additional Information - J.P. Morgan Comment:** While JPMorgan Chase does not intend to engage any subcontractors directly (diverse or otherwise) for the express purpose of delivering the services provided under this RFP, JPMC does have a robust supplier diversity program and consistently makes good faith efforts to provide contracting opportunities to diverse suppliers as part of its day-to-day operations. The JPMorgan Chase supplier diversity program is committed to



## Proposal to Dallas County, Texas

developing and engaging with certified and qualified diverse businesses, achieving uplift in diversity within the JPMC supply chain, and driving economic growth in the communities in which it does business. In 2017, included in its spend across many diversity categories, JPMorgan Chase spent \$1.1 billion dollars with Small Business Enterprises. From an “indirect spend” standpoint, JPMC can commit to spending dollars with SBEs, although the firm could not commit to a specific percentage. Please see attached document for additional details on JPMC’s supplier diversity program.

**6.3.5.17 Conflict of Interest Form - J.P. Morgan Comment:** Based on Section 176.001 of the Texas Local Government Code, business relationships as defined in the code do not include a connection based upon "a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency." As JPMorgan Chase Bank, N.A. is chartered by the Office of the Comptroller of the Currency and subject to, and reports, to its federal banking regulators, it is our understanding that we are not required to file the Conflict of Interest Questionnaire.

### 10.0 CONTRACTOR’S RESPONSIBILITY

**10.1 General Provisions and Requirements - J.P. Morgan Comment:** JPMorgan Chase Bank, NA complies with the Minimum Wage Rate requirements and will provide information to the County as reasonably requested to demonstrate compliance, as applicable, subject to privilege and appropriate confidentiality protections and assurances.

**10.2 Background Check, Staff and Personnel - J.P. Morgan Comment:** Employment with JPMC is contingent upon a hire’s ability to establish identity and valid employment eligibility by completing the I-9 form. Additionally, we participate in the E-Verify Program, which allows employers to electronically compare information taken from the Form I-9 against the records in the Social Security Administration and the Department of Homeland Security's databases.

All JPMorgan Chase employees, as well as contingent workers and certain designated third party supplier personnel assigned to perform or engage in services on JPMorgan Chase’s behalf, have successfully passed the requirements for employment under applicable federal law. These requirements include, but are not limited to, restrictions under Section 19 of the Financial Institution Reform and Recovery Act ("FIRREA"). FIRREA prohibits FDIC-insured institutions like JPMorgan Chase from employing or engaging as a contingent worker, any individual that has been convicted of, or entered a pretrial diversion or similar program for, a felony or multiple misdemeanor criminal offenses involving breach of trust, dishonesty, money laundering, embezzlement, fraud, theft, criminal conspiracy or the sale, distribution, manufacture of or trafficking in controlled substances. Furthermore, pursuant to the JPMorgan Chase policy, eligibility for employment or assignment is evaluated on a case-by-case basis for the following types of offenses: crimes of violence, crimes involving moral turpitude and crimes related to the performance of an employee's responsibilities, e.g., driving under the influence of alcohol or controlled substances when the employee drives as part of their job. Finally, as a term of employment, each JPMorgan Chase employee must annually certify adherence to the firm's Code of Conduct which among other

## Proposal to Dallas County, Texas

requirements contains an affirmative obligation for the employee to notify the Firm of any felony or misdemeanor arrest/conviction.

### 11.0 STANDARD TERMS AND CONDITIONS

#### 11.1 INCORPORATION OF PROPOSAL INTO THE CONTRACT

The contents of the RFP, and the selected Proposer's Proposal, cost, exhibits, and negotiated changes and any other attachments will be incorporated, in entirety, into the future formal Contract. The Contract constitutes the entire agreement between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written. Bank's Account Terms and Service Terms shall be incorporated into the future formal Contract, as such terms relate directly to and articulate the specific services J.P. Morgan is proposing to the County.

#### 11.5 COLLUSION

Contractor expressly ~~warrants and~~ certifies that, based upon the undersigned's information and belief, following due inquiry of other employees, officers, and agents of Contractor, that the undersigned deems appropriate under the circumstances, neither the Contractor/Proposer nor its employees or associates has directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competition in conjunction with the Proposal or Contract. This paragraph does not however, preclude two or more supplier of certain parts of the requirements from presenting a combined or joint proposal for the purpose of providing a complete Proposal.

#### 11.11 FAIR LABOR STANDARDS

CONTRACTOR SHALL MAKE ALL EFFORTS TO COMPLY WITH ALL APPLICABLE PROVISIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT AND SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM ANY AND ALL LIABILITY, INCLUDING, BUT NOT LIMITED TO, WAGES, OVERTIME PAY, LIQUIDATED DAMAGES, PENALTIES, COURT COSTS, AND ATTORNEYS' FEES ARISING UNDER ANY WAGE AND HOUR LAW, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL FAIR LABOR STANDARDS ACT, FOR WORK PERFORMED BY CONTRACTOR'S EMPLOYEES FOR WHICH THE COUNTY MAY BE FOUND JOINTLY OR SOLELY LIABLE.

#### 11.14 COMPLIANCE WITH LAWS

In providing work and services required by this Agreement, Contractor must observe and comply with all applicable federal, State, and local statutes, ordinances, rules, regulations, licenses, legal certifications, or inspections required for the work or services, facilities, equipment, or materials, and all applicable federal, state, and local statutes, ordinances, rules, and regulations: related to Contractor's performance of the Services required by this Contract.

### 11.17 INSURANCE – POLICIES, COVERAGE, ENDORSEMENT AND REQUIREMENT

## Proposal to Dallas County, Texas

**11.17.1** Without limiting any of the other obligations or liabilities the Contractor at its own expense shall purchase and maintain for the duration of the Agreement the herein stipulated minimum levels of insurance coverage ~~and shall likewise ensure that all of his Consultants, Subcontractors and their Sub-subcontractors (collectively own as “Contractor”) purchase and maintain such insurance~~, as will protect them from claims set forth below which may arise out of or result from the Contractor's operations under the Agreement, whether such operations are carried out by the Contractor, by any Consultant, Subcontractor, or by anyone directly or indirectly employed by the Contractor or any Subcontractor, or by anyone for whose acts any of them may be liable. Contractor is responsible for payment of all deductibles and retentions associated with the claims filed.

### **11.17.2.1 Workers’ Compensation Insurance:**

Policies under this Section shall apply to State of Texas and include the following endorsements in favor of Dallas County:

- a. Waiver of Subrogation
- ~~b. Thirty (30) day Notice of Cancellation~~

### **11.17.2.2 Commercial General Liability Insurance:**

Policies under this Section shall include the following in favor of Dallas County:

- a. Waiver of Subrogation
- ~~b. Thirty (30) day Notice of Cancellation~~
- ~~e.~~ b. Additional Insureds as their interests pertain to this contract:  
Dallas Country and its elected and appointed boards, officers, officials, ~~agents~~, representatives, directors, and employees ~~and volunteers~~.
- c. Additional Insureds as their interests pertain to this contract: Dallas County and its elected and appointed boards, officers, officials, ~~agents~~, representatives, directors, and employees ~~and volunteers~~.

### **11.17.2.3 Business Automobile Liability Insurance**

- ~~b. Thirty (30) day Notice of Cancellation~~
- ~~d.~~ b. Additional Insureds as their interests pertain to this contract:  
Dallas Country and its elected and appointed boards, officers, officials, ~~agents~~, representatives, directors, and employees ~~and volunteers~~.

**11.17.2.6** ~~Crime Policy/Fidelity Bond-Bankers Blanket Bond / Computer Misuse and Telephonic Misuse Liability:~~ Proposer shall procure and maintain, at its sole cost and expense, a Crime Policy/Fidelity Bond covering property of clients for inside/outside premises, including theft via electronic means; money & securities; depositors forgery; covering each employee of Proposer, whether or not they are compensated. The fidelity bond may be either a primary commercial blanket bond or a blanket position bond written by an insurer ~~licensed by the Texas Insurance Commissioner permitted to do business in Texas~~. ~~Proposer shall name Dallas County as Loss Payee.~~ The fidelity bond shall provide a minimum coverage equivalent to Two Million Dollars (\$2,000,000) for each occurrence. Proposer shall maintain the fidelity bond for the duration of the Contract.

## Proposal to Dallas County, Texas

**11.17.2.7** Should the County exercise any Agreement extension option for additional Agreement terms, it will be Contractor's responsibility to have the Surety Company provide to County confirmation of the existing bond or provide a new bond, if applicable

- ~~Except Workers Compensation and Professional Liability, name Dallas County and its elected and appointed boards, officers, officials, agents, representatives, directors, employees and volunteers as additional insured(s) (as the interest of each insured may appear) as to all applicable coverage.~~
- All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of the contract is satisfactorily completed and formally accepted.

**11.17.2.11** Provide for thirty (30) days' notice to County for cancellation, non-renewal or material change ~~below the minimum requirements of this contract.~~

**11.17.2.13** ~~Provide notice to the County of any material changes to policy.~~

**11.17.2.17** ~~Contractor shall provide that all provisions of this contract concerning liability, duty and standard of care, shall be underwritten by contractual liability coverage sufficient to include obligation within applicable policies.~~

**11.17.2.19**

- Insurance Certificates: The certificates of insurance shall list County as the certificate holder. Any and all copies of Certificates of Insurance shall reference any applicable RFP (Request for Proposal) number for which the insurance is being supplied. All insurance ~~policies or duly executed~~ certificates ~~for the same~~ required to be carried by Contractor under this Agreement, ~~together with satisfactory evidence of the payment of the premium thereof,~~ shall be delivered to the **Dallas County Purchasing Agent located at the 900 Jackson St. Suite 680 Dallas, Texas 75202**, within ten (10) calendar days of execution and/or renewal of the Agreement and upon renewals and/or material changes of such policies, but not more than fifteen (15) calendar days ~~prior to the expiration~~ after the renewal of the term of such coverage, or such non-delivery shall constitute a default of this Agreement subject to immediate termination at County's sole discretion.
- ~~All insurance required to be carried by Contractor and/or subcontractors under this Agreement shall be acceptable to County in form and content, in its sole discretion. All policies shall be issued by an insurance company acceptable and satisfactory to County and authorized to do business in the State of Texas. Acceptance of or the verification of insurance by County shall not relieve or decrease the liability of the Contractor.~~

## 11.18 INDEMNIFICATION

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, AND ALL OF ITS OFFICERS, DIRECTORS,

## Proposal to Dallas County, Texas

AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, DIRECTLY ARISING OUT OF OR DIRECTLY RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, DIRECTLY ARISING OR DIRECTLY ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR CONTRACTOR'S PERFORMANCE OF THE WORK ~~OR OTHER ACTIVITIES OF THE CONTRACTOR~~, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR OR ANYONE DIRECTLY ~~OR INDIRECTLY~~ EMPLOYED BY CONTRACTOR. ~~OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE.~~ NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, DIRECTLY ARISING OUT OF OR DIRECTLY RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, ~~IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS.~~ THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. NOTWITHSTANDING THE FOREGOING, (I) THE CONTRACTOR'S LIABILITY FOR INDEMNIFICATION HEREUNDER SHALL BE INVOKED ONLY TO THE EXTENT THAT THE CLAIMED DAMAGES, LOSSES, AND EXPENSES ARE DIRECTLY DUE TO THE NEGLIGENCE OF THE CONTRACTOR AND/OR ITS SUBCONTRACTORS; (II) THE CONTRACTOR'S INDEMNIFICATION OBLIGATIONS SHALL NOT EXCEED AN AMOUNT, IN THE AGGREGATE, OVER THE TERM OF THE CONTRACT, AN AMOUNT THAT EXCEEDS ONE TIME (1) TIME THE AVERAGE ANNUAL REVENUES RECEIVED BY THE CONTRACTOR FROM THE COUNTY UNDER THE CONTRACT; AND (III) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THEORY OF

**RECOVERY, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES OR THE SAME ARE REASONABLY FORESEEABLE.**

**I**

**~~IT IS MUTUALLY UNDERSTOOD AND AGREED THAT THE ASSUMPTION OF LIABILITIES AND INDEMNIFICATION PROVIDED FOR IN THIS AGREEMENT SHALL INDEFINITELY SURVIVE ANY EXPIRATION, COMPLETION OR TERMINATION OF THIS AGREEMENT.~~ IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

#### **11.21 TERMINATION FOR DEFAULT OR NON-PERFORMANCE**

Contractor may terminate this contract upon not less than 30 days' prior written notice to the City if the County breaches its obligations under this Contract and fails to cure the same within such timeframe or as otherwise provided in this Contract.

#### **11.32 SUBCONTRACTING**

Notwithstanding anything to the contrary in the RFP, for all purposes of this contract, "subcontract" shall refer to a third party or an agreement with such third party, if any and as applicable, engaged by Contractor to specifically aid in the performance of its obligations under this contract, but shall not include any third party engaged by Contractor, from time to time, in the performance of certain operational, technological, incidental, or back office functions that assist Contractor in its performance of services, on a common basis, for all or most of its customers utilizing such services, such latter category of third parties being referred to as Third Party Service Providers. Contractor will obtain prior consent of the County to its use of any "subcontractors" in the performance of services, to the extent and in the manner required under this contract, but shall not be required to notify or obtain written consent from the County or any other party to its engagement of Third Party Service Providers.

#### **11.33 ASSIGNMENT**

Notwithstanding anything to the contrary herein, J.P. Morgan may not assign its rights and duties under the contract without the written consent of the County; provided, however, J.P. Morgan may assign the contract without the prior written consent of the County to a successor in interest in connection with a merger, reorganization, consolidation or a disposition of a particular business to which this agreement relates, and may assign this contract to an affiliate or subsidiary. In the event of an assignment, J.P. Morgan shall notify the County and the County shall have the right to terminate the contract.

#### **11.36 LITIGATION**



## Proposal to Dallas County, Texas

**J.P. Morgan Comment:** We are not aware of any matters to disclose on behalf of JPMorgan Chase Bank, N.A.

### 11.40 CONTRACTOR'S PROFESSIONAL WARRANTIES

Professional Quality: Contractor ~~warrants covenants~~ to County that all materials, work, and services will be of professional quality conforming to "ordinary care" standard of care imposed upon banks under the Uniform Commercial Code ~~generally accepted practices, and that all work and services provided under this Agreement will be performed in a manner consistent with that degree of care, qualification and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.~~ If there are no applicable or recognized professional standards in the applicable area or areas of expertise required to perform such work or services, then Contractor will perform all services in a good and professional manner that meets County's goals and objectives as stated herein as well as otherwise adds value to or improves the performance of County's expectations, objectives, and purposes as stated in this Agreement. Any work that is determined by County to be less than professional quality will be corrected without charge. This warranty extends for ninety (90) business days past termination or expiration of this Agreement. ~~This warranty is limited to rework of the unsatisfactory service or product without change to the original specifications and without regard to the amount of the effort expended on the original service or work product.~~

### 11.41 Assurances

**J.P. Morgan Comment:** The responses provided in this Section 11.41 are based upon the Contractor's information and belief, following due inquiry of other employees, officers, and agents of Contractor, that Contractor's representative deems appropriate under the circumstances.

- ~~Best Commercially Reasonable~~ Efforts to Minimize Costs to County: Contractor shall use its ~~best efforts commercially reasonable efforts~~ to complete each assigned task in as economical a manner as possible and to minimize any charges incurred in connection therewith to the maximum extent possible, consistent with Contractor's other obligations under this Agreement.

### 11.42 REPORTING

Notwithstanding anything to the contrary herein , Contractor will allow the County's auditors and independent public accountants, including where state or federal assistance is involved, state and federal auditors identified by County, reasonable access during normal working hours to bank records of County's as reasonably required in connection with their examination of the books and records specifically pertaining to the County's accounts, use of funds and services provided by Contractor to County. Any access or examination will be: requested in writing; specifically describe the scope and records required; mutually agreed upon as to time and scope; and subject to Contractor's security procedures and record retention policies. Contractor may impose reasonable restrictions on the number of individuals allowed access, the frequency and length of access, and the scope of the records made



## Proposal to Dallas County, Texas

available. County shall reimburse Contractor for the reasonable cost of copying, collating, researching and producing archived information. Any examination will be at County's expense.

Further, Contractor is subject to a documentation retention policy which governs the retention period for each particular form of documentation and other information; this policy is largely dictated by law and regulation of the various jurisdictions in which Contractor does business. The documentation retention policy will often require retention of documentation and information after the termination of Contractor's relationship with the relevant customer. The period of retention beyond termination of the relationship will be dependent on the type of information and will be governed by the documentation retention policy.

With respect to ownership, notwithstanding anything to the contrary in the RFP or the resulting contract, the parties do not anticipate the development of any customized products or programming in connection with the services provided in this Agreement. Further, the parties agree that any products or programming in connection with the services provided under this Agreement shall remain the property of Proposer. The parties acknowledge that this is not a work for hire.

### 11.43 AUDIT, AVAILABILITY AND RETENTION OF RECORDS

At any time during the term of this Agreement all financial books, records, data, documents, statistical and management books and records pertaining to the work or services delivered and all financial books, records, data, documents, statistical and management books and records and records shall be available for ~~unrestricted~~ review, examination and audit by Dallas County Auditor, Federal, State or the County's duly authorized representatives for a period of not less than five (5) years after final payment of the Contractor's fee expenses under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain until all pending County, State, and Federal audits are completed, whichever is later. ~~All records related to this Agreement must be kept in a single location, either at Contractor's principle place of business or its place of business where the work or services are performed. If this is not practical, the Contractor will assume the cost of collecting, organizing, and relocating the records and any technology needed to access the records to the Contractor's office nearest Dallas County, Texas whenever County or anyone else with audit rights requests access to the Contractor's records associated with the services covered under this Agreement. The Contractor will do so with all due speed, not to exceed fifteen (15) business days or a mutually convenient time within a reasonable time by all parties. In the event such an audit by the County reveals any material deviation from the Agreement, errors/overpayments, disallowed cost or expenses by the County, Contractor shall refund the County the full amount of such overpayments plus damages within thirty (30) days of such audit findings as well the cost of the audit at the County discretion, or the County, at its option, reserves the right to deduct such amounts owing the County from any payments due to the Contractor.~~

### 11.44 AUDIT DISALLOWANCE

Please provide the following exception/modification: "In the event an audit by the County reveals any errors/overpayments, disallowed cost or expense by the County, ~~Contractor shall refund the County the full amount of such overpayments and plus damages within thirty (30) days of such audit findings as~~

## Proposal to Dallas County, Texas

~~well the cost of the audit at the County discretion, or the County, at its option, reserves the right to deduct such amounts owing the County from any payments due to the Contractor. The County shall notify the Contractor in writing of the disallowance and the required course of action~~ audit results and Contractor shall review and have an opportunity to respond to such results to achieve a solution that is mutually acceptable to both parties.

### 11.45 CONFLICT OF INTEREST

J.P. Morgan has banking and other business relationships in the normal course of business with various persons or entities, which may include employees, officers, directors, etc. of the County. Such relationships generally are governed by our usual and customary terms and conditions. Employees, officers or directors of the bank may be related to employees, officers, directors, etc. of the University. The J.P. Morgan Code of Conduct prohibits any employee in general from acting on behalf of the bank in any transaction or business relationship involving such employee, members of his/her family, or other persons or organizations with which such employee or his/her family have any significant personal connection or financial interest.

### 11.47 USE OF AGREEMENT BY OTHER POLITICAL JURISDICTIONS

**J.P. Morgan comment:** J.P. Morgan is willing to discuss with other governmental entities the option of extending a separate contract to the other governmental entities based upon prices, terms and conditions that are mutually acceptable by both parties. Notwithstanding anything to the contrary herein, J.P. Morgan is not required to extend a contract or accept purchases from other governmental entities at the prices, terms and conditions of the resulting contract. Accordingly, J.P. Morgan cannot agree to this provision.

### 11.54 TWELVE (12) MONTH WAITING PERIOD FOR EMPLOYMENT OF CERTAIN FORMER COUNTY EMPLOYEES

**J.P. Morgan Comment:** JPMorgan Chase Bank, N.A. has not hired any individual assigned to the relationship team for the County of Dallas, who previously worked for the County that either evaluated, recommended, approved, monitored, or managed a contract in the last 12 months.

### 11.58 SIGNATORY WARRANTY

The person signing or executing this Agreement on behalf of Contractor covenant and agree that he has been duly authorized by Contractor to validly and legally bind Contractor to the terms and conditions set forth in its response to the RFP. Contractor agrees to furnish to County an incumbency certificate authorizing the signatory authority.

Please refer to Appendix 6 JPMorgan Chase Bank, N.A. incumbency certificate authorizing the signatory authority.

## Proposal to Dallas County, Texas

### APPENDICES

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<b>Appendix 1.</b>	<b>Table of Figures</b>
<b>Appendix 2.</b>	<b>J.P. Morgan Business Resiliency Program Overview and Information Security Program Letter</b>
<b>Appendix 3.</b>	<b>Sample Integrated Receivables &amp; Payables Connect Service Terms</b>
<b>Appendix 4.</b>	<b>JPMC's Supplier Diversity Program</b>
<b>Appendix 5.</b>	<b>Policy Engagement and Political Participation</b>
<b>Appendix 6.</b>	<b>JPMC Secretary's Certificate</b>

Table of Figures

Verifone MX925 PIN Pad and Epson TM-T88V POS Receipt Printer



Figure 1

Sample Point of Sale Device Screens

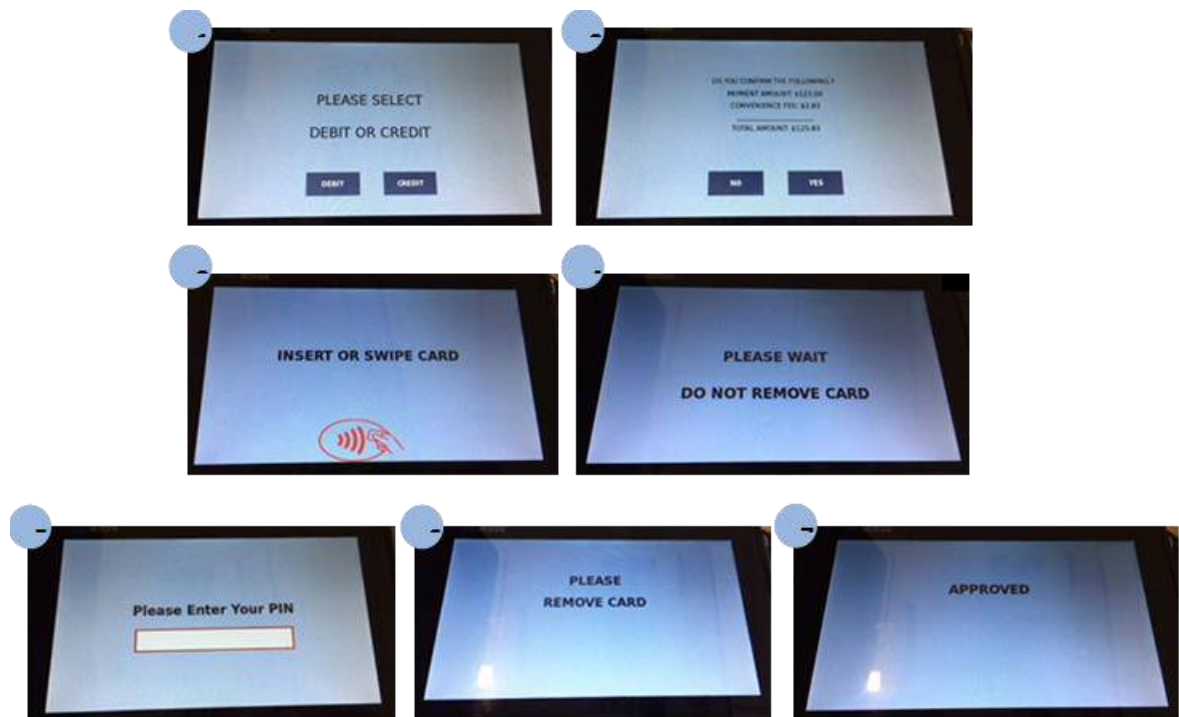


Figure 2

## Proposal to Dallas County, Texas

### POS Sample Receipt

Site 1  
123 Main St.  
Chicago, IL 60000

12/01/2017 12:39:41 PM

Revenue Collection  
Device: Window #1

Confirmation: ONEPS1000006488  
Account: XXXXXXXXXXXX5606  
Card Type: Visa  
Auth Code: 092097  
Transaction: SALE

---

Amount: \$123.00  
Convenience Fee: \$2.83  
**Total: \$125.83**

Figure 3

### Illustrative Example - Application of Configurable Business Rules

Partial payments are allowed and overpayments are disallowed against an amount due that is submitted to Connect. The due date is not provided, and future-dated “warehoused” payments are not supported.

Make a Payment - Property Tax

Please correct the errors

**PAYMENT INFORMATION**

Amount Due: \$1,000.00

Owner Name\*: John Doe

Property Address\*: 100 Main Street #123, Anytown, CA 00000-0000

**PAYMENT DETAILS**

Payment Amount\*: \$1,000.01

Payment Date: Nov-29-2013

Overpayment is not allowed

Figure 4

### Connect Availability Metrics by Channel Past Eight Years

	2010	2011	2012	2013	2014	2015	2016	2017
Web	99.78%	99.96%	99.89%	99.99%	99.83%	99.95%	99.93%	99.98%
Admin	99.90%	99.96%	99.91%	99.99%	99.87%	99.95%	99.93%	99.85%
IVR	99.90%	99.96%	99.90%	99.95%	99.97%	99.95%	99.93%	99.98%

Figure 5

## Proposal to Dallas County, Texas

### Settlement Processing and Timing for Dallas County

For County applications processing on our e-commerce Global Merchant Services platform (e.g., Dallas County Tax Office):

Day payment completed	Settlement day for ACH/eCheck payments (8:00 p.m. CT ACH batch cutoff)	Credit/debit card transactions authorized through J.P. Morgan		
		(7:00 p.m. CT card batch cutoff)	Settlement Day for Card Payments *	
			Settled by ACH (default)	Settled by Fed Wire (existing, for Dallas County Tax Office)
Monday	Tuesday	Monday	Wednesday	Tuesday
Tuesday	Wednesday	Tuesday	Thursday	Wednesday
Wednesday	Thursday	Wednesday	Friday	Thursday
Thursday	Friday	Thursday	Monday	Friday
Friday	Monday	Friday	Tuesday	Monday
Saturday	Tuesday	Saturday	Wednesday	Tuesday
Sunday	Tuesday	Sunday	Wednesday	Tuesday

\* American Express payments will settle later directly from American Express. Non-bank card deposits are electronically conveyed for settlement to the appropriate company, and you receive payment directly from that company.

For County applications processing on our North America Platform Global Merchant Services platform (e.g., Dallas County Tax Office property tax collection):

Day payment completed	Settlement day for ACH/eCheck payments (8:00 p.m. CT ACH batch cutoff)	Credit/debit card transactions authorized through J.P. Morgan	
		(3:45 a.m. CT card batch cutoff)	Settlement day for card payments *
Monday	Tuesday	Tuesday	Wednesday
Tuesday	Wednesday	Wednesday	Thursday
Wednesday	Thursday	Thursday	Friday
Thursday	Friday	Friday	Monday
Friday	Monday	Saturday	Tuesday
Saturday	Tuesday	Sunday	Tuesday
Sunday	Tuesday	Monday	Tuesday

\* American Express payments will settle later directly from American Express as exists. Non-bank card deposits are electronically conveyed for settlement to the appropriate company, and you receive payment directly from that company.

Figure 6

## Proposal to Dallas County, Texas

### Processing Card Payments through Connect with Real-time Authorization

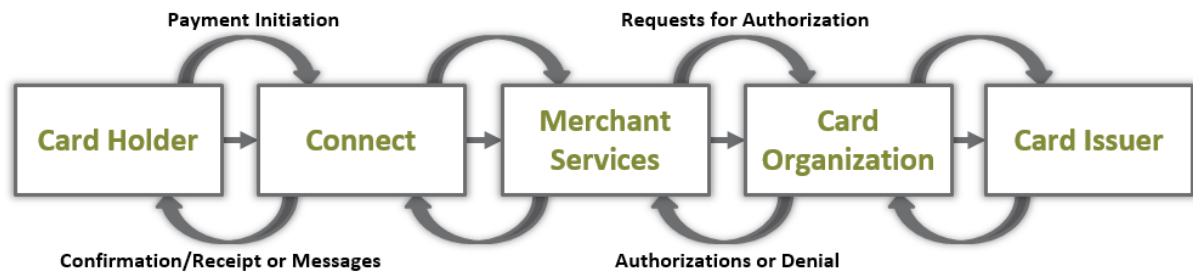


Figure 7

### Connect Standard Reports

Report Name	Description	Format		
		CSV	HTML	PDF
Administrative User Access Report	Indicates what administrative functions correspond to the County-defined administrative roles, which individual admin users are assigned to which roles and provides contact information for each individual admin user.	X	X	
Card Expiration Date Report	Provides helpful information enabling billers to notify payers of credit card expiration.	X		
CSR Payment Report	Provides summary/detail information on CSR payment activity at a daily/weekly/monthly basis.	X		X
Daily Settlement Summary Report	Provides settlement summary detail for credit/debit card and eCheck/ACH transactions to support reconciliation.	X	X	
IVR Statistics Report	Provides informative statistics on use of IVR payment channel.		X	
Payer Fraud Detection Report	Identifies suspicious payer activity based on seven distinct criteria.	X		
Payment Card Batch Report	Provides summary/detail information to support reconciliation and to correlate with J.P. Morgan card batch activity.	X	X	



## Proposal to Dallas County, Texas

Report Name	Description	Format		
		CSV	HTML	PDF
Payment Detail Report	Provides detail on transactions by payment method and channel.	X	X	
Payment Summary Report	Provides summary statistics of the count and value of transactions by payment method and channel.	X	X	
Product Detail Report	Provides detail on transactions by payment method and channel including the County-defined parameter detail for a specific the County-defined product.	X	X	
Recurring Payment Report	Provides helpful details about recurring payment enrollments.	X	X	
Registered Payer Detail Report	Provides extensive detail on profiles of registered payers.	X		
Remittance File	Provides remittance data.	X	X	
Undeliverable Email Report	Provides details enabling the County to contact payers enrolled for paperless billing whose Statement Notification emails were returned undeliverable.	X	X	

**Figure 8**

CSR and Call Center Service Functions	
Key Payer Service Functions	
Single Payments	
• Adjust Convenience Fee	• Refund Payment
• Cancel Pending Payment	• View Payment Details
• Edit Pending Payment	• View Payment History
• Enable-Disable Payment Methods	• View Pending Payments
• Make User Payment	
Recurring Payments	
• Edit Recurring Payment	• View Recurring Payments

Proposal to Dallas County, Texas

Key Payer Service Functions	
• Make User Recurring Payment	• View Recurring Payment Details
• Stop Recurring Payment	
Statement Presentment	
• View Statement History	
Registered Payers	
• Add or Delete Authorized Products	• Reset Registered Payer Password
• Edit Payer Profile	• View Payer Profile
• Register Payer	
Payment Accounts	
• Delete Payment Account	• Enable Invalid Account
• View Payment Account (with masked account number XXXXXXXXXXXXXXX1234)	

Figure 9

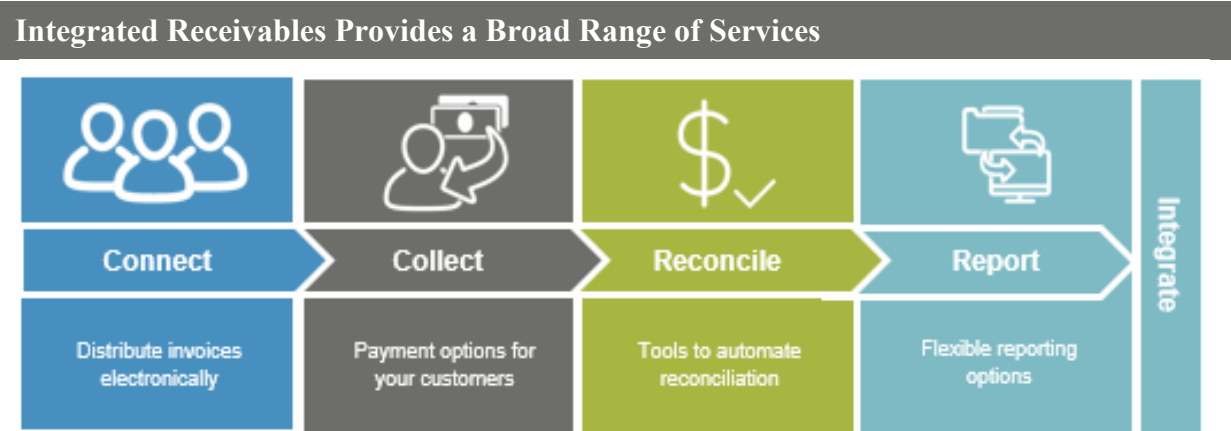


Figure 10

## **JPMorgan Chase's program to achieve continuity of business operations and services**

Dear Valued Customer,

JPMorgan Chase (JPMC) is committed to providing high quality and resilient services and supporting functions to our customers and clients. This is achieved through a rigorous control program committed to meeting legal and regulatory obligations in each of the jurisdictions where we conduct business.

Our global resiliency program is designed to provide an integrated firmwide resiliency approach aligned with our business and technology strategies, as well as the requirements of our customers and clients globally. We do this by:

- Providing continuity of client and customer services while protecting the firm's employees and assets;
- Engaging senior management on key aspects of the program, including determining the resiliency risk appetite, strategy, leadership and program oversight;
- Proactively managing resiliency risks incorporating appropriate procedures and controls;
- Developing and maintaining resiliency plans based on impact analysis and criticality; and
- Helping employees understand their role in recovery scenarios and conducting validation exercises across critical functions and locations.

The information below provides details about the key aspects of our program.

### **Regulations and Standards:**

Our resiliency policy and standards establish requirements for resiliency planning, response and recovery across the firm. The program is:

- Managed by a firmwide resiliency committee, comprised of senior management from each line of business as well as relevant JPMC corporate functions;
- Reviewed by the Audit Committee of the Board of Directors of JPMC on an annual basis;
- Subject to risk-based examinations by JPMC internal auditors; and
- Subject to regular inspection by regulatory authorities, including the US Office of The Comptroller of the Currency (OCC), The Federal Reserve Board (FRB), The UK Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA), the Monetary Authority of Singapore (MAS), the Hong Kong Monetary Authority (HKMA) and other national regulatory authorities around the globe.

### **Crisis Management Processes:**

A robust crisis management process exists to enable efficient, effective and timely response to incidents of varying severity and types.

- Firm-wide notification tools are used internally to communicate in crises;
- Escalation processes are in place and routinely tested; and
- After Action Reviews are undertaken to ensure event management procedures and resiliency capabilities are continually enhanced.

The firm responded effectively to several incidents over the past year, such as severe weather, power and various other business disruptions.

# JPMORGAN CHASE & CO.

## **Resiliency Planning:**

Managers throughout the firm develop and maintain resiliency plans as part of the program.

- Annual impact analyses are performed to determine or confirm the relative criticality of processes;
- Lines of business and corporate functions maintain resiliency plans, based on their business impact analysis and risk assessments, addressing business, staff, operations and technology components, and critical services provided by third parties;
- Plans address high-level absenteeism events, including infectious disease and severe weather;
- Quality reviews and audit assessments are undertaken and where appropriate corrective measures implemented; and
- Management reviews and approves resiliency plans annually.

## **Testing and Exercising:**

The firm employs a comprehensive testing approach to regularly validate the effectiveness of the resiliency program under different impact scenarios:

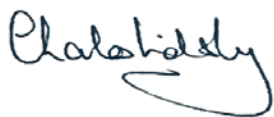
- Tests include simulation exercises and physical tests of recovery strategies;
- Test results are communicated to the firm's senior management across business and technology functions, as appropriate; and
- The firm regularly participates in market-wide and industry sponsored exercises.

## **Cybersecurity:**

JPMC maintains a robust cybersecurity program to enable us to maintain our defenses and actively enhance our threat resiliency. We operate several 24/7 global cyber operational centers with dedicated cybersecurity staff and work closely with government agencies and organizations to strengthen our safeguards as well as proactively respond to cyber threats.

We sincerely hope that this letter answers your questions about our program to safeguard our operations and services. We value the relationships we have built with our customers and we strive to maintain and enhance those relationships every day. Should you have any questions regarding this letter or our resiliency program in general, please contact your JPMC representative.

Thank you for your continued confidence in JPMorgan Chase.



Charles Lindsley  
Executive Director  
Head of Global Business Resiliency



John Balzano  
Managing Director  
Head of Global Technology Resiliency

May 2018

Dear Valued Customer:

At JPMorgan Chase & Co. (“JPMC” or “Firm”), we have developed a rigorous program to safeguard our customers’ data in our care. We are committed to observing the data protection laws and regulations in all the jurisdictions in which we do business.

Our Information Security Program (“Program”) is designed to securely enable new business and technology initiatives while maintaining a relentless focus on protecting the Firm and its clients/customers.

### **How Our Information Security Program is Designed**

Our IT Risk and Security Policies and Standards provide the foundation of the Program and establish the rules for safeguarding our IT environment. The Program is designed to:

- Provide for the security and confidentiality of customer, client, and employee information;
- Protect against anticipated threats or risks to the security or integrity of that information;
- Prohibit unauthorized access to, or use of, information that could harm any customer, client or employee;
- Properly store, transport and dispose of customer, client, and employee information;
- Inform employees about their responsibilities to protect customer and client information and the security of our systems;
- Require that our key third party service providers adhere to our security policies and standards, as well as applicable regulatory obligations;
- Adhere to all customer notification requirements for protecting information.

In partnership with the Firm’s lines of business, the Global Cybersecurity and Technology Controls (“CTC”) organization identifies information security risk issues and champions programs for the technological protection of JPMC’s information resources including applications, infrastructure as well as confidential and private information related to the Firm’s customers, clients and employees.

### **How We are Governed**

The Global CTC functions are responsible for the governance and oversight of the Program.

The technology governance structure is designed to identify, escalate, and mitigate information security risks. This structure uses key governance forums to disseminate information and monitor technology efforts.

These forums are established at multiple levels throughout the Firm and include representatives from each line of business and relevant corporate functions. Compliance Measurement and Reporting for the organization is produced for these forums, and is reviewed by management at multiple levels including technology management, greater Firmwide management and the Firm's Operating Committee.

The Audit Committee of the Board of Directors reviews and approves the Program annually. Internal and external auditors continually review our IT programs and processes.

Regulators in countries where the Firm operates periodically inspect and review our Program.

## **How the Program is Implemented**

The Firm implements the Program through the following capabilities, processes, controls and technology solutions:<sup>1</sup>

### **1. Network and Email Security**

Our Network and Email Security (NES) strategy is focused on enabling enterprise security controls designed to prevent and detect unauthorized network activities, and protect against risks introduced through web and email communications. Capabilities include securing the perimeter, oversight of firewall rules, limiting access via multiple security controls, network traffic visibility and inspection, and email protection. The NES product as part of the Cyber Operating model also provides a Firmwide control framework for Network and Email Security in partnership with the lines of business, Global Technology Infrastructure, and Risk and Compliance.

### **2. Endpoint Security**

Our Endpoint Security capabilities are designed to detect and prevent malware from infiltrating the Firm's corporate network using end point devices. We manage the security standards and Endpoint Security tools on end point computing devices, such as Workstations, Servers, ATMs and Mainframe/Large Midranges (LMRs). Capabilities include malware detection & prevention, endpoint activity monitoring, and build hardening standards & controls.

### **3. Data Protection**

The Data Protection program identifies and implements actions to improve protection of Firm, customer and client information. The program established a framework designed to apply appropriate cybersecurity controls to business data. These controls include discovery, classification, encryption and data loss prevention. Components of the program are designed to enable the Firm to better:

- Understand the data we have, its sensitivity and ways to protect it;
- Provide standards and guidance on available tools and services;
- Identify, categorize and protect our data;
- Implement encryption and lifecycle protection of our data;
- Maintain and enhance existing data loss prevention services, processes and tools.

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<sup>1</sup> As of 2017.



#### 4. Cloud Security

The mission of the Cloud function is to ensure the appropriate cybersecurity controls are in place to protect business data and cloud services. Capabilities include logging and monitoring, encryption, access control, lifecycle management and embedding security into all cloud services.

#### 5. Application and Mobile Security

Through our secure-from-the-start design processes, the Program assists software engineers and operations teams in developing, implementing and operating secure applications that deliver exceptional client and employee experiences. This is further enhanced by our comprehensive application and mobile code scanning tools and processes to improve early detection and mitigation of software security issues in JPMC and vendor applications.

#### 6. Vulnerability Reduction Assessments and Training

Our Vulnerability Reduction strategy is focused on detection and remediation of vulnerabilities across JPMC infrastructure and applications, driving remediation through a standard scoring model and SLAs. Assessments capability is focused on providing visibility into the firm's security posture by demonstrating the exposure to current cyber threats, highlighting vulnerabilities and control weaknesses, by using adversary tactics, tools and procedures in order to inform and prioritize Firmwide risk reduction activities. Exercises capability leverages targeted tabletops, drills, and employee phishing tests to assess the firm's overall readiness to detect, respond to and recover from high-risk cyber scenarios targeting its most critical Business processes and assets. Training is focussed on reducing risk to the firm through enhancing technologists' knowledge, skills and abilities in CTC.

#### 7. Security Event and Incident Management

Our security event and incident management capabilities enable monitoring, detection, and investigation of security-related events and incidents. These capabilities leverage threat intelligence, operational risk measures, and business referential context to continually improve early detection of threats and coordinate integrated, Firmwide responses to security-related events.

#### 8. Digital Forensics

Our Digital Forensics capabilities enable the recovery, preservation and investigation of material found in digital devices and networks as part of suspected events by employing forensically sound procedures to present in investigative proceedings. Capabilities include providing technical support, evidence collection and storage for Code of Conduct investigations, and responding as Subject Matter Experts in suspected cyber-attacks.

#### 9. Fraud and Client Protection

Our processes around fraud and client interaction enable us to better detect and prevent fraud activities relating to cyber security and reduce the risks introduced via client-access channels. These are



accomplished by investing in authentication and other technologies to secure the online experience, increasing client awareness and implementing robust fraud prevention technologies. Our fraud program reaches across banking activities, credit/debit card related fraud, as well as our digital platforms. We also search across the web to identify potential phishing campaigns against the Firm.

## 10. Third Party

Corporate Third-Party Oversight (CTPO) is a dedicated function that establishes the risk management governance framework and enforces defined policies and standards for the lifecycle of third-party service providers engagements.

The framework includes identifying, assessing, managing and monitoring risk from third-party service providers, along with leveraging integrated reporting and analysis for effective risk management.

Controls are reviewed as part of the due-diligence and comprehensive risk assessment conducted of third-party service providers and third-party applications by CTPO's Supplier Assurance Services (SAS) team.

## 11. Identity and Access Management

The Identity and Access Management program implements access standards and controls across our infrastructure and applications, particularly those that contain customer information. These controls are designed to authenticate users, permit authorized access, enforce consistent administration procedures, maintain segregation of duties, and ensure timely changes through on-boarding/termination/transfer processes for Firmwide information systems.

## 12. Resiliency and Recovery

The Resiliency and Recovery program aligns an integrated Firmwide resiliency program to the Firm's business strategy and principles, as well as the requirements of the Firm's customers and clients globally. The program is designed to help the Firm recover critical business functions and supporting assets (i.e., staff, technology and facilities) in the event of a business interruption while complying with global laws and regulations relating to resiliency risk. Key elements include:

- Providing continuity of client and customer services while protecting the Firm's employees and assets;
- Engaging senior management on the program, strategy, leadership and oversight;
- Managing resiliency risks proactively to incorporate appropriate procedures and controls;
- Developing and maintaining resiliency plans based on impact analysis and criticality;
- Helping employees understand their role in recovery scenarios and conducting validation exercises across critical functions and locations.

## 13. Production Management

The mission of the CTC Production Management team is to oversee all Production Operations and ensure the highest degree of standards are being met for uptime, availability, hygiene and overall application health for CTC Products. The current Production Management services that provide stability to CTC are

focused on delivering world class services in respect to incident, problem, change, resiliency, capacity, automation, and monitoring. Providing production coverage will ensure that we are reducing risk to the firm by ensuring our CTC toolset is consistently at peak availability.

#### 14. Global Privacy Incident Management

The Global Privacy Office is responsible for establishing and maintaining the Firmwide framework for privacy incident and breach management. This framework drives consistency and provides guidance for Privacy Incident Response Managers and Privacy Compliance functions surrounding the minimum requirements that must be addressed in privacy incident response procedures. Cybersecurity Incident Response Teams escalate privacy incidents, in line with their procedures, to the Privacy Incident Response Team Managers for research, analysis, notification and root cause assignment.

Core responsibilities of the Global Privacy Office as it relates to Privacy Incident Management include:

- Maintaining the Potential Breaches of Information Program including the Potential Breaches of Information Policy, Global Incident Response Standards and global guidance materials;
- Developing and disseminating reporting on Firmwide potential incidents and breaches;
- Advising on high severity incidents (Sev 1) and approving approach for external notifications;
- Providing Firmwide guidance, training and reporting criteria for Incident Response Teams to include in procedures, and
- Communicating policy requirements to JPMC workforce.

#### Information Security is a Shared Responsibility

At JPMorgan Chase, we take the protection of our customers' data in our care seriously and have the aforementioned capabilities, processes, controls and technology solutions in place to safeguard the data. However, even the best security measures can only be effective in ensuring data security if our customers are also vigilant about employing the necessary safeguards to protect their information.

Thank you for your continued confidence in JPMorgan Chase & Co. We appreciate the partnership with you.



**Rohan M. Amin**  
Managing Director  
Chief Information Security Officer &  
Chief Technology Control Officer

## **NTGRTB RES & AXB CONNET SRTES**

JPMorgan Chase Bank, N.A. (the "Bank") will provide the Customer with the Service described herein, which includes the Bank's Integrated Receivables Connect Service, Integrated Payables Connect Service, access to Connect Website, IVR, Call Center, Point-of-Sale, file transmission, API, reporting and analysis capabilities, in accordance with the provisions of these Service Terms. These Service Terms supplement the account documentation, including the Account Terms, ACH Origination Service Terms, Check Print Service Terms and other applicable Service Terms, as amended from time to time (collectively, the "Account Documentation"). By acknowledging or signing the applicable Account Documentation or by using or continuing to use the Service, the Customer agrees to these Service Terms. If and to the extent there is a conflict between the Account Documentation and these Service Terms, the provisions of these Service Terms shall prevail. Capitalized terms used herein and not otherwise defined shall have the meanings specified in the Account Documentation.

### **1. Definitions.**

**"ACH"** means the automated clearing house system.

**"Debit Entry" and "Credit Entry"** shall have their meanings set forth in the NACHA Rules.

**"API"** means Application Programming Interface.

**"Authorized User"** means any person who has been designated by a written notice from the Customer to act on behalf of the Customer under these Service Terms.

**"Authorization"** means an authorization from the Payer or Payee to the Customer that may be obtained (i) by the Bank on behalf of the Customer through Connect Website, IVR or Call Center, or (ii) by the Customer, in either case before originating a Debit Entry or Credit Entry to the Payer's or Payee's deposit account.

**"Call Center"** means the Bank's call center operations that provides privately branded call center support for the Customer's customer.

**"Card"** means a physical card used to access an account or account number through which Payment Brand payment services are delivered, authorized and established between a Payer and a Payment Brand, or representatives or members of a Payment Brand that the Customer accepts from Payers as payment for goods or services. Cards include, but are not limited to, credit or debit cards, stored value cards, loyalty cards, and electronic gift cards.

**"Connect Website"** means the Bank hosted website that allows Payers and Payees to Enroll in order to make or receive Electronic Payments.

**"Connect Website Terms and Conditions"** means the terms and conditions which may be provided by the Bank to the Payer or Payee which govern the Payer's or Payee's use of or access to the Connect Website.

**"Convenience Fee"** means a charge to a Payer's Card, checking account or savings account for the convenience of using the Technology.

**"Electronic Payment"** means the payment of amounts specified by the Customer to be paid (i) by the Payer to the Customer or (ii) by the Customer to the Payee, through ACH or Card.

**"Enroll" or Enrollment** means the process through which the Payees or Payers provide their bank account or Card details using the Technology in order to make or receive Electronic Payments.

**"Integrated Payables Connect Service"** means a Service that enables the Customer to make an Electronic Payment using the Technology.

**"Integrated Receivables Connect Service"** means a Service that enables the Customer to receive an Electronic Payment using the Technology.

**"IVR"** means the Bank provided Interactive Voice Response (IVR) system.

**"Merchant Processor"** means the provider of services necessary to authorize, process and settle, as applicable, Payers' Card transactions contemplated hereunder.

**"NACHA"** means the National Automated Clearing House Association.

**"NACHA Rules"** means the operating rules and guidelines of NACHA.

**"Payee"** means either a consumer or business customer of the Customer to whom an Electronic Payment is made by the Customer once the Payee completes the Enrollment.

**"Payee Information"** means information related to a Payee that is either (i) obtained by the Customer or (ii) obtained by the Bank directly from the Payee in connection with the Enrollment.

**"Payer"** means either a consumer or business customer of the Customer who makes an Electronic Payment to the Customer by completing the Enrollment.

**"Payer Information"** means information related to a Payer or the Payer's Card that is either (i) obtained by the Customer or the Bank from the Payer's Card or (ii) obtained by the Bank directly from the Payer in connection with the Enrollment.

**"Payment Brand"** is any payment method provider whose payment method is accepted by Merchant Processor for processing,

including, but not limited to Visa, U.S.A., Inc., MasterCard International, Inc., Discover Financial Services, LLC, American Express and other credit and debit card providers, and debit network providers.

**"Payment Instructions"** means the Instructions provided by the Customer to the Bank to originate Debit or Credit Entries to the checking or savings account of each Payer or Payee or process Card payments, as applicable, as per the Enrollment.

**"Paper Check Payments"** means the service by which the Bank prints and mails check payments on behalf of the Customer for Payees who have not completed Enrollment.

**"Point-of-Sale" or "POS"** means an electronic payment terminal provided by the Bank to the Customer to accept Card payments from the Payers at the point of sale.

**"Pre-registration Inbound File"** means the file provided by the Customer that may include Payee Information or Payer Information that the Bank uses to register Payees or Payers on the Connect Website.

**"Rules and Regulations"** means the NACHA Rules, the Payment Brand rules, standards and guidelines, including without limitation security standards relating to privacy, data security or other applicable association or clearinghouse rules and all other applicable laws, regulations and industry rules, each as amended from time to time.

**"Settlement Account"** means the designated account of the Customer held with the Bank used for settlement purposes.

**"Technology"** means the Bank's (or its licensor's) IVR, API, Point-of-Sale and/or Connect Website, as applicable, which have been designed to facilitate payments between Payees or Payers and the Customer, using as applicable, Cards or ACH.

- 2. Integrated Receivables Connect Service** . The Customer shall use the Integrated Receivables Connect Service to facilitate Electronic Payments from Payers to the Customer using the Technology relating to various transactions entered into between the Payer and the Customer. The Payer may choose not to Enroll or cancel an existing Enrollment at its discretion. If the Payer completes the Enrollment, the Bank will process the Electronic Payments through ACH or Card, as applicable.

- 2.1 ACH Processing.** If the Payer chooses to make Electronic Payments through a bank account, the Bank will initiate Debit Entries to the checking or savings accounts of Payers. All Electronic Payments originated through ACH shall be governed by the ACH Origination Service Terms.

- 2.2 Card Processing.** If the Payer chooses to make Electronic Payment using a Card, such transactions will be submitted to the Merchant Processor according to its formats and procedures. In processing and transmitting Electronic Payments through Cards, the Bank's sole responsibility will be to transmit such files to the Merchant Processor. The Bank will have no responsibility for applying any payments on such file to a Payer's Card account or for any other credit card processing functions, nor will the Bank have any responsibility for any action or inaction of the Merchant Processor.

- 2.3 Obligations of the Customer.** In connection with the Integrated Receivables Connect Service, the Customer shall have the following obligations:

(a) The Customer shall provide the Bank with all information and materials reasonably necessary to implement the Integrated Receivables Connect Service for use by the Customer.

(b) The Customer may provide to the Bank, a Pre-registration Inbound File, in a format and through a secure channel acceptable to the Bank, using such security procedures as the Bank may prescribe. The Pre-registration Inbound File shall include the name, email address, mailing address for each Payer and any other information agreed upon by the Bank and the Customer. The Bank may reject or delay processing of the Pre-registration Inbound File if it is incomplete or otherwise does not meet the standards the Bank specifies for acceptance. The Customer will promptly notify the Bank of any changes to any such information provided by the Customer to the Bank.

(c) The Customer shall provide the Bank with Payment Instructions to originate Debit Entries to the checking or savings account of each Payer as per the Enrollment.

(d) Except as otherwise provided in (f), the Customer (as the Originator of each Debit Entry originated hereunder) authorizes the Bank to obtain an Authorization on the Customer's behalf from each Payer when the Payer uses Connect Website, IVR or Call Centre for initiating Electronic Payments.

(e) If applicable, the Customer shall provide consumer Payers with all required disclosures pursuant to the Rules and Regulations and as otherwise agreed to by the parties, including but not limited to, where the Customer is accepting POS transactions, ensuring that all required disclosures relating to Convenience Fees are made by the Customer to each Payer at the point-of-sale. The Customer shall certify its compliance with the disclosure requirements in writing to the Bank on an annual basis.

(f) The Customer shall obtain an Authorization from each Payer when the Payer directly provides the bank account or Card details to the Customer.

(g) The Customer shall execute any additional documents related to payment processing by Merchant Processor as provided by the Bank.

- 2.4 Obligations of the Bank** . In connection with the Integrated Receivables Connect Service, the Bank shall have the following obligations:

(a) The Bank shall provide the form of Authorization when the Payer uses Connect Website, IVR or Call Centre for initiating Electronic Payments. The Payer must agree to the Authorization prior to making an Electronic Payment.

- (b) The Bank will manage the Enrollment of the Payers and processing of the Payment Instructions from the Customer.
- (c) The Bank shall comply with the Rules and Regulations applicable to the Bank as provider of the Service.

**2.5 Convenience Fees.** Convenience Fees shall be charged to the Payer in relation to the Service if mutually agreed upon by the Customer and the Bank. The Bank may initiate a separate transaction for the collection of Convenience Fees and will submit the transaction to the Merchant Processor or ACH, as applicable. Convenience Fees will either be retained by the Bank or the Customer, as mutually agreed upon by the parties. The party retaining the Convenience Fee shall be responsible for paying any applicable fees and taxes related to the Convenience Fees.

**3 Integrated Payables Connect Service .** The Customer shall use the Integrated Payables Connect Service to initiate Electronic Payments by either providing the Bank with Payee Information or enabling the Payee to complete Enrollment using the Technology. The Payee may choose not to Enroll or cancel an existing Enrollment at its discretion. If the Payee completes the Enrollment, the Customer authorizes the Bank to initiate Credit Entries to the checking or savings account of the Payee as per the Enrollment. If the Payee does not complete the Enrollment or cancels the Enrollment before the Customer instructs the Bank to make the Electronic Payment, the Customer may authorize the Bank to make Paper Check Payments to the Payee, if applicable. All Electronic Payments processed through ACH shall be governed by the ACH Origination Service Terms. All Paper Check Payments shall be governed by the Check Print Service Terms.

**3.1 Obligations of the Customer.** In connection with the Integrated Payables Connect Service, the Customer shall have the following obligations:

- (a) The Customer shall provide the Bank with all information and materials reasonably necessary to implement the Integrated Receivables Connect Service for use by the Customer.
- (b) The Customer may provide to the Bank a Pre-registration Inbound File, in a format and through a secure channel acceptable to the Bank, using such security procedures as the Bank may prescribe. The Pre-registration Inbound File may include the name, email address, mailing address for each Payer and any other information agreed upon by the Bank and the Customer. The Bank may reject or delay processing of the Pre-registration Inbound File if it is incomplete or otherwise does not meet the standards the Bank specifies for acceptance. The Customer will promptly notify the Bank of any changes to any such information provided by the Customer to the Bank.
- (c) The Customer is responsible for validating the bank account information provided by the Payee in the Enrollment before providing Payment Instructions to the Bank.
- (d) The Customer shall provide the Bank Payment Instructions to originate Credit Entries to the checking or savings account of each Payee as per the Enrollment or as per the Payee Information provided by the Customer, as applicable.
- (e) Except as otherwise provided in (f), the Customer (as the Originator of each Credit Entry originated hereunder) authorizes the Bank to obtain an Authorization on the Customer's behalf from each Payee during Enrollment on ConnectWebsite.
- (f) The Customer shall obtain an Authorization from each Payee when the Payee directly provides the bank account details to the Customer.

**3.2 Obligations of the Bank .** In connection with the Integrated Payables Connect Service, the Bank shall have the following obligations:

- (a) The Bank shall provide the form of Authorization when the Payee uses the Connect Website to complete an Enrollment and Connect Website Terms and Conditions. The Payee must agree to the Authorization and accept the Connect Website Terms and Conditions prior to receiving Electronic Payment as per the Enrollment.
- (b) The Bank will manage the Enrollment of the Payee and processing of the Payment Instructions from the Customer.
- (c) The Bank shall comply with the Rules and Regulations applicable to the Bank as provider of the Service.

**4 Settlement Account.** The Customer agrees not to close the Settlement Account without giving the Bank at least five (5) banking days' prior written notice and substitution of another Settlement Account at the Bank. The Customer authorizes the Bank to initiate electronic debit and credit Entries and adjustments to the Settlement Account in connection with the Electronic Payments. This authorization shall remain in full force and effect until termination of these Service Terms.

**5 Chargebacks/ ~~Return~~ /~~Reversals~~.** The Customer shall have full liability if any Card or ACH transactions for which the Customer or any Payee/ Payer has been given provisional credit is the subject of a chargeback, return or reversal, or if final settlement is not received by the Bank or Merchant Processor for any reason. In such event, where applicable, the Bank will charge back the amount to the Settlement Account or claim a refund from the Customer. The Bank will credit the Settlement Account for the amount of any returned Credit Entries upon receipt by the Bank of settlement and after any applicable resubmissions are completed.

**6 Additional ~~Responsibilities~~ of the Customer.** In connection with the Service, the Customer agrees to:

- (a) Maintain the Customer's IVR, API and website, as applicable, as well as any related actual links and session transfer capabilities.
- (b) Maintain the URLs to which Payers or Payees are returned after completing an Electronic Payment or Enrollment, as applicable, through Connect Website.
- (c) Procure and maintain, at its sole expense, all hardware and browser capabilities, software and telecommunications equipment necessary to access and use the Service, including any updates or upgrades required by the Bank in order to continue performing the



Service, in accordance with the Bank's recommended system configuration.

(d) Use commercially reasonable efforts to ensure that its vendors, if applicable, cooperate fully with the Bank to achieve inter-operability of the Technology and Service with the Customer's or its vendor's hardware and software. The Bank will have the right to, at its discretion, reject any data file that it reasonably believes will interfere with the ability of the Technology or Service to process data in accordance with these Service Terms.

(e) Advise each Authorized User of his or her obligations under these Service Terms.

(f) Provide appropriate and sufficient data to authenticate Payers/Payees, as applicable, including but not limited to delivery of data that will be: (1) used to validate a Payer/ Payee when attempting to access Connect Website; (2) used to authenticate Payer/ Payee when the Bank is not performing the authentication; and (3) used to validate the Payer/Payee, as applicable, after a successful session transfer.

(g) Maintain the confidentiality of any passwords, codes, digital certificates, security devices and related instructions for use of the Services, which may be revised from time to time upon notice to the Customer, and if the Customer believes or suspects that any such information or instructions have been accessed by unauthorized persons, the Customer shall promptly notify the Bank and advise the Bank as to the effect of the security breach and the corrective actions to be taken to restore or verify security.

**7 Representation, Warranties and Covenants** . The Customer represents, warrants and covenants to the Bank that (a) the Customer shall comply with the Rules and Regulations applicable to the Customer; (b) each Payer or Payee as applicable has agreed and authorized that their mailing address, email address, telephone number and bank account details, as applicable and available, will be shared with the Bank and the Bank's agents and vendors in connection with the Service; (c) the Customer shall not use the Service for international ACH transactions or cross border payments, which are prohibited under these Service Terms; and (d) in relation to the Integrated Payables Connect Service, the Customer has verified the accuracy of the information in the Enrollment and the Bank is authorized to make an Electronic Payment as per the Enrollment or Paper Check Payment on behalf of the Customer, as applicable. The Customer agrees to indemnify and hold the Bank, its agents, employees, officers and directors, harmless from and against any and all claims, damages, demands, judgments, liabilities, losses, costs and expenses (including attorneys' fees) resulting directly or indirectly from the Customer's breach of any representation, warranty or covenant under these Service Terms.

**8 Intellectual Property Ownership.** These Service Terms do not transfer to the Customer any ownership, intellectual property or proprietary rights in the Technology, Service or any work or any part thereof, or any copyright, trademark, patent right, etc., and all right, title and interest in and to the Technology, Service and intellectual property will remain solely with the Bank or its licensors. The Bank hereby grants the Customer a non-exclusive, non-assignable, non-transferable, non-sub licensable, revocable right to display the J.P. Morgan or Chase Logo (collectively "Logo"): (a) in a form to be provided by the Bank, and (b) solely on the Customer's Internet website; and solely in connection with the Customer's use of the Service as described in these Service Terms and (c) in accordance with any quality standards and specifications supplied or approved by the Bank. Upon the Bank's request, the Customer will: (i) submit to the Bank for prior approval all proposed uses of the Logo; and (ii) provide to the Bank samples of all uses of the Logo and any other documents or information which may permit the Bank to determine if the Customer's use of the Logo meets quality standards and specifications and directions supplied or approved by the Bank. Ownership of the Logo and the goodwill relating thereto shall remain vested in the Bank both during the period of these Service Terms and thereafter. Any use of the Logo by the Customer shall inure to the benefit of the Bank. The Customer grants the Bank a non-exclusive limited license to use the Customer's name, trademarks, service marks, symbols, logos, domain names and trade names, as applicable, for use in connection with the provision of the Service.

**9 Reliance on Information.** Without limitation of the foregoing, the Bank is authorized to rely on the content, accuracy and completeness of all information and data received from the Customer or any Payer or Payee. The Bank will not be liable for any loss or damage arising out of the inaccuracy thereof, including any errors in the Payer Information or Payee Information and any resulting erroneous Electronic Payments. The Customer shall be solely responsible for the security and integrity of all information and data supplied or transmitted to the Bank including during transmission to the Bank.

**10 DISCLAIMER** THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL WARRANTIES AND REPRESENTATIONS, EXPRESS, STATUTORY OR IMPLIED, WITH REGARD TO THE TECHNOLOGY OR SERVICE ARE HEREBY DISCLAIMED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND COURSE OF DEALING OR USAGE OF TRADE OR WARRANTIES OF NON-INFRINGEMENT OR WARRANTIES AS TO ANY RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICE. THE BANK DOES NOT WARRANT OR GUARANTEE THE SECURITY, SEQUENCE, TIMELINESS, ACCURACY, PERFORMANCE OR COMPLETENESS OF THE DATA OR THAT ANY PART OF THE SERVICE WILL BE ERROR-FREE, WITHOUT DELAY OR UNINTERRUPTED. CUSTOMER ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR, AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET AND CUSTOMER ASSUMES ALL SUCH RISK. CUSTOMER SHALL MAKE AN INDEPENDENT ASSESSMENT OF THE ADEQUACY OF THE INTERNET IN USE OF THE SERVICE PURSUANT TO THE BANK'S PROCEDURES.

**11 Withdrawal of Access/Suspension of Service.** The Bank may, in its reasonable discretion, instruct the Customer to terminate access to any Authorized User or individual and the Customer agrees to promptly comply with such instructions. The Bank reserves the right to deny, suspend or revoke access to the Service, in whole or in part, if the Bank believes the Customer and/or its Authorized Users are in breach of these Service Terms or are otherwise using or accessing the Service inconsistent with the terms and conditions hereof. The Bank may, at any time, in its sole discretion, cancel or suspend a Payer's or Payee's use of or access to Technology and Service, as may be required by applicable law, rule or regulation or by the Bank's policies and procedures.

**12 Customer Agreement with Payer/ Payee** . The Customer acknowledges and agrees that the Bank shall not be deemed to have any knowledge (imputed or otherwise) of any of the terms or conditions of any agreement between the Customer and any Payer or Payee

nor for the performance thereof. Notwithstanding the foregoing, in the event the Bank becomes aware that the content of any communication or agreement between the Customer and any Payer or Payee relating to the Service is incorrect or contains information that the Bank in its reasonable discretion finds objectionable, the Bank shall have the right to require the Customer to modify or amend such communication or agreement to the Bank's reasonable satisfaction.

- 13 Fees.** The Bank may impose, and the Customer will pay, fees for the Service, including but not limited to, any applicable maintenance fees.
- 14 Termination.** Upon termination of these Service Terms as provided in the Account Terms, all rights to the Service and Technology, including, but not limited to use and access, will automatically terminate. The Customer will discontinue its use of the Service and Technology, and upon request from the Bank, will return to the Bank any and all Services, equipment, software, documentation, Technology or other deliverables provided to the Customer by the Bank, including any copies thereof held by the Customer.

SAMPLE



These Supplemental Service Terms ("Supplemental Terms" or "AEXP Terms") supplement the Integrated Receivables & Payables - Connect Service Terms ("Connect Service Terms") and set forth the terms and conditions that apply if and to the extent the Customer (also referred to as "Sponsored Merchant" in the Merchant Regulations) accepts credit cards issued by American Express Travel Related Services Company, Inc. ("American Express" or "AEXP"), from Payers as a method of payment, with AEXP Convenience Fees (hereinafter defined), for goods and services offered by the Customer and JPMorgan Chase Bank, N.A. ("Bank") may capture AEXP Transaction Data from Cardmembers for AEXP Transactions initiated using the Integrated Receivables & Payables - Connect Service ("Connect") on behalf of the Customer. These AEXP Terms pertain to all AEXP Transactions submitted and processed through the Connect or POS. Capitalized terms used in these Supplemental Terms, unless otherwise defined herein, shall have their meanings set forth in the Connect Service Terms or the Merchant Regulations, except as modified herein.

## 1. DEFINITIONS

- (a) **AEXP Advance Payment Charges** means an AEXP Charge for which full payment is made in advance of Customer providing the goods and/or rendering the services to the Cardmember.
- (b) **AEXP Card** means (a) any card, account access device, or payment device or service bearing the brand of American Express or any of its affiliates, or (b) an AEXP Card Number.
- (c) **AEXP Card Number** means the unique identifying number that the AEXP Issuer assigns to the AEXP Card when it is issued.
- (d) **AEXP Charge** means a payment or purchase made on the AEXP Card through the Payment Services. Unless otherwise specified, AEXP Charge includes AEXP Convenience Fees.
- (e) **AEXP Charge Record** means the reproducible (both paper and electronic) record of an AEXP Charge that complies with AEXP requirements and contains the AEXP Card Number, AEXP Transaction date, dollar amount, approval, and Cardmember signature (if applicable), and other information.
- (f) **AEXP Chargeback** when used as a verb, means (i) AEXP's reimbursement for the amount of an AEXP Charge subject to such right, or (ii) AEXP's reversal of a Charge for which AEXP has not paid Customer; when used as a noun, means the amount of an AEXP Charge subject to reimbursement or reversal.
- (g) **AEXP Convenience Fee** means a charge to an AEXP Card for the convenience of using the payment channels offered via the Payment Services, which include the Internet, Point-of-Sale, IVR, Call Center, and API, as applicable, where such charge is charged and collected by, and settled to, Bank.
- (h) **AEXP Credit** means the amount of the AEXP Charge refunded to Cardmembers for purchases or payments made on the AEXP Card.
- (i) **AEXP Issuer** means any entity (including AEXP and its affiliates) licensed by AEXP or its affiliates to issue AEXP Cards and to engage in the AEXP Card issuing business.
- (j) **AEXP Reserve** means a fund established by AEXP as security for Customer's obligations to AEXP under the AEXP Terms and Merchant Regulations.
- (k) **AEXP Transaction** means an AEXP Charge or AEXP Credit completed by the means of an AEXP Card on which an associated AEXP Convenience Fee is charged and collected by, and settled to, Bank.
- (l) **AEXP Transaction Data** means all information required by AEXP, evidencing one or more AEXP Transactions, including information obtained at point-of-sale, information obtained or generated during authorization and submission, and any AEXP Chargeback.
- (m) **Applicable law** means, with respect to Customer, Bank, and AEXP or any of their respective affiliates (i) any law, statute, regulation, ordinance, or subordinate legislation in force from time to time to which they are subject, (ii) the common law as applicable to them from time to time, (iii) any court order, judgment, or decree that is binding on them, and (iv) any directive, policy, rule or order that is binding on them and that is made or given by a regulator or other government or government agency of any territory, or other national, federal, commonwealth, state, provincial, or local jurisdiction.
- (n) **Cardmember** means an individual or entity (a) that has entered into an agreement establishing an AEXP Card account with an AEXP Issuer, or (b) whose name appears on the AEXP Card.
- (o) **Cardmember Information** means any information about Cardmembers and AEXP Transactions, including but not limited to, AEXP Transaction Data, and Cardmember name, addresses, AEXP Card numbers, and AEXP Card identification numbers.
- (p) **Claim** means any claim (including initial claims, counterclaims, cross claims and third party claims), dispute or controversy between Customer and AEXP, or among Customer, Bank and AEXP, arising from or relating to the AEXP Terms, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the AEXP Terms, or the relationship resulting therefrom, except for the validity, enforceability, or scope of Section c of Exhibit 1, attached hereto and incorporated by reference.
- (q) **Disputed Charge** means an AEXP Charge about which a claim, complaint or question has been brought.
- (r) **Establishments** means any or all of Customer's locations, outlets, websites, online networks, IVR, call centers, customer service centers, point-of-sale, API and mobile applications and all other methods for accepting payments from Cardmembers through Bank's Payment Services for goods and services sold by Customer, including methods that Customer adopts in the future.
- (s) **Marks** means names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.
- (t) **Merchant Number** (sometimes called the "Merchant ID" or "Establishment" or "SE" number in AEXP materials) means a unique number AEXP assigns to Bank on behalf of Customer's Establishments.
- (u) **Merchant Regulations** means the American Express Merchant Regulations U.S., which are available as set forth in section 2.2 below.
- (v) **Other Payment Products** means any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the AEXP Card.
- (w) **Payment Service Provider** means Bank as provider of Payment Services to Customer.
- (x) **Payment Services** means the provision of payment services in connection with AEXP Transactions between Cardmembers and Customer through Bank's Connect Service whereby Bank, the entity providing such services (and not Customer), is the merchant of record and submits AEXP Transactions on behalf of such Customer, or in the case of POS, the AEXP Transactions are submitted at the point-of-sale by Customer) and whereby Bank as the merchant of record also charges and collects AEXP Convenience Fees on AEXP Charges.
- (y) **Paymenttech** means Paymenttech, LLC, Bank's merchant processor and an affiliate of Bank.
- (z) **Sponsored Merchant Agreement** as referenced in the Merchant Regulations and as modified in Bank's agreement with AEXP means the standard form agreement governing Bank's provision of Payment Services (which is in the form of these AEXP Terms that are an supplemental to the Connect Service Terms governing Bank's provision of payment services related to Other Payment Products through

Connect ), and which must be executed by the Customer pursuant to Bank's agreement with AEXP and Chapter 13 of the Merchant Regulations prior to acceptance of the AEXP Card and submission of AEXP Charges, as modified in Bank's sole discretion.

## **2. SPONSORED MERCHANT'S ACCEPTANCE OF AEXP CARDS**

**2.1. Acceptance.** Customer must accept the AEXP Card as payment for goods and services (other than those goods and services prohibited in the Merchant Regulations) sold, or, if applicable, for charitable contributions made at all of Customer's Establishments that utilize Connect to accept payments from Cardmembers, except as expressly permitted by state statute. Customer expressly agrees to accept AEXP Cards in accordance with these AEXP Terms and the Merchant Regulations.

**2.2. Application of Merchant Regulations.** The Merchant Regulations set forth the policies and procedures governing the acceptance of the AEXP Card. If Customer's personnel are accepting payment from Cardmembers, Customer shall ensure their personnel are familiar with their obligations regarding acceptance of the AEXP Card. The Merchant Regulations are a part of, and are hereby incorporated by reference into, these AEXP Terms, and Customer and Bank agree to be bound by and comply with the Merchant Regulations except as modified herein and as changed by AEXP from time to time. Customer acknowledges that its agreement to be bound by the Merchant Regulations is a condition to its acceptance of AEXP Cards, and that as used in the Merchant Regulations, the terms "you" and "your" apply to Customer as the individual or entity accepting AEXP Cards. AEXP may make changes in the Merchant Regulations in scheduled changes and at any time in unscheduled changes. To obtain a copy of the Merchant Regulations, go to [www.americanexpress.com/merchantpolicy](http://www.americanexpress.com/merchantpolicy) and enter the Merchant Number that will be provided upon request from Bank. While the Customer obligations set forth in this AEXP Terms and in the Merchant Regulations are ultimately the responsibility of the Customer, the Parties acknowledge and agree that Customer has contracted with Bank under the terms of the Service Terms and these AEXP Terms for the performance of some of those obligations as expressly stated. Customer expressly authorizes Bank to submit AEXP Transactions to, and if applicable, receive settlement from, AEXP on behalf of Customer.

**2.3. Treatment of AEXP Card.** Except as expressly permitted by Applicable Law, Customer must not: (i) indicate or imply that Customer prefers, directly or indirectly, any Other Payment Products over the AEXP Card; (ii) try to dissuade Cardmembers from using the AEXP Card; (iii) criticize or mischaracterize the AEXP Card or any of AEXP's services or programs; (iv) try to persuade or prompt Cardmembers to use any Other Payment Products, except for electronic funds transfer, or cash and check; (v) impose any restrictions, conditions, disadvantages or fees when the AEXP Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check; (vi) suggest or require Cardmembers to waive their right to dispute any AEXP Transaction; (vii) engage in activities that harm the business of AEXP or the AEXP brand; (viii) promote any Other Payment Products more actively than the AEXP Card; or (ix) convert the currency of the original AEXP Transaction to another currency.

**2.4. Offer of Discounts.** Customer may offer discounts or in-kind incentives from its regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by Applicable Law): (x) Customer clearly and conspicuously discloses the terms of the discount or in-kind incentive to Cardmembers; (y) the discount or in-kind incentive is offered to all prospective customers, and (z) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, other payment card networks (e.g., Visa, MasterCard, Discover, American Express, etc.). The offering of discounts or in-kind incentives in compliance with the terms of this section 2.4 will not constitute a violation of the provisions of section 2.3.

**2.5. Treatment of Marks.** Whenever payment methods are communicated to customers or when customers ask what payments are accepted (within the scope of these AEXP Terms) Customer must indicate its acceptance of the AEXP Card and display AEXP Marks as prominently and in the same manner as any Other Payment Products. Customer must not use AEXP Marks in any way that injures or diminishes the goodwill associated with the AEXP Marks, nor in any way (without written consent from AEXP) indicate that AEXP endorses Customer's goods or services. Customer shall only use the AEXP Marks as permitted by the AEXP Terms and Merchant Regulations and shall cease using AEXP Marks upon termination of the AEXP Terms in connection with acceptance of AEXP Cards through Connect. None of AEXP, Customer, or Bank has any rights in the others Marks, except as otherwise expressly specified herein or in the Merchant Regulations, nor shall any party use another's Marks without its prior written consent, except that AEXP may use the name, address (including website addresses or URLs) and customer service telephone numbers of Customer and Bank in any media at any time.

**2.6. Prohibited Uses of the AEXP Card.** Customer must not accept the AEXP Card for any of the following: (i) adult digital content sold via internet electronic delivery; (ii) amounts that do not represent bona fide sales of goods or services (or, if applicable, amounts that do not represent bona fide charitable contributions) made at Customer's Establishments; (for example, purchases at Customer's Establishments by anyone contrived for cash flow purposes, or payments that Customer has accepted in order to advance cash to Cardmembers in connection with the AEXP Transaction); (iii) amounts that do not represent bona fide, direct sales by Customer's Establishments to Cardmembers made in the ordinary course of Customer's business; (iv) cash or cash equivalent; (v) AEXP Charges that the Cardmember has not specifically approved; (vi) costs or fees over the normal price of the goods or services (plus applicable taxes) that the Cardmember has not specifically approved; (vii) damages, losses, penalties or fines of any kind, UNLESS CUSTOMER CLEARLY COMMUNICATES TO THE CARDMEMBER IN WRITING VIA INVOICE OR THROUGH CONNECT THAT THE AEXP CHARGE IS FOR PAYMENT OF A FINE OR PENALTY (SUCH AS A TAX PENALTY) AND THE AMOUNT OF THE FINE OR PENALTY; (viii) gambling services (including online gambling), gambling chips, gambling credits, or lottery tickets; (ix) unlawful/illegal activities, fraudulent business transactions or when providing the goods or services is unlawful/illegal (e.g. unlawful/illegal online internet sales of prescription medications or controlled substances; sales of any goods that infringe the copyrights or trademarks of a third party under Applicable Law); (ix) overdue amounts or amounts covering returned, previously dishonored or stop-payment checks (e.g., where the AEXP Card is used as a payment of last resort); (x) sales made by third parties or entities conducting business in industries other than Customer's, except for Connect as provider of services hereunder; (xi) other items as determined and communicated by AEXP. Customer must not use the AEXP Card to verify its customer's age, or accept the AEXP Card for amounts that represent repayment of a cash advance including, but not limited to, payday loans, pawn loans or payday advances.

## **3. Transaction Processing, Charge Records, Card Information and Cardmember Information**

**3.1. Authorizations.** Each AEXP Card payment accepted by Customer is required to have an authorization approval code. Bank will submit all AEXP Transactions to Paymentech for authorization (except where such authorization is sent directly to Paymentech from a terminal at one of Customer's Establishments (e.g., POS.)) Customer acknowledges that authorization of an AEXP Transaction indicates that the AEXP Card (i) contains a valid account number; and (ii) has an available credit balance sufficient for the amount of the AEXP Transaction; but, it does not

guarantee that (w) the person making the AEXP Charge is the Cardmember; (x) the AEXP Charge is in fact valid or bona fide; (y) Customer will be paid for the AEXP Charge; or (z) the AEXP Charge will not be subject to an AEXP Chargeback.

**3.2. ~~AE~~ Charge Records and Refund Policies** . An AEXP Charge Record must be provided to the Cardmember by Customer or Bank in the form of a customer receipt. The customer receipt must disclose Customer's return and/or cancellation policies, and other information that Customer is required to maintain and disclose as required by the Merchant Regulations. The refund policy must be fair and clearly disclosed at the time of sale in compliance with Applicable Law, and must be conveyed to the Cardmember prior to completion of the AEXP Charge and printed on a copy of the customer receipt. Customer must not give cash refunds to Cardmembers for goods or services they purchase on the AEXP Card, unless required by Applicable Law. Customer's refund policy for purchases made on the AEXP Card must be at least as favorable as the refund policy for purchases made with Other Payment Products or other payment methods. Customer should document refund policies and terms and conditions in its agreement with the Cardmember or on its website, as applicable.

**3.3. Advance Payment Charges** If Customer offers the option of AEXP Advance Payment Charges for tuition, room and board, and other mandatory fees (e.g., library fees) of higher educational institutions, Customer must provide all information required by Bank in order to set up such AEXP Advance Payment Charge options for Customer and familiarize itself with the Merchant Regulations governing AEXP Advance Payment Charges, including requirements to provide details of its refund policies, obtain written consent from Cardmembers, and provide Cardmembers with written confirmation (e.g., email) of the AEXP Advanced Payment Charge, and detailed description and expected delivery date.

**3.4. ~~Recurring Billing~~** For recurring AEXP Transactions, Customer must (i) obtain the Cardmember's consent to periodically charge the Cardmember on a recurring basis for the goods or services purchased, which must also disclose that Customer may receive updated AEXP Card account information from AEXP; (ii) retain this permission for the duration of the recurring services and provide it upon request to Bank or AEXP; and (iii) retain written or electronic documentation specifying the frequency of the recurring AEXP Charge and the duration of time during which such charges may be made. A recurring AEXP Transaction shall not be submitted after: (y) receipt of a cancellation notice from the Cardmember; or (z) receipt of notice from Bank, Paymentech or AEXP (via authorization code or otherwise) that the AEXP Card is not to be honored. Customer must also notify all Cardmembers for whom Recurring Billing Charges have been submitted that Customer no longer accepts AEXP Cards.

**3.5. Protecting Cardmember Information /~~Violation of Merchant Regulations~~** . Any and all Cardmember Information is confidential and the sole property of AEXP or its affiliates. Customer must protect Cardmember Information as described herein and in the Merchant Regulations, and may have additional obligations based on AEXP Transaction volume, including providing documentation to AEXP validating Customer's compliance with the PCI DSS. Except as otherwise specified herein, Customer must not disclose Cardmember Information, nor use nor store it, other than to facilitate AEXP Transactions at Customer's Establishments in accordance with these AEXP Service Terms and the Merchant Regulations. If applicable to Customer's program, the AEXP Transaction Data Customer collects to facilitate the AEXP Charges must be or have been provided directly to Customer by the Cardmember. Customer must not accept or have accepted AEXP Transaction Data from, nor shall Customer provide or have provided AEXP Transaction Data to, any third parties other than as specified hereunder. If Customer fails to comply with this requirement, in addition to AEXP's rights and remedies listed in this AEXP Terms and the Merchant Regulations, AEXP may, in its sole discretion, charge Customer non-compliance fees, suspend AEXP Card acceptance privileges at the Establishments, or instruct Bank to terminate this AEXP Terms. Customer must comply with the Security Standards, which apply to all of Customer's equipment, systems and networks on which **Cardmember Data** (which shall have the meaning given to "Cardholder Data" in the Merchant Regulations) or **Sensitive Authentication Data** (as defined in the Merchant Regulations) are stored, processed or transmitted. Customer must notify AEXP immediately, and in no case later than 24 hours after discovery of a **Data Incident** (defined as an incident involving at least one AEXP Card Number in which there is (i) unauthorized access or use of Cardmember Data or Sensitive Authentication Data (or both) that are stored, processed, or transmitted on Customer's equipment, systems, and/or networks) or the components thereof; (ii) use of such Cardmember Data or Sensitive Authentication Data (or both) other than in accordance with this AEXP Terms and the Merchant Regulations; and/or (iii) suspected or confirmed loss, theft, or misappropriation by any means of any media, materials, records, or information containing such Cardmember Data or Sensitive Authentication Data (or both), and comply with all other applicable requirements of AEXP relating to Data Incidents as set forth in the Merchant Regulations. To notify AEXP, contact the American Express Enterprise Response Program (EIRP) or email at [EIRP@aexp.com](mailto:EIRP@aexp.com). Customer must designate an individual as its contact regarding such Data Incident. Where Customer is accepting AEXP Transactions or is otherwise exposed to AEXP Cards, AEXP Transaction Data, Cardmember Information, Cardmember Data, Sensitive Authentication Data and any other sensitive information, Customer acknowledges the heightened risk associated with its access to such information, and Customer further acknowledges it must establish policies and procedures to protect such information in conformity with the Merchant Regulations, including the Security Standards, and Applicable Law. Customer further agrees to provide Bank and AEXP, upon request, with validation of Public Sector Customer's compliance with the Security Standards as may from time to time be required by AEXP. Customer acknowledges that its failure to comply with the Merchant Regulations, including the Security Standards, or the compromise of any AEXP Transaction Data, Cardmember Information, Cardmember Data, Sensitive Authentication Data or any other sensitive information may result in assessments, fines, non-compliance fees, and/or penalties by AEXP. In the event Bank or any of its affiliates incurs any damage, liability, non-compliance fee, fine, assessment or penalty ("**bss**") as a result of Customer's breach or violation of the Merchant Regulations or Security Standards, or breach of Customer's obligation to provide disclosures relating to AEXP Convenience Fees at each Customer Point-of-Sale Establishment as set forth in the Service Terms, Customer shall reimburse Bank immediately for all such Losses. In addition to the foregoing, Customer acknowledges its obligations with respect to Data Incidents as set forth in the Merchant Regulations.

**3.6. Sharing Information** . Customer must permit AEXP or Bank, respectively, to establish a hyperlink from AEXP or Bank's website and list Customer's customer service contact information, in connection with Customer's and Bank's obligations under the Merchant Regulations to maintain customer service information that is readily available for review by Cardmembers transacting with Customer and Bank. The customer service information should provide clear instructions on how to contact Customer and Bank, including an active customer service email address and telephone number. Customer agrees to provide the information pertaining to Customer to Bank upon request. Customer acknowledges that AEXP reserves the right to use the Customer's name, address, and website address in any media from time to time. Customer agrees that Bank and AEXP may share with each other and with their affiliates, agents, subcontractors and employees Customer financial information, AEXP Transaction Data and other information that Customer provides as necessary to process the AEXP Transactions and perform their obligations and due diligence including for underwriting and credit review purposes, perform analytics and create reports, or otherwise as required or permitted by the Merchant Regulations, the Rules and Regulations and Applicable Law. Notwithstanding any contrary confidentiality obligation in the Service Terms or any other agreement, as provided in the Merchant Regulations, AEXP also has the right to disclose information about any Data Incident to Cardmembers, AEXP Issuers, other participants on the American Express Network, and the general public as required

by Applicable Law; by judicial, administrative, or regulatory order, decree, subpoena, request or other process in order to mitigate the risk of fraud or other harm or otherwise to the extent appropriate to operate the American Express Network. Customer agrees that Bank may provide a copy of these AEXP Terms to AEXP upon request. Unless otherwise prohibited by state law, Customer must keep confidential and not disclose to any third party the provisions of these AEXP Terms and any information that Customer receives from AEXP that is not publicly available.

**3.7. Split Tender Purchases.** Customer agrees it will not accept multiple forms of payment (e.g., cash, AEXP Card, prepaid products) for a single purchase.

#### **4. Settlement.**

**4.1. Customer's Settlement Account** In order to receive settlement funds for AEXP Transactions, Customer must designate and maintain one or more accounts used primarily for business purposes at Bank (collectively, "AEXP Settlement Account"). Customer shall not close its AEXP Settlement Account without giving Bank at least thirty (30) days' prior written notice and substituting another AEXP Settlement Account. Customer authorizes Bank and AEXP to initiate electronic debit and credit entries and adjustments to the AEXP Settlement Account at any time without regard to the source of any monies in the AEXP Settlement Account, and this authority will remain in full force and effect for the term of the AEXP Terms. Bank will not be liable for any delays in receipt of funds or errors in AEXP Settlement Account entries caused by AEXP.

**4.2. Payment for Charges.** The parties acknowledge that some Public Sector Entities may desire to get paid directly by AEXP, while others may desire to receive payments directly from Bank. Payment for AEXP Charges may be settled separate from Other Payment Products, as applicable, in accordance with the following:

(a) **f Payments are Made Directly to Bank**. Bank will submit AEXP Charges and AEXP Credits in U.S. dollars, and AEXP will pay Bank in U. S. dollars for the face amount of AEXP Charges submitted minus any AEXP Credits submitted on the Customer's behalf and minus other applicable deductions in accordance with the Bank's agreement with AEXP. Promptly after Bank receives funds for settled AEXP Transactions from AEXP, Bank will fund the AEXP Settlement Account with the net amount of proceeds received from AEXP, which shall be equal to the amounts submitted to AEXP by Bank minus the sum of the following: (i) all AEXP Credits or refunds and AEXP Chargebacks, but not including any refunds or chargebacks of AEXP Convenience Fees; (ii) all fees and charges (except as otherwise provided in Section 4.3 of the Service Terms), and (iii) all assessments, fines, non-compliance fees, and/or penalties or other liabilities that may be imposed from time to time by AEXP and all related costs and expenses incurred by Bank or Paymentech as a result of Customer's breach of its obligations to provide disclosures relating to AEXP Convenience Fees at each of Customer's Point-of-Sale Establishments or Customer's breach or violation of the Merchant Regulations or Security Standards.

(b) **f Payments are made directly by AEXP to the Customer**. Bank will submit AEXP Charges and AEXP Credits in U.S. Dollars and AEXP will fund the AEXP Settlement Account directly based upon AEXP's standard funding timeframes, in U.S. Dollars. AEXP will fund the face amount of the AEXP Charges submitted by or on the Customer's behalf minus the sum of the following: (i) All AEXP Credits or refunds and AEXP Chargebacks, excluding any refunds or chargebacks of AEXP Convenience Fees; (ii) all assessments, fines, non-compliance fees, and/or penalties or other liabilities that may be imposed from time to time by AEXP and all related costs and expenses incurred by Bank or Paymentech as a result of Customer's breach of its obligations to provide disclosures relating to AEXP Convenience Fees at each of Customer's Point-of-Sale Establishments or Customer's violation of the Merchant Regulations or Security Standards; (iii) in some cases, based upon AEXP and Bank preferences, AEXP and Bank may gross AEXP Chargebacks, refunds, assessments, fines, non-compliance fees, penalties or other liabilities that may be imposed from time to time and other related costs and expenses incurred by Bank or Paymentech as a result of Customer's breach of its obligations to provide disclosures relating to AEXP Convenience Fees at each of Customer's Point-of-Sale Establishments or Customer's breach or violation of the Merchant Regulations or Security Standards into a separate debit to the AEXP Settlement Account.

**4.3. Negative Amounts.** Customer shall maintain sufficient funds in the AEXP Settlement Account to prevent the occurrence of a negative balance. In the event that the proceeds from the settled AEXP Transactions or the balance of Customer's AEXP Settlement Account are not sufficient to pay amounts due under these AEXP Terms, including the amounts reflected in section 4.2(a) and (b), in addition to any other rights and remedies Bank and AEXP may have under these AEXP Terms, Bank and AEXP may pursue one or more of the following options: (a) demand and receive immediate payment for such amounts; and if payment is not made within three (3) days of demand, debit the AEXP Settlement Account for the negative amount; (b) on an on-going basis withhold some or all of Customer's settlement funds and apply them against the negative amount; and (c) with respect to AEXP, apply funds held in Reserve against the negative amount as further described below.

#### **4.4. Protective Actions.**

(a) **Creating a Reserve**. Regardless of any contrary provision in the AEXP Terms, AEXP has the right based on the occurrence of one or more trigger events described below to create a Reserve, or suspend AEXP Card acceptance by Customer. In such event, at least three business days' notice of intent to establish a Reserve will be provided. The Reserve may be established by AEXP withholding amounts from payment Bank or AEXP otherwise would make to Customer, and the amount of the Reserve may be increased by AEXP at any time upon three business days prior written notice to Customer so long as the amount of the Reserve does not exceed an amount sufficient, in AEXP's reasonable judgment, to satisfy any financial exposure or risk to Bank, AEXP or Cardmembers (including AEXP Charges submitted for goods or services not yet received by Cardmembers and fees associated with handling Disputed Charges as set forth in the Merchant Regulations).

(b) **Trigger Events for Reserve**. The events that may cause AEXP to establish a Reserve are: (i) Customer ceasing a substantial portion of or adversely altering its operations; (ii) Customer selling all or substantially all of its assets or any party acquiring 25% or more of the equity interests issued by Customer (other than parties owning 25% or more of such interests as of the Effective Date of the Agreement), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) Customer suffering a material adverse change in its business or a material adverse change occurs in its industry; (iv) Customer becoming insolvent; (v) a disproportionate number or amount of Disputed Charges at Customer's Establishments; (vi) Bank's or AEXP's reasonable belief that Customer will not be able to perform its obligations under the Agreement, or to Cardmembers; or (vii) the establishment of a reserve or other protective action taken by any entity with whom Customer has entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to Customer, (B) requires Customer to make a direct payment into a reserve account or similar device, or (C) requires Customer to provide such entity with a letter of credit or other third-party guaranty of payment.

(c) **Application of Reserve.** AEXP may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts Customer owes AEXP under these AEXP Terms; and (ii) any fees associated with handling Disputed Charges as set forth in the Merchant Regulations.

(d) **Other Protections.** Bank may deduct from and set-off against the AEXP Settlement Account for any amounts Customer owes Bank under these AEXP Terms. Customer acknowledges that AEXP may take other reasonable actions to protect its rights, including changing the speed or method of payment for AEXP Charges, exercising AEXP Chargeback under any of its AEXP Chargeback programs, or charging fees for Disputed Charges.

## **5. AEXP Chargebacks and Dispute Requests**

5.1. **AEXP Chargeback Reasons.** AEXP has AEXP Chargeback rights, as described in the Merchant Regulations. AEXP may exercise an AEXP Chargeback by (i) deducting, withholding, recouping from, or offsetting against AEXP payments to Bank or Customer, or debiting Bank or Customer's bank accounts, or AEXP may notify Bank or Customer of the obligations to pay AEXP; or (ii) reversing an AEXP Charge for which AEXP has not paid Bank or Customer. Customer is responsible for all AEXP Chargebacks and agrees to pay Bank, or AEXP as the case may be, promptly and fully for any and all AEXP Chargeback amounts, except for chargebacks of AEXP Convenience Fee payments where charged and collected by, and settled to, Bank. Some of the more common reasons for AEXP Chargebacks are:

- (a) Whenever Cardmembers bring Disputed Charges, or have rights under Applicable Law or contract to withhold payments;
- (b) In cases of actual or alleged fraud relating to AEXP Charges;
- (c) Customer fails to issue a refund to a Cardmember upon the return or non-delivery of goods or services;
- (d) Customer fails to inform Cardmembers of its refund policy, as required by the Merchant Regulations.
- (e) As otherwise provided in the Merchant Regulations.

5.2. **Requesting an AEXP Chargeback Reversal.** Customer may request an AEXP Chargeback reversal by providing the supporting information required by AEXP and responding timely to any inquiry from AEXP or Bank. Requests for AEXP Chargeback reversals must be made in the time and manner as required under the Merchant Regulations. Bank may not investigate or attempt to obtain a reversal or other adjustment to any AEXP Chargeback if Customer has not timely responded to an inquiry from Bank or AEXP. Customer acknowledges that under certain Merchant Regulations, Customer cannot rebut an AEXP Chargeback where the Cardmember disputes making the purchase and Customer does not have an electronic record (e.g., "swiping" an AEXP Card).

6. **Fees; Convenience Fees.** Fees, including AEXP Convenience Fees, shall be described in a fee schedule attached to the Service Terms and incorporated herein by reference as if fully set forth herein. Customer acknowledges that merchants in the government, utilities and certain education industries (i.e. higher education, private school kindergarten to grade 12) may assess AEXP Convenience Fees or allow a Payment Service Provider to assess AEXP Convenience Fees in accordance with the Merchant Regulations. Customer acknowledges its obligations (including those set forth in Section 3.1 of the Service Terms) to clearly disclose the amount of AEXP Convenience Fees to the Cardmember and give the Cardmember the opportunity to cancel the AEXP Charge if the Cardmember does not want to pay the AEXP Convenience Fee. Customer acknowledges that AEXP views discrimination against Cardmembers as a breach of these AEXP Terms and that AEXP Convenience Fees for AEXP Charges may not be higher than those charged for Other Payment Products, except for ACH, cash and checks.

## **7. Termination.**

7.1. **Termination Generally.** These AEXP Terms shall terminate simultaneously with the Service Terms, unless terminated earlier (i) in accordance with the terms of the Service Terms, (ii) by Customer upon written notice to Bank, (iii) by AEXP upon written notice to Bank or Customer, or (iv) by Bank as set forth below. In the event AEXP notifies Bank that Customer has breached any of the AEXP Terms or Merchant Regulations, Bank must cease providing Payment Services to Customer within five (5) days after Bank's receipt of such notice and Customer must remove all AEXP Marks from Customer's website and other locations immediately. The provisions regarding processing and settlement of AEXP Transactions, all related refunds, and the resolution of any related AEXP Chargebacks, disputes or other issues involving AEXP Transactions will continue to apply even after termination of these AEXP Terms, with respect to all AEXP Transactions made prior to termination. After termination of these AEXP Terms for any reason whatsoever, Customer shall continue to bear responsibility for all AEXP Chargebacks and refunds resulting from AEXP Transactions processed pursuant to these AEXP Terms.

7.2. **Termination for Cause by Bank.** Bank may terminate these AEXP Terms in the event of (i) Customer's failure to comply with any of the provisions of these AEXP Terms or the Merchant Regulations; or (ii) the occurrence of any of the trigger events in Section 4.3(b) above, except that with respect to the trigger event in section 4.3(b) (v), Bank must have a reasonable, good faith belief that Bank will be unable to collect any AEXP Chargeback amounts from Customer.

8. **CONSEQUENTIAL DAMAGES DISCLAIMER.** IN NO EVENT SHALL AEXP, SPONSORED MERCHANT OR BANK OR THEIR RESPECTIVE AFFILIATES, SUCCESSORS, OR PERMITTED ASSIGNS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH THE AEXP TERMS, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. AEXP, BANK AND SPONSORED MERCHANT SHALL HAVE NO LIABILITY FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS OR THE BANKING SYSTEM, EXCEPT THAT AEXP'S AND BANK'S RIGHTS TO CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

## **9. Miscellaneous.**

9.1. **Representations.** Customer represents and warrants to AEXP and Bank that: (i) Customer has full authority to enter into the AEXP Terms and all necessary assets and liquidity to perform its obligations and pay its debts as they become due; (ii) there is no circumstance threatened or pending that might have a material adverse effect on Customer's business or its ability to perform its obligations or pay its debts; (iii) Customer is authorized to enter into the AEXP Terms on behalf of its Establishments and the individual who signs the Agreement or otherwise enters into it has authority to bind Customer and them to it; (iv) Customer is not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [treas.gov/ofac](https://www.treas.gov/ofac)), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at [state.gov](https://www.state.gov)), or (3) located in or operating under license issued by a jurisdiction identified by the U.S.



Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as non cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (v) Customer has not assigned to any third party any payments due to Customer under the AEXP Terms and all indebtedness arising from AEXP Charges are for bona fide sales of goods or services (or both) at Customer's Establishments and free of any liens, claims, or encumbrances other than ordinary sales taxes, if applicable; (vi) all information that Customer provided in connection with the AEXP Terms is true, accurate, and complete; and (vii) Customer has read the AEXP Terms and kept a copy for its file. If any of Customer's representations or warranties in the AEXP Terms become untrue, inaccurate, or incomplete at any time, AEXP may immediately terminate the AEXP Terms in its discretion. Customer and Bank agree to comply with All Applicable Laws relating to the conduct of their businesses, respectively.

9.2. **Notices.** AEXP's address for notification purposes is:

American Express Travel Related Services Company, Inc.  
P. O. Box 299051  
Fort Lauderdale, FL 33329  
Attn: Department 87  
Email: [American.Express.Contract.Keying@aexp.com](mailto:American.Express.Contract.Keying@aexp.com)  
Tel: (800)528-5200  
Fax: (602)744-8413

Bank's address for notification purposes is

JPMorgan Chase Bank, N.A.  
10 S Dearborn, Floor 13, IL1-0092  
Chicago, IL 60603-2300  
Attn: Connect Product Management  
Email: [connect.support@jpmchase.com](mailto:connect.support@jpmchase.com)  
Tel: (866)282-1981  
Fax: (312)954-1522

9.3. **Taxpayer Certification.** In conjunction with the execution of these AEXP Terms, Customer shall provide Bank with the appropriate taxpayer certification documentation, via Internal Revenue Service (IRS) Form W-9 (or the appropriate versions of Form W-8, if applicable). Customer shall promptly notify Bank if there are any changes in this information. Bank may deduct withholding taxes, if any, from proceeds payable to Customer or any entity that is a party to this agreement where required under Applicable Law. Bank may, in accordance with Applicable Law and from time to time during the term of these AEXP Terms, request Customer to recertify its taxpayer certification hereunder. Furthermore, Customer shall immediately reimburse Bank for any fines, fees, penalties or assessments that may be imposed on Bank for Customer's failure to comply with this section.

9.4. **Information About Customer and Customer's Business.** Upon five (5) days' written notice, Customer agrees to furnish to Bank (a) its most recently prepared financial statements and credit information; and (b) if applicable, its three most recent filings with the SEC. Customer agrees to provide Bank with prompt written notice if Customer is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding or becomes unable to pay its debts when due. Customer's signature on these AEXP Terms authorizes Bank to perform any credit check deemed necessary with respect to Customer. Customer acknowledges that AEXP may require Bank to audit Customer's compliance with these AEXP Terms or the Merchant Regulations. Accordingly, with prior notice and during Customer's normal business hours, Bank's duly authorized representatives may visit Customer's business premises and may examine Customer's books and records that pertain to Customer's AEXP Transactions or Customer's compliance with these AEXP Terms.

9.5. **Dispute Resolution.** See Exhibit 1, attached and incorporated by reference as if fully set forth herein.

9.6. **Survival.** Except as elsewhere provided in these AEXP Terms, the following sections will survive termination: 4, 5 and 8.

9.7. **Entire Agreement; Interpretation.** These AEXP Terms, the Service Terms and all documents and agreements expressly incorporated herein by reference, including the Account Documentation and the Merchant Regulations, are the complete and exclusive expression of the agreement between Customer and Bank regarding the subject matter hereof and supersedes any prior or contemporaneous agreements, understandings or courses of dealing regarding the subject matter hereof. To the extent possible, all aforementioned documents and agreements shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: These AEXP Terms including any modifications to the Merchant Regulations shall control over the Merchant Regulations and the Service Terms; the Merchant Regulations as modified herein shall control over the Service Terms; and the Service Terms shall control over the Account Documentation and any other documents and agreements incorporated herein by reference and not otherwise mentioned in this subsection.

9.8. **Savings Clause.** Other than as set forth in the last sentence of section c. ii in the attached Exhibit 1, if any provision of the AEXP Terms is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the AEXP Terms remaining unaffected.

9.9. **Third Party Beneficiary.** Customer and Bank agree that AEXP is a third-party beneficiary under these AEXP Terms and is expressly given third-party beneficiary rights, but not obligations, that provide AEXP the ability to enforce Customer's compliance with the Merchant Regulations as well as Customer's compliance with these AEXP Terms that apply to AEXP Card acceptance and actions to recover any amount owed to AEXP under the AEXP Terms or the Merchant Regulations. Customer covenants that it is not a third-party beneficiary under Bank's agreement with AEXP.

9.10. **Press Releases.** Customer shall not issue any press release or make any public announcement (or both) in respect of the AEXP Terms or AEXP without prior AEXP and Bank written consent.

9.11. **Independent Contractors.** Customer, Bank and AEXP are independent contractors. No agency, partnership, joint-venture, or employment relationship is created by the AEXP Terms. Each of Customer, Bank and AEXP is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives and subcontractors in connection with the AEXP Terms.

## BB 1

This section explains how Claims can be resolved through mediation, arbitration or litigation. It includes an arbitration provision. As used in this Exhibit 1, "you" and "we" means Customer and/or Bank, as the case may be, and any of Customer or Bank's affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and "our", "ours", and "us" include AEXP and any of its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing.

a. **Notice of Claim.** Before filing a lawsuit or beginning a mediation or arbitration regarding a Claim, you and we agree to send a written notice (to each party against whom the Claim is asserted. This provides the parties an opportunity to resolve the Claim informally or through mediation. The Claim notice must describe the nature and basis of the Claim and state the specific amount or other relief demanded. Notice to us must include your name, your Merchant name, address, and Merchant Number and be sent to our notice address set forth in section 9.2 of the AEXP Terms. If the Claim proceeds to arbitration, the amount of any relief demanded by you or us in a Claim notice shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled on the Claim.

b. **Mediation.** In mediation, a neutral mediator helps parties resolve a claim. The mediator does not decide the claim but helps parties reach agreement.

i. **Initiation of Mediation.** Before beginning a mediation, you or we must first provide the Claim notice described above. Within thirty days after sending or receiving a Claim notice, with prior written consent of the other, you or we may submit the Claim to JAMS (1-800-352-5252, jamsadr.com) or the American Arbitration Association ("AAA") (800-778-7879, adr.org) for mediation, or to an alternative mediator mutually agreed upon in writing by you and us.

ii. **Conduct of Mediation.** You and we agree to cooperate in selecting a mediator from a panel of neutrals and in scheduling the mediation proceedings. Both parties will share equally the costs of any mediation proceedings.

iii. **Confidentiality/Tolling.** All communications made for the purpose of, in the course of, or pursuant to the mediation shall be confidential, and no evidence of any such communication shall be admissible for any purpose or subject to discovery. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled from thirty days following the sending of the Claim notice for sixty days or until termination of the mediation, whichever is earlier.

iv. **Termination.** Either you or we may terminate the mediation at any time following the first mediation proceeding. Your or our submission or failure to submit a Claim to mediation shall not affect your or our right to elect to resolve a Claim through arbitration, including initiation of arbitration proceedings during the pendency of mediation.

c. **Arbitration.** You or we may elect to resolve any Claim by individual arbitration. Claims are decided by a neutral arbitrator.

**If arbitration is chosen by any party, neither you nor we will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, you and we will not have the right to participate in a representative capacity or as a member of any class pertaining to any Claim subject to arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights you or we would have in court may also not be available in arbitration.**

i. **Initiation of Arbitration.** Before beginning an arbitration, you or we must first provide the Claim notice described above. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration provision and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. If we choose the organization, you may select the other within 30 days after receiving notice of our selection and your selection shall control. Contact JAMS or AAA to begin an arbitration or for other information. Claims also may be referred to another arbitration organization if you and we agree in writing or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (A). Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located or New York, NY, at your election.

ii. **Limitations on Arbitration.** **If either party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Merchants or other persons similarly situated.** The arbitrator's authority is limited to Claims between you and us alone. Claims may not be joined or consolidated unless you and we agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case and cannot be used in any other case except to enforce the award. This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against us. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these ~~terms~~ is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

iv. **Arbitrator's Authority.** The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section, nor to determine any matter or make any award except as provided in this section. For the avoidance of doubt, the arbitrator shall have no power or authority to award incidental, indirect, speculative, consequential, special, punitive, or exemplary damages of any kind.

v. **Split Proceedings for Equitable Relief.** Either you or we may seek equitable relief in aid of arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process.

vi. **Small Claims Court; Injunctive Relief.** We shall not elect to use arbitration under this section for any Claim you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court. Injunctive relief sought to enforce the provisions of the last sentences in sections 2.5 and 3.6 of the AEXP Terms is not subject to the requirements of this section. This section



is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty days of any objecting party's submission. If your Claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If the amount of the award exceeds \$100,000, either party can appeal that award to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider de novo any aspect of the initial award requested and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. Judgment upon an award rendered by the arbitrator or by a panel of arbitrators on appeal may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

viii. Confidential Proceedings. The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the Claim resolution, negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by the mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation, mediation, or arbitration.

ix. Costs of Arbitration Proceedings. Both parties will share equally the costs of any arbitration proceedings.

d. Definitions. For purposes of section 7 of the General Provisions only, (i) ~~you~~ and ~~us~~ include any of our Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) ~~you~~ and ~~us~~ include any of your Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing.

e. Continuation. This section will survive termination of this Agreement, any legal proceeding to collect a debt, any bankruptcy and any sale of you or your assets (in the case of a sale, its terms will apply to the buyer). If any portion of this Dispute Resolution section, except as otherwise provided in the ~~first~~ subsection, is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Dispute Resolution section, the Agreement or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

These JPMorgan Integrated Receivables & Payables - Connect / Point of Sale Public Sector Merchant Card Processing Instructions, Terms and Conditions (the "**Agreement**") are acknowledged and agreed to on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the Parties.

**WBS,** \_\_\_\_\_ ("**Merchant**", also referred to as "Customer" in the Connect Service Terms, defined below) wishes to accept Cards from Payers as a method of payment for goods or services offered by Merchant;

**WBS** \_\_\_\_\_, JPMorgan Chase Bank, N.A. is a registered third party service provider with the Payment Brands ("**Service Provider**") and is also a member bank of the Payment Brands ("**Member**");

**WBS** \_\_\_\_\_, Merchant has agreed to Integrated Receivables & Payables - Connect Service Terms ("**Connect Service Terms**") incorporated herein by reference, with Service Provider for the provision of Integrated Receivables & Payables - Connect ("**Connect**") services (capitalized terms used and not otherwise defined in this Agreement shall have their meaning in the Connect Service Terms);

**WBS** \_\_\_\_\_, pursuant to the Connect Service Terms, (a) Service Provider will capture Transaction Data from the Payer on behalf of Merchant and submit such Transaction Data to Paymentech for processing ("**Connect Transactions**"); (b) Merchant will capture Transaction Data from the Payer through a Merchant staffed customer service representative call center ("**CSR Transactions**"); (c) Merchant will capture Transaction Data from the Payer through Merchant's website and convey such Transaction Data to Connect through an application programming interface ("**API Transactions**"); and/or (d) Merchant will capture Transaction Data from the Payer and convey such Transaction Data to Connect through Service Provider's administrator site ("**Admin Transactions**");

**WBS,** \_\_\_\_\_ if applicable, Merchant may also accept Cards from Payers at the point of sale using terminal hardware located at Merchant's place of business (the "**POS Transactions**"), which will be submitted directly to Paymentech from Merchant;

**WBS,** \_\_\_\_\_ Paymentech desires to process the Connect Transactions, CSR Transactions, API Transactions, Admin Transactions and POS Transactions submitted to Paymentech (by Merchant or Service Provider, as applicable); and

**WBS,** \_\_\_\_\_ Paymentech is authorized, as a merchant acquirer, to acquire and process Merchant's Transactions.

**ACCORDINGLY** \_\_\_\_\_, in consideration of the mutual promises made and the mutual benefits to be derived from this Agreement, Paymentech, Member, Service Provider and Merchant (the "**Parties**") agree to the following terms and conditions intending to be legally bound:

## 1. Merchant's Acceptance of Cards

**1.1. Scope; of a Service Provider.** The terms and conditions contained herein pertain to all of Merchant's Transactions submitted to Paymentech through Service Provider's Connect or where applicable, directly by Merchant. While the Merchant obligations set forth in this Agreement are ultimately the responsibility of Merchant, the Parties acknowledge and agree that Merchant has agreed with Service Provider under the terms of the Connect Service Terms for the performance of some of those obligations.

**1.2. Application of Payment Brand Rules.** The Payment Brands require that Merchant (i) enter into a direct contractual relationship with a Member and merchant acquirer; and (ii) agree to comply with Payment Brand Rules as they pertain to Merchant's Transactions. Therefore, Merchant hereby agrees to comply with all Payment Brand Rules, including the Security Standards, as may be applicable to Merchant and in effect from time to time.

### 1.3. Payment Acceptance Practices and Prohibitions.

- (a) Merchant shall not require the Payer to pay any fees that would otherwise be paid by Merchant for the processing of Transactions.
- (b) Merchant shall never issue Refunds for Transactions by cash or a cash equivalent (e.g., check) unless required by law or permitted by the Payment Brand Rules.
- (c) Unless permitted by the Payment Brand Rules, Merchant shall not engage in any practice that unfavorably discriminates against or provides unequal treatment of any Payment Brand relative to any other Payment Brand.
- (d) Except where expressly permitted by law, Merchant shall not set a dollar amount above or below which Merchant refuses to honor otherwise valid Cards in violation of Payment Brand Rules.
- (e) Merchant agrees to accept all categories of Visa and MasterCard Cards (i.e., debit and credit cards), unless Merchant has notified Service Provider and Paymentech, on its Application or otherwise in writing, of its election to accept one of the following "**limited acceptance**" options: (i) all Visa and MasterCard consumer credit cards and Visa and MasterCard

commercial credit and debit cards; or (ii) Visa and MasterCard debit cards only (but no credit cards). Notwithstanding the election of one of the foregoing limited acceptance options, Merchant must honor all foreign bank-issued Visa or MasterCard Cards. If Merchant elects one of the limited acceptance categories: (Y) Merchant must display appropriate signage to indicate the limited acceptance category; and (Z) Paymentech, at its option, may process any Transactions submitted to Paymentech outside of the limited acceptance category, in which case such Transactions will be assessed the applicable interchange fees plus any additional fees/surcharges assessed by Paymentech or the Payment Brands.

- (f) Merchant shall not add any tax or surcharge to Transactions, unless applicable law expressly requires a Merchant be permitted to impose the tax or surcharge. If any tax or surcharge amount is allowed, such amount shall be included in the Transaction amount and shall not be collected separately.
- (g) Merchant shall not request or use a Card account number for any purpose except as payment for its goods or services, unless required by the Payment Brand Rules in order to support specific services offered by the Payment Brands.
- (h) For recurring Transactions, Merchant must: (i) obtain the Payer's consent to periodically charge the Payer on a recurring basis for the goods or services purchased; (ii) retain this permission for the duration of the recurring services and provide it upon request to (as applicable) Service Provider, Member, Paymentech or the issuing bank of the Payer's Card; and (iii) retain written or electronic documentation specifying the frequency of the recurring charge and the duration of time during which such charges may be made. A recurring transaction shall not be submitted after: (Y) receipt of a cancellation notice from the Payer; or (Z) receipt of notice from Member, Service Provider, Paymentech or any Payment Brand (via authorization code or otherwise) that the Card is not to be honored.
- (i) Merchant represents and warrants, to the best of its knowledge, that the Transaction Data represents an obligation of the Payer for the amount of the Transaction.
- (j) Merchant represents and warrants, to the best of its knowledge: (i) that the Transaction is not for any purpose other than payment for the current Transaction; (ii) the Transaction does not represent the collection of a dishonored check or the collection or refinancing of an existing debt; (iii) the Transaction does not represent payment for a previous Transaction or charge incurred at the Merchant or a Transaction that was previously charged back by the Payer, irrespective of Payer consent or approval.
- (k) Merchant represents and warrants, to the best of its knowledge, the amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim.
- (l) Merchant represents and warrants, to the best of its knowledge, that Merchant has not disbursed or advanced any cash to the Payer (except as authorized by the Payment Brand Rules) or itself or to any of its representatives, agents, or employees in connection with the Transaction, nor has Merchant accepted payment for effecting credits to a Payer.
- (m) Where Merchant is accepting POS Transactions, Merchant shall examine each card physically presented at the point of sale to determine that the Card presented is valid and has not expired. Merchant shall exercise reasonable diligence to determine that the authorized signature on any Card physically presented at the point of sale corresponds to the Payer's signature on the Transaction Receipt.
- (n) Where Merchant is accepting POS Transactions, Merchant shall not submit any Transaction that Merchant knows or should have known to be either fraudulent, illegal, damaging to the Payment Brand(s), not authorized by the Payer or otherwise in violation of any provision of this Agreement or the Connect Service Terms, applicable law, or Payment Brand Rules.

**2. Authorizations.** Each Card payment accepted by Merchant is required to have an authorization code. Merchant acknowledges that authorization of a Transaction indicates that the Card: (a) contains a valid account number; and (b) has an available credit balance sufficient for the amount of the Transaction; but, it does not constitute a representation from Paymentech, a Payment Brand, or a card issuing bank that a particular Transaction is in fact a valid or undisputed Transaction entered into by the actual Payer. Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant unless it includes a proper authorization.

**3. Refunds and Adjustments.** Merchant is required to maintain a Refund Policy and to disclose such Refund Policy to Payers at the time of the Transaction. If, under Merchant's Refund Policy, Merchant allows a Refund, Transaction Data reflecting any such Refund shall be prepared and delivered to Paymentech within three (3) days of approving the Payer's request for such Refund. If applicable, the amount of a Refund cannot exceed the amount shown as the total on the original Transaction Data except by the exact amount required to reimburse the Payer for shipping charges that the Payer paid to return merchandise, if any. Merchant shall not accept any payment from a Payer as consideration for issuing a Refund. Merchant shall not give cash (or cash equivalent) refunds to a Payer in connection with a Transaction, unless required by law or permitted by the Payment Brand Rules.

**4. Settlement.**

- 4.1. Merchant's Settlement Account.** In order to receive settlement funds for Transactions, Merchant must designate and maintain one or more accounts used primarily for business purposes at JPMorgan Chase Bank, N.A. (collectively referred to as "**Settlement Account**"). Merchant shall not close its Settlement Account without giving Paymentech and/or Service Provider at least five (5) days' prior written notice and substituting another Settlement Account. Merchant is solely liable for all fees, costs, and overdrafts associated with the Settlement Account. Merchant authorizes Paymentech to initiate electronic debit and credit Entries and adjustments to the Settlement Account at any time without regard to the source of any monies in the Settlement Account, and this authority will remain in full force and effect for the term of this Agreement. Paymentech will not be liable for any delays in receipt of funds or errors in Settlement Account Entries caused by third parties, including, without limitation, delays or errors by the Payment Brands or Merchant's bank.
- 4.2. Conveyed Transactions.** To the extent that Merchant accepts a method of payment from Payers for which Paymentech is able to acquire and convey to a third party, but is not able to settle the related funds directly to the merchant's Settlement Account (e.g. American Express; Transactions stemming from acceptance of such methods of payment herein referred to as "**Conveyed Transactions**"), Merchant must have a valid agreement in effect with the company responsible for the settlement of such Conveyed Transactions (the "**Settlement Entity**"). If Service Provider submits Conveyed Transactions to Paymentech on behalf of Merchant and Merchant does not have a valid agreement with the Settlement Entity, Paymentech may, but shall not be obligated to, submit such Conveyed Transactions to the applicable Settlement Entity and to share with them information about Merchant (from the Application or otherwise) as may be required to approve Merchant's acceptance of the Settlement Entity's method of payment. Payment of proceeds due Merchant for Conveyed Transactions shall be governed by the agreement Merchant has with the applicable Settlement Entity, and Paymentech does not bear any responsibility for their performance thereunder, including, without limitation, the funding and settlement of Merchant's Conveyed Transactions.
- 4.3. Transfer of Transaction Settlement Funds.** Subject to Section 3.2, for all Transactions, Paymentech will submit Merchant's Transaction Data to the applicable Payment Brand. Promptly after Paymentech receives funds for Settled Transactions from the Payment Brands, Paymentech, Member or Service Provider will provisionally fund the Settlement Account. The proceeds payable to Merchant shall be equal to the amounts submitted by Service Provider, or in the case of POS Transactions, by Merchant, in connection with the Transaction Data, minus the sum of the following: (a) all Refunds and Chargebacks; (b) all fees and charges and all fines, assessments, penalties or other liabilities that may be imposed on Paymentech, Member or Service Provider from time to time by the Payment Brands and all related costs and expenses incurred by Paymentech, Member or Service Provider as a result of Merchant's breach of obligation to provide disclosures relating to Convenience Fees at each Public Sector Entity point-of-sale as set forth in the Connect Service Terms, or Merchant's breach or violation of the Payment Brand Rules or Security Standards as described in this Exhibit C, including, without limitation, Section 9; and (c) where Merchant is accepting POS Transactions, all Reserve Account (as defined in Section 4.5) amounts. In the event Paymentech does not deduct such amounts from Merchant's proceeds when such amounts are due and payable, Merchant agrees to pay all such amounts to Paymentech immediately without any deduction or offset.
- 4.4. Negative Amounts.** Merchant shall maintain sufficient funds in the Settlement Account to prevent the occurrence of a negative balance. In the event that the proceeds from the Settled Transactions or the balance of Merchant's Settlement Account are not sufficient to pay amounts due under this Agreement, in addition to any other rights and remedies Paymentech may have under this Agreement, Paymentech may pursue one or more of the following options:
- (a) Demand and receive immediate payment for such amounts; and if payment is not made within three (3) days of demand, debit the Settlement Account for the negative amount;
  - (b) Withhold all or some of Merchant's Settlement funds and apply them against the negative amount; and
  - (c) Where Merchant is accepting POS Transactions, apply funds held in the Reserve Account against the negative amount.
- 4.5. Reserve Account.** Where Merchant is accepting CSR Transactions, API Transactions, Admin Transactions and/or POS Transactions, if:
- (a) Merchant is receiving excessive Chargebacks;
  - (b) Paymentech has reasonable grounds to believe that it may be or may become liable to third parties for the provisional funds extended to Merchant; or
  - (c) Paymentech has reasonable grounds to believe that it may be subject to any additional liabilities arising out of or relating to this Agreement, including without limitation, any fines, fees, or penalties assessed against Paymentech or Service Provider by any of the Payment Brands arising out of or relating to Merchant's Transactions, Chargebacks, or failure to comply with the Payment Brand Rules or the Security Standards;

then, each such event may subject Paymentech to additional risk (such risk being hereinafter referred to as "**Anticipated Risk**"). In any such event, Paymentech may temporarily suspend or delay payments to Merchant during Paymentech's investigation of the issue and/or designate an amount of funds that Paymentech must maintain in order to protect itself against Anticipated Risks (such funds being hereinafter referred to as the "**Reserve Account**"), which may be funded in the same manner as provided in Section 3.2. The Reserve Account will contain sufficient funds to cover Paymentech's estimated exposure based on reasonable criteria for Chargebacks, Refunds, unshipped goods and/or unfulfilled services, and all

additional Anticipated Risks. Paymentech may (but is not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable to Merchant against, the satisfaction of any amounts which are or may become due from Merchant pursuant to this Agreement. Funds in the Reserve Account will be held and controlled by Paymentech, will not bear interest, and may be commingled with other funds. Effective upon Paymentech's establishment of a Reserve Account, Merchant irrevocably grants to Paymentech a security interest in any interest Merchant may now have or later acquire in any and all funds, together with the proceeds thereof, that may at any time be in the Reserve Account and that would otherwise be payable to Merchant pursuant to the terms of this Agreement. Merchant agrees to execute and deliver to Paymentech such instruments and documents that Paymentech may reasonably request to perfect and confirm the security interest in the Reserve Account funds. Upon: (i) satisfaction of all Merchant's obligations under this Agreement; and (ii) Merchant's execution of documents reasonably requested by Paymentech in connection with the return of any Reserve Account funds; Paymentech will pay to Merchant any funds then remaining in the Reserve Account.

## **5. Chargebacks and Retrieval Requests.**

### **5.1. Chargeback Reasons.** Merchant may receive Chargebacks from time to time. Following are some of the most common reasons for Chargebacks:

- (a) Merchant fails to issue a Refund to a Payer upon the return or non-delivery of goods or services;
- (b) A required authorization/approval code was not obtained;
- (c) The Transaction Data was prepared incorrectly or fraudulently;
- (d) Paymentech did not receive Merchant's response to a Retrieval Request;
- (e) The Payer disputes the Transaction or the authenticity of the signature on the Transaction Receipt, or claims that the Transaction is subject to a set-off, defense, or counterclaim;
- (f) The Payer refuses to make payment for a Transaction because, in the Payer's opinion, a claim or complaint has not been resolved or has been resolved in an unsatisfactory manner;
- (g) The Card was not actually presented at the time of the Transaction or Merchant failed to obtain an electronic record or physical imprint of such Card, and the Payer denies making the purchase; or
- (h) Merchant fails to inform Payer of its Refund Policy, as required by the Payment Brand Rules.

### **5.2. Response to Chargebacks.** If Merchant has reason to dispute or respond to a Chargeback, then such dispute or response must be provided by the date set forth on the applicable Chargeback notice. Paymentech will not investigate or attempt to obtain a reversal or other adjustment to any Chargeback if Merchant has not timely responded to the notice. Merchant acknowledges that under certain Payment Brand Rules, Merchant cannot rebut a Chargeback where the Payer disputes making the purchase and Merchant does not have an electronic record (e.g., "swiping" or "tapping" a Card) or physical imprint of the Card. Merchant has full liability for all Chargebacks.

### **5.3. Excessive Chargebacks.** If Merchant is receiving an excessive amount of Chargebacks, as determined by the Payment Brands from time to time, in addition to Paymentech's other remedies under this Agreement, Paymentech may take one or more of the following actions: (a) review Merchant's internal procedures relating to acceptance of Cards and notify Merchant of new procedures Merchant should adopt in order to avoid future Chargebacks; (b) notify Merchant or Service Provider of a new rate Paymentech will charge to process Merchant's Chargebacks; or (c) where Merchant is accepting POS Transactions, establish a Reserve Account. Merchant also agrees to pay any and all penalties, fees, fines, and costs assessed against Merchant, Paymentech, and/or Service Provider relating to Merchant's violation of this Agreement or the Payment Brand Rules with respect to Merchant's acceptance of Cards, its Transactions, or with respect to excessive Chargebacks under this Section.

### **5.4. Retrieval Requests.** Within seven (7) days (or such shorter time as the Payment Brand Rules may require) of Merchant receiving a Retrieval Request, Merchant, directly or through Service Provider, must provide to Paymentech via certified or overnight mail or by confirmed fax: (a) written resolution of Merchant's investigation of such Retrieval Request; and (b) legible copies of any supporting documentation requested or required by the Retrieval Request. Merchant acknowledges that failure to fulfill a Retrieval Request timely and in accordance with Payment Brand Rules may result in an irreversible Chargeback.

## **6. Display of Payment Brand Marks.** Merchant is prohibited from using the Payment Brand Marks, as defined below (sometimes referred to herein as "**Marks**"), other than as expressly permitted by the Payment Brands. Payment Brand Marks mean the brands, emblems, trademarks and/or logos that identify a Payment Brand. Merchant may use the Payment Brand Marks only to promote the services covered by the Marks by using them on decals, indoor and outdoor signs, advertising materials, and marketing materials; provided, that all such uses by Merchant must be consistent with Payment Brand Rules. Merchant shall not use the Payment Brand Marks in any way that Payers could believe that the goods or services offered by Merchant are sponsored, endorsed, or guaranteed by the owners of the Payment Brand Marks. Merchant recognizes that it has no ownership

rights in the Payment Brand Marks. Merchant shall not assign the rights to use the Payment Brand Marks to any third party. Merchant's right to use the Payment Brand Marks hereunder terminates with the termination of this Agreement.

## **7. Fees; Convenience Fees.**

**7.1. Fees.** Unless the Connect Service Terms specifically state otherwise, Merchant is directly responsible for paying the processing fees set forth on Schedule A to Paymentech for all Transactions processed hereunder. Specifically, this Section 7.1 and Schedule A shall not apply if the Connect Service Terms state that Service Provider is responsible for paying Merchant Processor processing fees and other similar fees and charges. Merchant acknowledges that the fees stated in Schedule A are based upon the assumption that Merchant's Transactions will qualify for certain interchange rates, as determined in each case by the applicable Payment Brand. If any of Merchant's Transactions fail to qualify for such interchange rates, Paymentech shall process each such Transaction at the applicable interchange rate determined by the applicable Payment brand. Fees payable under this Agreement that contain a fraction of a cent will be rounded up to the next full cent. Furthermore, the fees set forth on Schedule A may be adjusted to reflect increases by Payment Brands in interchange, assessments, or other Payment Brand fees or additional fees imposed by the Payment Brands. Merchant shall pay all such fees, as so adjusted. Each such adjustment shall become effective upon the date the corresponding increase or additional fee is implemented by the Payment Brand.

**7.2. Convenience Fees.** To the extent Merchant or Service Provider charges and collects a Convenience Fee from Payer at the time of the Transaction, Paymentech shall process and fund the Convenience Fee, as well as the Transaction Data (a/k/a Sales Data), in accordance with this Agreement and Section 2.5 of the Connect Service Terms, as applicable.

**8. Termination.** This Agreement shall terminate simultaneously with the Connect Service Terms. The provisions governing processing and settlement of Transactions, all related Refunds, and the resolution of any related Chargebacks, disputes, or other issues involving Transactions, will continue to apply even after termination of this Agreement, with respect to all Transactions made prior to such termination or after such termination, as described below. After termination of this Agreement for any reason whatsoever, Merchant shall continue to bear total responsibility for all Chargebacks and Refunds resulting from Transactions processed pursuant to this Agreement.

## **9 Transaction Data, Card Information and Payer Information.**

**9.1. Protecting Payer Information.** By accepting Cards from its Payers, Merchant acknowledges and understands the importance of protecting Card information and Payer Information and complying with the Payment Brand Rules, Security Standards, and applicable law. Merchant financial information, Transaction Data, and other information that Merchant provides to Paymentech or Service Provider may be shared among Paymentech, Service Provider and their affiliates and with the Payment Brands subject to the provisions of this Agreement and Payment Brand Rules. Merchant agrees to comply with all Security Standards. By signing below, the Parties acknowledge and agree that where Merchant is **b** accepting API Transactions, CSR Transactions, Admin Transactions and/or POS Transactions Merchant has contracted with Service Provider for the collection of Card information and Payer Information directly from Payers through Connect, as well as the subsequent storage and protection of Card information and Payer Information collected by Service Provider through Connect while it is in Service Provider's possession. Furthermore, where Merchant is **b** accepting API Transactions, CSR Transactions, Admin Transactions and/or POS Transactions, Merchant represents and warrants that it does not have access to Card information (such as the Payer's Card account number, expiration date, security code, PIN data or any track data available through the Card's magnetic strip), and Merchant shall not request access to Card information from Service Provider or Paymentech. At any time during the term of this Agreement, and specifically including but not limited to where Merchant is **b** accepting API Transactions, CSR Transactions, Admin Transactions and/or POS Transactions, if Merchant, its employees, agents or affiliates, gain access to Transaction Data or Card information, Merchant shall: (a) not use Transaction Data or Card information other than for the sole purpose of completing the Transaction authorized by the Payer for which the information was provided to Merchant, or as specifically allowed by Payment Brand Rules, or required by law; (b) not use Transaction Data or Card information for fraudulent purposes; (c) immediately notify Paymentech and Service Provider; and (d) execute all such instruments and documents that Paymentech and Service Provider may reasonably request in order to ensure Merchant's compliance with Security Standards and all associated financial obligations therewith. Similarly, if at any time during the term of this Agreement Paymentech or Service Provider become aware of Merchant's, its employees', agents' or affiliates' access to Transaction Data or Card information, Merchant shall execute all such instruments and documents that Paymentech, Member and/or Service Provider may reasonably request in order to ensure Merchant's compliance with Security Standards and all associated financial obligations therewith. If at any time Merchant believes that Transaction Data, Card information, Payer Information has been compromised, Merchant must notify Service Provider and Paymentech immediately and assist in providing notification to the proper parties. Merchant acknowledges that its failure to comply with the Payment Brand Rules, including the Security Standards, or the compromise of any Transaction Data, Card information or Payer Information, may result in assessments, fines and/or penalties by the Payment Brands. In the event Paymentech, Member or Service Provider incurs any damage, liability, fee, fine, assessment or penalty ("**bss**") as a result of Merchant's breach or violation of the Payment Brand Rules or Security Standards, or breach of Merchant's obligation to provide disclosures relating to Convenience Fees at each Public Sector Entity point-of-sale as set forth in the Connect Service Terms, Merchant shall reimburse Paymentech, Member and Service Provider, as applicable, immediately for all such Losses. Furthermore, if any Payment Brand requires a forensic examination of Merchant or any of Merchant's agents, business partners, contractors, or subcontractors due to a Data Compromise Event, Merchant agrees to cooperate with such forensic examination until it is completed, including, without limitation, the engagement of an examiner acceptable to the relevant Payment Brand. Notwithstanding the foregoing the Payment Brands may directly, or demand that Paymentech, engage an examiner on behalf

of the Merchant in order to expedite the investigation of the Data Compromise Event. By executing this Agreement, Merchant represents that, in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, Merchant shall not sell, transfer, or disclose to third parties any materials that contain Transaction Data, Card information or Payer Information. Upon request, Merchant must return such information to Paymentech, Member or Service Provider or provide acceptable proof of its destruction.

- 92. Sharing Information.** Merchant financial information, Transaction Data, and other information that Merchant provides to Paymentech may be shared by Paymentech with its affiliates. Paymentech will not otherwise disclose or use such information for any purpose whatsoever other than: (i) as necessary to process Merchant's Transactions or otherwise provide services and maintain Merchant's account pursuant to this Agreement; (ii) to detect, prevent, reduce, or otherwise address fraud, security, or technical issues; (iii) to enhance or improve Paymentech's products and services generally; or (iv) as otherwise required or permitted by the Payment Brands or applicable law. Paymentech may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Paymentech's customers or specific segments of Paymentech's customers.
- 93. API Transactions; CSRT Transactions; Admin Transactions; POS Transactions.** Where Merchant is accepting API Transactions, CSRT Transactions, Admin Transactions and/or POS Transactions, Merchant also acknowledges the heightened risk associated with its access to Card information and Payer Information, and that Merchant must establish policies and procedures to protect such information in conformity with the Payment Brand Rules, Security Standards, and applicable law, including the storage and disclosure of such information. Merchant further acknowledges it shall exercise reasonable care to prevent use or disclosure of Transaction Data, Card information and Payer Information, other than to: (a) Merchant's agents and contractors for purpose of assisting Merchant in completing a Transaction; (b) to the applicable Payment Brand; or (c) as specifically required by law. Merchant is allowed by the Payment Brand Rules to store only certain Card information and Payer Information (currently limited to the Payer's name, Card account number, and expiration date) and is prohibited from storing additional Card information and Payer Information, including, without limitation, any security code data, such as CVV2, CVC2, and PIN data, and any magnetic stripe track data. Merchant shall store all media containing Card information and Payer Information in an unreadable format wherever it is stored and in an area limited to selected personnel on a "need to know" basis only. Prior to either party discarding any material containing Card information and Payer Information, the party will render all Card account numbers unreadable. If at any time Merchant determines or suspects that Transaction Data, Card information or Payer Information has been compromised Merchant must notify Paymentech immediately and assist in providing notification to such parties as may be required by law or Payment Brand Rules, or as Paymentech otherwise reasonably deems necessary. Merchant further agrees to provide Paymentech, upon its request, with such tests, scans, and assessments of Merchant's compliance with Security Standards as may from time to time be required by the Payment Brands.
- 94. Third Party Service Providers.** Merchant must notify Paymentech of its use of any additional third party service provider that processes, stores, receives, transmits, or has access to Card information or Payer Information on Merchant's behalf, including, without limitation, its agents, business partners, contractors, and subcontractors ("TPSP") and, to the extent required by each Payment Brand all TPSP must be: (a) compliant with all Security Standards applicable to TPSP; and (b) registered with and/or recognized by such Payment Brand(s) as being so compliant. Merchant agrees to exercise due diligence to ensure that all TPSP, and any other agents, business partners, contractors, or subcontractors with access to Merchant's Card information and Payer Information, maintain compliance with the Security Standards. To the extent required by each Payment Brand, all Payment Applications (defined as a third party application used by Merchant that is involved in the authorization or settlement of Transaction Data) or software involved in processing, storing, receiving, or transmitting of Card Information, shall be: (y) compliant with all Security Standards applicable to such Payment Applications or software; and (z) registered with and/or recognized by such Payment Brand(s) as being so compliant.

## **10. Miscellaneous**

- 10.1. Taxes.** Unless Merchant is otherwise exempt, and, if applicable, provides a valid exemption certificate, Merchant agrees to pay any taxes imposed on the services provided under this Agreement.
- 10.2. Representations.** Merchant represents and warrants that its execution of and performance under this Agreement: (a) in no way breaches, contravenes, violates, or in any manner conflicts with any of its other legal obligations, including, without limitation, its corporate charter or similar document or any agreement between Merchant and any third party or any affiliated entity; (b) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party; and (c) that the person signing this Agreement on behalf of Merchant is duly authorized to do so. Merchant shall perform its obligations under this Agreement in compliance with all applicable laws.
- 10.3. Waivers.** No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.
- 10.4. Notices.** Except as otherwise provided in this Agreement, all notices must be given in writing and either hand delivered, faxed, mailed first class, postage prepaid, sent via electronic mail transmission, or sent via overnight courier (and will be deemed to be given when so delivered or mailed) to the addresses set forth below or to such other address as either party may from time to time specify to the other party in writing.





**"Transaction Data"** means the written or electronic record of a Transaction, including, without limitation, an authorization code or settlement record, which is submitted to Paymentech.

**"Transaction Receipt"** means an electronic or paper record of a Transaction generated upon completion of a sale or Refund, a copy of which is presented to the Payer.

(Remainder of page intentionally left blank; signature page follows)

SAMPLE

**NWES** **OF** , the undersigned parties have duly executed this Agreement.

Agreed and Accepted by:

Agreed and Accepted by:

**PAYMENTECH, C** for itself and on behalf of JPMorgan Chase Bank, N.A., solely in its capacity as Member

By (authorized signature)

By (authorized signature)

Print Name and Title

Print Name and Title

Date

Date

Address

Address

City, State Zip

City, State Zip

Agreed and Accepted by:

**JPMORGAN CHASE BANK, N.A.** , in it's capacity as Service Provider

By (authorized signature)

To be completed by Paymentech, LLC  
Merchant Agreement Contract  
Number  
Merchant processing IDs will be provided at the time of setup

Print Name and Title

Date

Address

City, State Zip

## Global Supplier Diversity

*"Having a diverse supplier network makes us a stronger company, one that can better serve our diverse clients and communities. Our commitment to expanding that network is long-term, and our Global Supplier Diversity Program works towards that goal every day."*

**Jamie Dimon**  
Chief Executive Officer  
JPMorgan Chase & Co.

*"Our Global Supplier Diversity Program is an important part of JPMorgan Chase's engagement with our clients and communities. Having a diverse supplier network makes us more competitive and able to fulfill our stakeholders' needs. The firm is committed to expanding diversity within sourcing overall."*

**Ken Litton**  
Chief Procurement Officer  
JPMorgan Chase & Co.

*"Diversity is a cornerstone of our global corporate culture—both in the workplace and in the marketplace. It is the breadth of our differences that defines us, makes us stronger, and enables us to better support diverse markets and the economic growth of all the communities we serve."*

**William Kapfer, PhD**  
Global Head of Supplier Diversity  
JPMorgan Chase & Co.

## Our Mission

The JPMorgan Chase Global Supplier Diversity Program is committed to developing and engaging with certified and qualified diverse businesses. Our mission is comprised of three pillars: 1) To achieve uplift in diversity within the JPMorgan Chase supply chain; 2) to create a supply chain that mirrors our customers' changing demographics; and 3) to drive economic growth in the communities in which we do business. Senior management's commitment, policies, procedures, strategies, and results demonstrate that supplier diversity is part of our corporate fabric. We are proactive in our outreach to diverse businesses, connecting them with internal and external decision-makers.

JPMorgan Chase's commitment to engaging diverse suppliers is evident in many areas of our supply chain. From designing, constructing, furnishing, staffing, and maintaining our banking branches and offices, to manufacturing credit cards, operating call centers, marketing our products and services, collecting on outstanding debt, and advocating for the firm in legal matters, diverse suppliers drive significant value and make noteworthy contributions to our continued success.

## Certification Requirements

JPMorgan Chase defines a "Diverse Supplier" as one certified by a designated third-party as being 51% owned, operated and controlled by members of the following, among others:

- Minority-Owned Business Enterprise (MBE)
- Women-Owned Business Enterprise (WBE)
- Veteran-Owned Business Enterprise (VBE)
- Service Disabled Veteran-Owned Business Enterprise (SDVBE / DVBE)
- LGBT-Owned Business Enterprise (LGBTE)
- Disability-Owned Business Enterprise (DOBE)
- Small Business Enterprise (SBE)

We invite diverse suppliers interested in doing business, or currently doing business with JPMorgan Chase to register via the [JPMorgan Chase Supplier Diversity Portal](#).

## External Partner Organizations

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We partner with several organizations and their regional (or local) affiliates for support to execute on our supplier diversity objectives, including baseline certification standards. The following are examples of our largest community partners:

- National Minority Supplier Development Council
- Women's Business Enterprise National Council
- National LGBT Chamber of Commerce
- National Veteran-Owned Business Association
- National Veteran Business Development Council
- WEConnect International
- U.S. Business Leadership Network
- U.S. Hispanic Chamber of Commerce
- The Latino Coalition
- U.S. Pan Asian American Chamber of Commerce
- Minority Supplier Development United Kingdom

These organizations provide a platform for promoting our program, as well as networking directly with diverse business owners.

## Supplier Diversity and Strategic Sourcing Process

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Supplier Diversity processes are integrated into the strategic sourcing process. We strive to achieve the optimal combination of price, quality and service for purchased products and services through our Global Supplier Services group. Together, we help provide diverse suppliers with a broad range of project opportunities. We partner with sourcing managers and our business units to ensure active involvement in every step of the sourcing engagement. Qualified and certified diverse suppliers are identified from our Diverse Supplier Registration Portal and other external supplier databases to source diverse vendors that can meet our business needs.

## Management Tracking & Reporting Systems

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JPMorgan Chase's robust management, tracking and reporting systems support our supplier diversity initiatives.

JPMorgan Chase has the ability to track spend by the following diversity classifications, among others:

- Minority-Owned Business Enterprise (MBE)
- Women-Owned Business Enterprise (WBE)
- Veteran-Owned Business Enterprise (VBE)
- Service Disabled Veteran-Owned Business Enterprise (SDVBE / DVBE)
- LGBT-Owned Business Enterprise (LGBTE)
- Disability-Owned Business Enterprise (DOBE)
- Small Business Enterprise (SBE)

We provide external indirect reports on a quarterly basis.

## Tier 2 Program

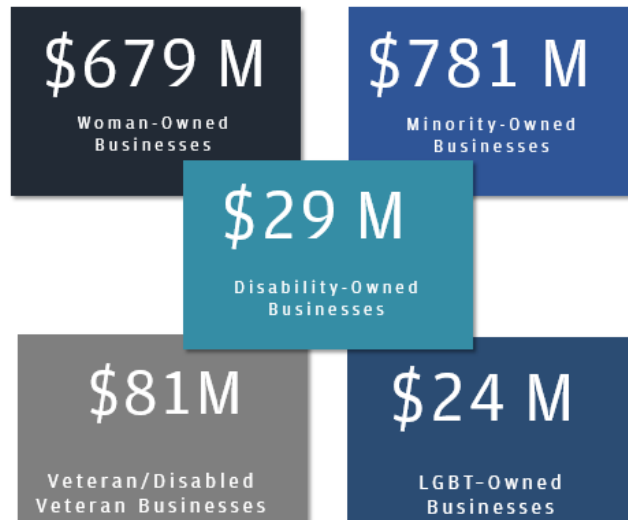
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JPMorgan Chase consistently makes good faith efforts to provide contracting opportunities to diverse suppliers. In addition to purchasing directly from diverse suppliers, JPMorgan Chase also encourages its prime suppliers both diverse and non-diverse to include diverse businesses in their supply chains. We also assist our suppliers in expanding their supplier networks to include more diverse vendors. We track this Tier 2 spend by asking our suppliers to report their diverse supplier spend to us on a quarterly basis.

## Accomplishments

In 2018, JPMorgan Chase celebrates the **24<sup>th</sup> anniversary** of the Global Supplier Diversity program. Over the past 11 years, JPMorgan Chase has spent over \$15 billion dollars with diverse suppliers.

### Spend in 2017



## Awards

### In 2018...

**Professional Woman's Magazine** names JPMorgan Chase to its list of 2018 Best of the Best –Top Financial & Banking Companies

**MBN USA Magazine** names JPMorgan Chase Category Director 2018 Corporate Buyer of the Year

**National Business Inclusion Consortium (NBIC)** selected JPMorgan Chase & Co **2018 Best-of-the-Best Corporation** – This is the third year the firm was recognized

### In 2017...

- 2017 America's Top Corporation for Women's Business Enterprises: **Women's Business Enterprise National Council (WBENC)**
- 100% score in **2017 Disability Equality Index (DEI)** Best Places to Work
- 2017 Corporate 101: America's Most Admired Corporations for Supplier Diversity: **McSweeney's**
- "1<sup>st</sup> place Best-of-the-Best"; **National Business Inclusion Consortium**
- BEQ Pride LGBTQ Business Equality Excellence Award
- "AIM 1" **Affinity Inc. Magazine**
- "Top 100 Leaders in Corporate Supplier Diversity" (William Kapfer); **Women's Enterprise Magazine**

## Additional Information

For additional information on our Supplier Diversity Program, visit our website [www.jpmorganchase.com/supplierdiversity](http://www.jpmorganchase.com/supplierdiversity) or contact us at [supplier.diversity@jpmchase.com](mailto:supplier.diversity@jpmchase.com).




## Policy Engagement and Political Participation

JPMorgan Chase believes that responsible corporate citizenship demands a strong commitment to a health and informed democracy through civic and community involvement.

Our business is subject to extensive laws and regulations at the international, federal, state and local levels and changes to such laws can significantly affect how we operate, our revenues and the costs we incur. Because of the potential impact public policy can have on our businesses, employees, communities and customers, we engage with policymakers in order to advance and protect the long-term interests of the Firm. Meaningful engagement requires JPMorgan Chase to participate in the legislative process and to support candidates through prudent political contributions.

## Trade Associations

JPMorgan Chase is regularly involved in legislative initiatives across a broad spectrum of policy areas that could significantly affect our operations and results. We regularly express our views to public officials and provide them with factual briefings to inform their decisions. We monitor legislative activities, analyze trends and advance public policies that will benefit the Firm and our stakeholders.


To help us achieve these objectives, we belong to a number of trade associations representing the interests of both the financial services industry specifically as well as the broader business community. These organizations work to represent the industry and advocate on major public policy issues of importance to the Firm and the communities we serve. The Firm's participation as a member of these associations comes with the understanding that we may not always agree with all the positions of an organization or its other members. A list of the principal organizations we belong to is available [here](https://www.jpmorganchase.com/corporate/About-JPMC/ab-political-activities.htm). 





When we make payments to these organizations, including membership fees and dues, we restrict these organizations from using our funds for any election-related activity at the federal, state or local level, including contributions and expenditures (including independent expenditures) in support of, or opposition to any candidate for any office, ballot initiative campaign, political party committee or PAC.

We disclose publicly all U.S. federal lobbying costs – those paid directly as well as through trade associations – and the issues to which our lobbying efforts relate, on a quarterly basis, pursuant to reports required by the Lobbying Disclosure Act. We also disclose state and local lobbying costs where required by applicable law.

## Political Contributions

The Firm's policies prohibit contributions of corporate funds to candidates, political party committees and political action committees. Contributions by the Firm's PACs – which are supported entirely by voluntary contributions made by employees – support candidates, parties or committees whose views on specific issues are consistent with the Firm's priorities. The Firm's PACs contribute to candidates and political committees on a bi-partisan basis, and do not make contributions in connection with U.S. presidential elections. Contribution decisions are not made to reflect the personal political views or interests of senior management. In deciding whom to support, consideration is given to candidates who represent the communities we serve, those who serve on relevant committees or in leadership, and those who have shown support for policies and initiatives of importance to the Firm. Contributions made by the PACs are, as required by law, reported in filings with the Federal Election Commission and the relevant State or local election commissions and are publicly available. The most recent report is available [here](#). 

The Firm may from time to time use corporate funds to support or oppose state or local ballot initiatives that affect our business. The Firm does not use corporate funds to make contributions to broad-based groups organized under Section 527 of the Internal Revenue Code. The Firm's PACs may make contributions to ballot committees and 527 organizations; however, contributions to 527s are primarily membership dues and are not used to support the election of any specific candidate or for the purpose of funding specific expenditures or communications. Even where we are not required to disclose contributions to 527s or ballot initiatives, we voluntarily provide that information on our website. The most recent report is available [here](#). 

The Firm does not support groups organized under Section 501(c)4 of the Internal Revenue Code for electoral purposes. When we do support a 501(c)4 on public policy matters, we will seek to disclose that information [here](#). 

We do not use corporate funds to make independent political expenditures, including electioneering communications, notwithstanding the Supreme Court's decision in Citizens United that corporations may make such expenditures.

## Compliance and Oversight

All political activities conducted by or on behalf of the Firm are managed by the Firm's Global Government Relations department, which reports to the Head of Corporate Responsibility. The Head of Corporate Responsibility is responsible for the department's policies, activities and legal compliance, upon advice of the Firm's legal counsel and Compliance Department and subject to oversight by the Public Responsibility Committee of the Board of Directors. Government Relations reports not less than annually to the Public Responsibility Committee on the Firm's significant policies and practices regarding political contributions, major lobbying priorities and principal trade association memberships that relate to the Firm's public policy objectives. This organization and leadership helps us focus the Firm's efforts on those public policy issues most relevant to the long-term interests of the enterprise overall and to our clients and shareholders.

JPMorgan Chase is fully committed to complying with all applicable laws regarding political contributions, including MSRB Rule G-37, SEC Rule 206(4)-5, CFTC Rule 23.451 and applicable state and local restrictions and limits.

The Firm has policies and procedures in place consistent with this statement. The Firm maintains compliance processes intended to ensure that its activities are conducted in accordance with those policies, our Code of Conduct and with all relevant laws governing political contributions and lobbying activities. Procedures include employees' annual review and acknowledgment of their Code of Conduct responsibilities.

The JPMorgan Chase Code of Conduct requires that Government Relations review and approve all request for Firm support of political events, political candidates and their campaigns, political parties or committees, and all political contributions proposed to be made by or on behalf of the Firm. It also requires Government Relations to review and approve all lobbying activities, including retention of outside lobbyists, except where government procurement requires registration. The Firm's employees have the right to participate in the political process by making personal contributions from personal funds, subject to applicable legal limits. However, as stated in the Firm's Code of Conduct, employees cannot be reimbursed or otherwise compensated by JPMorgan Chase for any such contributions.

# JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

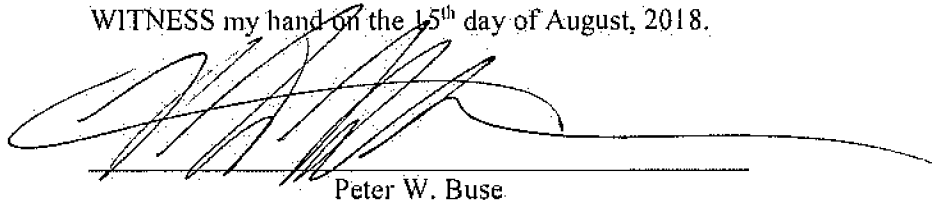
## SECRETARY'S CERTIFICATE

I, Peter W. Buse, do hereby certify that I am a duly appointed Assistant Corporate Secretary of JPMorgan Chase Bank, National Association, a national banking association duly organized under the laws of the United States of America (the "Bank"), and that set forth below is a true and correct copy of a resolution duly adopted by the Board of Directors of the Bank at a meeting held on March 20, 2018. I further certify that said resolution, as of the date hereof, is still in full force and effect.

"RESOLVED that loan agreements, contracts, indentures, mortgages, deeds, releases, conveyances, assignments, transfers, certificates, certifications, declarations, leases, discharges, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, guarantees, proxies, requisitions, demands, proofs of debt, claims, records, notes signifying indebtedness of JPMorgan Chase Bank, N.A. (the "Bank") and any other contracts, instruments or documents in connection with the conduct of the business of the Bank ("Documents"), whether or not specified in the resolutions of the Bank's Board of Directors (the "Board"), may be signed, executed, acknowledged, verified, delivered or accepted on behalf of the Bank by the Chairman of the Board, the Chief Executive Officer of the Bank ("CEO"), a President, the Chief Operating Officer, a Vice Chairman of the Board, a Vice Chairman, any member of the Firm's Operating Committee (an "Operating Committee Member"), any Executive Vice President, the Chief Financial Officer, the General Counsel, the Treasurer, the Controller, the Chief Risk Officer, the Secretary, any Senior Vice President, any Managing Director, any Executive Director, any Vice President, or any other officer having a functional title or official status which is at least equivalent to any of the foregoing corporate titles, and the seal of the Bank may be affixed to any thereof and attested by the Secretary, any Assistant Corporate Secretary, or any of the foregoing officers; provided, however, that any guarantees, comfort letters or other letters of support issued by the Bank in respect of obligations of any of the Bank's affiliates or subsidiaries ("Support Documents") may be executed only where consistent with such resolutions of the Board dated December 8, 2015, as amended, relating to the provision of Bank guarantees and other support issued by the Bank in respect of obligations of its subsidiaries and affiliates."

I further certify that Arkeba Batie is a Vice President of the Bank and is empowered to act in conformity with the above resolution.

WITNESS my hand on the 15<sup>th</sup> day of August, 2018.



Peter W. Buse



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J.P.Morgan

# EEO-1 Form (To be submitted by the prime and any sub with 20% or more of the contract)

**NAME OF FIRM:** JPMorgan Chase Bank, NA

## Section D- EMPLOYMENT DATA

Employment at this establishment- Report all permanent full and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

**Number of Employees (Report employees in only one category)**

Job Categories		Race/Ethnicity														TOTAL COL. A-N
				Not-Hispanic or Latino												
				Male						Female						
		Male	Female	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	
		A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Executive/Senior Level officials and Managers	1.1	71	28	1227	44	1	112	4	8	490	38	1	49		6	2079
First/Mid-Level Officials and Managers	1.2	1483	1729	10591	994	52	3893	29	230	7821	1574	40	1944	33	231	30644
Professionals	2	1833	1962	11810	1689	38	4717	33	354	9071	2572	31	3252	33	368	37763
Technicians	3	20	7	69	28		19		3	30	22		9		2	209
Sales Workers	4	3648	3442	7617	1049	79	1590	40	320	5250	1030	55	1747	42	264	26173
Administrative Support Workers	5	3946	10699	4216	2352	40	942	45	356	12331	7900	132	2321	126	866	46272
Craft Workers	6	1		4												5
Operatives	7															
Laborers and Helpers	8															
Service Workers	9	43	22	37	41	1	13		5	12	22		2		3	201
TOTAL	10	11045	17889	35571	6197	211	11286	151	1276	35005	13158	259	9324	234	1740	143346
PREVIOUS YEAR TOTAL	11	10766	17598	35050	6179	210	10109	146	1301	35255	13431	252	8542	230	1804	140873

1. Date(s) of payroll period used: 01/16/18 - 01/31/18 (Omit on the Consolidated Report.)

**Section E-ESTABLISHMENT INFORMATION (Omit on the Consolidated Report).** What is the major activity of this establishment? (Be specific, i.e., manufacturing steel casings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.) 522110 Commercial Banking

**Section F- REMARKS-**Use this item to give any identification data appearing on the last EEO-1 report which differs from that given above, explain major changes in composition of reporting units and other pertinent information

### Section G- CERTIFICATION

Check One	1	<input type="checkbox"/>	All reports are accurate and were prepared in accordance with the instructions. (Check on Consolidated Report only.)
	2	<input checked="" type="checkbox"/>	This report is accurate and was prepared in accordance with the instructions.

Name of Certifying Official <u>Carolyn Cochran</u>	Title <u>Vice President</u>	Signature	Date <u>02/14/18</u>
Name of person to contact regarding this report <u>Carolyn Cochran</u>	Title <u>Vice President</u>	Address (Number and Street) <u>201 N. Central Avenue</u>	
City and State <u>Phoenix, AZ</u>	Zip Code <u>85004</u>	Telephone No. (including area code and extension) <u>(602) 221-4549</u>	Email address <u>carolyn.cochran@jpmchase.com</u>

All reports and information obtained from individual reports will be kept confidential as required by Section 709(e) of Title VII.  
WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S CODE, TITLE 18, SECTION 1001

Description of Race and Ethnic Identification and Job Categories are found @ <http://www.eeoc.gov/employers/eeo1survey/2007instructions.cfm> / Appendix 4. Race and Ethnic Identification / and Appendix 5. Description of Job Categories