



## COMMERCIAL CARD TERMS

These Commercial Card Terms (the “Terms”), as well as the Card Program Application (the “Application”), and any other agreements, documents, or other instruments including all riders, amendments, restatements, schedules, supplements, and addenda thereto (collectively, the “Agreement”) govern the establishment and use of a commercial credit card program product and services relationship (“Card Program”) between the Organization (as identified within the Application) and Capital One, National Association (“Bank”). By using or authorizing any person to use the Card Program, the Organization confirms its acceptance and agreement to abide by the Agreement, as the same may be amended from time to time.

If Organization is approved for a Card Program, Bank will provide Organization with a Card Program Schedule; this document will outline the approved and applicable credit limit(s), billing cycle, rewards, pricing, fees, and other terms and details associated with Organization’s Master Account(s) for each Solution within the Card Program (see below for further definitions of capitalized terms). The use of each and every “Card,” “Master Account,” and “Related Account” issued or established as a part of Organization’s Card Program shall be governed by the Agreement (including these Terms).

The Agreement is effective as of the “Effective Date of the Agreement” noted within the Card Program Schedule (which is herein incorporated by reference) provided to the Organization by Bank.

### **Definitions:**

“Parties” means, collectively, Bank and Organization and their respective successors and permitted assigns, with Bank and Organization each individually being referred to as a “Party.”

In the Agreement, “Card” means any form of credit card, charge card, virtual card, electronic check or other evolutionary financial transaction device used to obtain credit from any of Organization’s Card Program accounts (including all Master Accounts and Related Accounts) that is now or hereafter effected through “Transactions” with merchants via Mastercard’s clearing network. Each Card is linked to a specific Related Account.

The word “Solution” means a bundle of features, software, and related commercial card products and services offered by Bank in combination to help address the Organization’s business needs of paying vendors and allowing Organization’s “Authorized Users” to make purchases on behalf of the Organization using Cards. Bank offers two Commercial Card Solutions: 1) Bank’s “Virtual Card Solution” and 2) Bank’s “Physical Card Solution.” Bank’s Physical Card Solution can include the use of either “Purchasing Cards” or “Travel & Expense Cards” or both (see further explanations below).

Bank will create one or more “Master Account(s)” for each Solution utilized by the Organization. The words “Related Account(s)” mean all individual Cards that are issued under each respective Master Account. No purchases can be made using a Master Account number; however, each respective Master Account contains the approved and applicable credit limit(s), billing cycle, rewards, pricing, fees, and other terms and details for each Related Account (and Card) issued out of that Master Account.

“Physical Card” means a tangible card with a 16-digit number that is linked to a Related Account and that can be physically swiped, inserted, or dipped into a payment terminal. In certain circumstances, Physical Cards can be used in “Card Not Present” Transactions. Types of Physical Card(s) include and may also be referred to as “Purchasing Card” or “P-Card” or “Travel and Expense Card” or “T&E Card.”

“Virtual Card” means a 16-digit number (not a tangible card) that is linked to a Related Account and that can only be used in place of a Physical Card in relation to “Card Not Present” Transactions. Virtual Card(s) may also be referred to as “Electronic Accounts Payable Cards” or “EAP Cards.”

The words “Authorized Administrator” mean a natural person who is identified and designated by the Organization and who is duly authorized by the Organization to perform administrative functions on behalf of the Organization in accordance with the Agreement (see further definition and scope of this Authorized Administrator role, below).

The words “Authorized User” mean any natural person who is identified by one of Organization’s Authorized Administrator(s) and is thereby authorized to use the Organization’s Card(s) to conduct Transactions in accordance with the user role(s) or other designation(s) and permission(s) given him or her by an Authorized Administrator. The words “Authorized Cardholder” may be used to describe an Authorized User who uses a Physical Card for Transactions. Each Authorized Administrator is also



## COMMERCIAL CARD TERMS

an Authorized User.

The word “Transaction” means an authorization request, cash withdrawal, deposit, payment transaction, purchase, refund, account inquiry, or other transaction that is: (i) initiated using one of Organization’s Cards and (ii) transmitted to Mastercard for processing under the Agreement. “Card Not Present” Transactions mean those Transactions initiated through e-commerce, telephone, mobile telephone, or mail order and any other Transactions for which a tangible card is not being physically swiped, inserted, or dipped into a payment terminal.

The words “Merchant Category Codes” or “MCC” mean a four-digit number that Mastercard International Incorporated (“Mastercard”) assigns to merchants who accept credit card payments through Mastercard’s card association network. Typically, the MCC number corresponds to the type of business or service the merchant (or group of merchants in similar lines of business) provides. From time to time, Mastercard may change or amend the MCC number applicable to merchants.

The word “Guarantor” means any individual or entity, if any, that executes a separate personal or corporate guaranty (as applicable) of the Organization’s obligations under the Agreement.

1. **USE OF THE CARD PROGRAM.** Organization warrants and affirms that the Card Program (including any and all Master Accounts, Related Accounts, and Cards) may only be used by Organization (including, e.g., through the actions of Authorized Administrators and other Authorized Users) for a commercial or other bonafide business purpose. Organization further warrants that none of the Master Account(s), Related Account(s), Card(s), and Transaction(s) related to the Card Program have been established or will be used for personal, family, or household purposes. As such and to the extent permitted by applicable law, the Card Program is not subject to any statutes or regulations that apply to credit primarily used for personal, family, or household purposes. Bank may, from time to time, give Organization notices or take other actions required for consumer purpose accounts without making the Card Program subject to such laws or regulations.

Organization is responsible for instructing all Authorized Administrators and Authorized Users that the Card Program (including each Master Account, Related Account, and Card issued under the Agreement) is only used to pay for or (if cash advance access is requested) to obtain cash advances to pay for bonafide business expenses. Organization shall indemnify Bank and hold Bank harmless from any and all liability, loss, or expense, including reasonable attorney’s fees, arising from or out of any violation or alleged violation of the Truth-In-Lending Act or Regulation Z made or asserted against Bank based upon any use of the Card Program for an alleged consumer purpose.

Organization promises to pay and to be responsible for paying Bank for all credit extended under the Card Program for any purpose or by any means whatsoever, as well as for all finance charges and other fees and charges that may be assessed against each and every Master Account and Related Account. This responsibility includes credit extended for business and consumer purposes through the use of a Card for Transactions including, e.g., purchases of merchandise and services, cash advances, use of a Card at an ATM, and any other credit extended under the Card Program.

2. **DESIGNATION OF AUTHORIZED USERS.** Only duly authorized employees, owners, officers, members, partners, or other agents of Organization may be designated as Authorized Users of any part of the Card Program. Organization represents and warrants to Bank that each Authorized User (including each Authorized Administrator) is a current employee or agent of Organization. Bank may, in its absolute discretion and at any time without notice, immediately suspend or revoke the designation roles, permissions, designations, authorities, and entitlements within the Card Program of an Authorized Administrator or Authorized User.

- a. **Authorized Administrator Role within the Card Program**

Organization agrees that each Authorized Administrator designated by the Organization is hereby empowered to exercise full control over the Organization’s Card Program including each and every Master Account, Related Account, and Card. The permissions and powers of an Authorized Administrator include all rights belonging to the Organization with respect to the Card Program including but not limited to the rights (in any manner that each Authorized Administrator may in his or her absolute discretion see fit) to manage, control, operate, modify, access, and close the Card Program; these rights expressly convey to each and every Master



## COMMERCIAL CARD TERMS

Account, Related Account, Card, and Transaction within the Card Program.

An Authorized Administrator can add, remove, or modify Authorized Users and their respective roles, permissions, designations, authorities, and entitlements within the Card Program. For each Virtual Card and Physical Card (including Descriptive Title Cards (further defined below)), an Authorized Administrator must either: 1) be the Authorized User of record or 2) designate the Authorized User(s) of that Card. Organization understands that Authorized Administrators and Authorized Users (with the express approval of or as duly designated that authority by an Authorized Administrator) can submit a payment request to either the Bank or a third party through the Card Program that withdraws or transfers money from demand deposit accounts associated with the Organization. All such payment request submissions (regardless of the form in which that request takes place) will be considered an action taken by and made with the Organization's full awareness and authority.

The identification/designation (including any revocation of that designation) of Authorized Administrator(s) is established by the Organization through the actions of either: 1) an Authorized Representative, or 2) another Authorized Administrator. Organization represents and warrants that all such designations of Authorized Administrators are duly authorized by the Organization and, further, that Bank may entirely rely upon such designations. Until Bank has received from Organization written notification to the contrary and has been afforded a reasonable opportunity to act thereon, Bank may rely upon any instruction, decision, designation of authority, or information that Bank, in its sole reasonable discretion, believes to emanate from Organization's Authorized Administrator, regardless of whether it actually does. The Bank may at its absolute discretion require additional security or process checks relative to the actions of or access to certain rights by the Authorized Administrator(s). Bank's decision of whether to implement any such check(s) does not in any way diminish Organization's liability for the actions of the Organization's Authorized Administrator(s).

### **b. Other Authorized Users**

Each Authorized User will be designated his or her respective "User Role" by an Authorized Administrator. Each User Role's scope will include the permissions, designations, authorities, and entitlements the Authorized User in that role has with regard to the Card Program. The scope of the various User Roles can be viewed at: <https://www.capitalone.com/treasury-management/terms-and-conditions/commercial-card>

### **3. REQUEST FOR CARDS.**

Subject to Bank's approval upon Organization's request (e.g., through an Authorized Administrator), Bank will establish Cards linked to Related Accounts for use in making Transactions. Each Card shall be valid through the noted expiration date unless the Bank has canceled such Card or the expiration date has been modified by an Authorized Administrator or Authorized User. Unless the Card is a "Descriptive Title Card" (see below), each Physical Card issued by Bank at the Organization's request shall bear the Organization's name as well as the legal name of the natural person who is the Authorized User (such name to be provided to Bank by the Organization through the actions of an Authorized Administrator).

When Organization requests a Card, Organization shall provide the name of the Authorized User and other information requested by Bank, such as address, contact and phone information, desired credit limit, etc. for each Card requested. Organization agrees that Bank will mail the requested Physical Card to each Authorized Cardholder at Organization's business address, unless the Organization furnishes to Bank other instructions. Organization is responsible for ensuring that each Authorized Cardholder signs any Physical Card issued to him or her. Organization is also responsible for ensuring that Organization's Authorized Users use each Master Account, Related Account, and Card to which he or she has access in strict accordance with the Agreement. Bank and any merchant or other financial institution may rely upon any individual's access to or possession of a Master Account, Related Account, or Card as its sole evidence of that the individual is authorized to use it and shall have no duty to question the purpose or nature of that use by such individual.



## COMMERCIAL CARD TERMS

### **Descriptive Title Cards:**

With limited exceptions, the Organization may request that Bank issue Physical Card(s) that do not include the name of a natural person but are instead embossed with a descriptive title (e.g., regarding a department name within the Organization) (“Descriptive Title Cards”). To the extent Bank issues Descriptive Title Card(s) to the Organization, the Organization expressly agrees to the following additional applicable terms:

- a. Organization acknowledges that Mastercard Operating regulations require merchants to verify that a Physical Card is signed and that the signature on the back panel of the Physical Card matches the signature on the sales draft for any purchase made, and that the merchant is instructed by Mastercard to refuse any sale if these signatures do not match.
- b. Organization further acknowledges that Bank has informed Organization that by requesting Descriptive Title Card(s), any individual using one of these Descriptive Title Cards may potentially be refused a sale by the merchant because of invalid signature verification (or other reasons).
- c. Organization further acknowledges that since Organization has knowingly requested that Bank issue Descriptive Title Card(s), Organization shall have no right to charge back to the merchant(s) or Bank any fraudulent or disputed charges that occur(s) with or as a result of any Descriptive Title Cards issued to Organization. Organization expressly agrees that Organization shall have no recourse to recoup any losses from Bank for alleged or actual unauthorized use of these Descriptive Title Card(s). Organization further agrees that Organization shall have no right to assert or allege unauthorized use of these Descriptive Title Card(s) as a defense to payment. Organization holds Bank harmless from and shall indemnify and defend Bank against all costs, losses, liability and expenses arising out of or in any way related to issuance and use of any Descriptive Title Card(s).
- d. Bank requires and Organization agrees that Organization must have issued to it no fewer than ten (10) Cards at all times if Organization is issued or requests one or more Descriptive Title Cards. If Organization’s total number of issued Cards falls below ten (10) at any time, Organization has an affirmative obligation to notify the Bank and Organization will immediately cease use of all Descriptive Title Cards.

**4. REQUEST FOR ATM/CASH ACCESS (Physical Cards Only).** Organization may from time to time request in writing that the Bank permit certain Authorized Cardholders to obtain cash advances by either 1) presenting a Physical Card to an institution that accepts the Physical Card for that purpose, or 2) by using the Physical Card at an automated teller machine (“ATM”) that accepts the Physical Card for that purpose. Authorized Users are not permitted to use a Virtual Card for a cash advance. Organization shall require each Authorized Cardholder to maintain in strict confidence the Personal Identification Number (“PIN”) assigned to him or her for ATM access using a Physical Card. Bank does not warrant or represent that all institutions (financial or otherwise) will accept a Physical Card for the purposes of obtaining cash advances and Bank shall have no liability in connection therewith. Bank may at any time and in its sole reasonable discretion cancel, revoke, or suspend an Authorized Cardholder’s ability to obtain cash advances; Bank may do so without also canceling the Card or Related Account. For each cash advance, Organization will be charged a fee as disclosed in the Card Program Schedule.

**5. ACCESSING THE CARD PROGRAM VIA THE INTERNET.**

- a. Bank may make some or all portions of the Card Program available via the Internet, including mobile applications, websites, and other related internet channels (collectively, the “Commercial Card Platform Channels” or “CCP Channels”). The Organization’s use of any information, content, communications, features, or other means of using the Card Program (including, e.g., the Master Account(s), Related Account(s), Card(s), or Transactions) on or through the CCP Channels shall be governed by the Agreement. By using the CCP Channels, Organization acknowledges that Organization has read, understands, and expressly agrees to abide by these terms and conditions without limitation or qualification; Organization acknowledges its responsibility and obligation to ensure that each and every Authorized User (including Authorized Administrators) is aware of and complies with the Agreement.



## COMMERCIAL CARD TERMS

- b. Organization, Authorized Administrator(s), and each Authorized User of the CCP Channels will be subject to or required to agree to various guidelines, rules, schedules, disclosures, disclaimers, separate user agreements, other terms, customer agreements, or similar agreements (collectively, "Additional Agreements") governing or relating to some features, products, or services available on or through the CCP Channels or any other website(s). All such Additional Agreements are hereby incorporated by reference into the Agreement.

If the terms and conditions of the Agreement conflict with the terms and conditions contained in any Additional Agreement, then solely as they apply to the Card Program, the Agreement controls; provided, the terms and conditions of the Agreement are not intended to modify any disclosures or other terms that are required by law in any of the Additional Agreements.

- c. Subject to all terms hereof, Organization may use the CCP Channels seven days a week, twenty-four hours a day, except for any scheduled or unscheduled interruptions in the CCP Channels for maintenance, security, or any other reasons, as further described herein. Customer hereby acknowledges and accepts the risk that, from time to time, there's a possibility that something within the CCP Channels might not work correctly or may not work at all. If the CCP Channels are not working or work incorrectly, Organization should contact Bank during normal business hours at either TM-CommercialCardSupport@capitalone.com or 866-772-4497.
- d. Bank may seek Organization's constructive feedback on the CCP Channels, including problems Authorized Administrators, other Authorized Users, or Organization encounters, aspects that work well, and suggestions for improvement, which shall be deemed Feedback (defined below). Organization agrees that Bank may contact Organization, Authorized Administrators, and Authorized Users from time to time (at the electronic mail ("email") address or phone number provided by Organization or the Authorized User) regarding the CCP Channels.
- e. Device Security, Unauthorized Access: Bank does not control the security of the devices that Organization, Authorized Administrators, or other Authorized Users use to access the CCP Channels. Organization is responsible for ensuring that Organization, Authorized Administrators, and Authorized Users keep safe and secure all respective password(s), PINs, codes, digital certificates, and any other login credentials or security access information related to the CCP Channels. Organization is responsible for the activities that occur on any device using any Organization, Authorized Administrator, or Authorized User login and password, including the activities of others using those credentials to access the CCP Channels. Organization agrees to immediately notify Bank (by calling the Commercial Card Servicing Team at 866-772-4497) of any unauthorized access or use of the CCP Channels. Organization acknowledges and agrees that Organization, Authorized Administrator(s), and Authorized Users will not share their respective security credentials with anyone.

Organization shall provide, at Organization's sole expense, all necessary telephone lines, Internet connections, equipment, software, and services for Organization, Authorized Administrator, and Authorized Users to effectively access the CCP Channels. Organization is responsible for upgrading and configuring Organization's internal systems (e.g., network settings, routing, firewalls, and Internet browsers) to be and remain compatible with and optimize the performance of the CCP Channels.

To help protect the confidentiality and security of Organization Card Program, accounts, and other financial information, Organization, Authorized Administrator(s), and Authorized Users must connect to the CCP Channels using an Internet browser that supports 128-bit encryption and secure sockets layer version 3.0 or higher. Use of the CCP Channels with lower than 128-bit encryption is strictly prohibited. To the extent Organization, Authorized Administrator(s), or Authorized Users are able to access the CCP Channels using lower than 128-bit encryption, Bank specifically disclaims any and all responsibility for any losses or damages resulting from the use of such lower encryption. Bank may change these requirements from time to time and shall do so by providing reasonable notice thereof; the Parties agree that posting the changes within the CCP Channels shall constitute reasonable notice of any such change.

- f. Indemnity – Use of the CCP Channels: Organization agrees (to the maximum extent permitted by law) to hold



## COMMERCIAL CARD TERMS

harmless Bank and protect and indemnify Bank from and against any and all claims, losses, liability, damages, or demands (including, without limitation, reasonable attorneys' fees and court costs), direct or indirect, arising out of or in any way connected to the use of the CCP Channels by Organization, Authorized Administrators, or Authorized Users, except as caused by Bank's gross negligence or willful misconduct.

- g. Changes or Developments Regarding the CCP Channels: As between Bank and Organization, Bank retains the right in its sole discretion to design and operate, and make ongoing changes to the design and operation of the CCP Channels and any technology associated with the CCP Channels. Organization's continued use of the CCP Channels (as, e.g., through use by an Authorized Administrator or Authorized User) after the effective date of the changes in design and operation of the CCP Channels constitutes acceptance by the Organization of all such changes.
- h. Termination of the CCP Channels and Access Thereto: Bank may suspend or discontinue the CCP Channels, or any part thereof, at any time without notice. If Organization (e.g., through the actions of an Authorized Administrator or Authorized User) fails to comply with the terms of the Agreement, Bank may immediately revoke Organization's access to the CCP Channels and, in Bank's sole discretion, may terminate the Agreement. Bank may, in its absolute discretion, immediately suspend or revoke the access or other credentials of an Authorized Administrator or Authorized User, at any time without notice.
- i. Disclaimer of Warranty Regarding the CCP Channels: WITHOUT LIMITING THE FOREGOING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THE CCP CHANNELS ARE PROVIDED TO ORGANIZATION "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WHILE BANK WILL MAKE COMMERCIALY REASONABLE EFFORTS TO PROVIDE ACCURATE INFORMATION IN CONNECTION WITH THE CCP CHANNELS, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BANK MAKES NO WARRANTY THAT (a) THE CCP CHANNELS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, or (b) ANY INFORMATION CONTAINED ON, RESULTS THAT MAY BE OBTAINED FROM THE USE OF, OR OTHER ASPECT OF THE CCP CHANNELS WILL BE ACCURATE, CURRENT, COMPLETE OR RELIABLE.

Nothing contained in the CCP Channels is intended to provide legal, accounting, tax, or financial advice. Organization should consult its own professional advisor on such matters. Information about products and services which Organization does not already have with Bank is provided for informational purposes only and should not be considered as an offer to make those products and services available to Organization.

- j. Intellectual Property Ownership Regarding the CCP Channels: As between Bank and Organization, Bank exclusively owns and reserves all right, title, and interest (including all intellectual property rights) in and to the CCP Channels under the Agreement, including all programs, features, functions (as well as the combination and "look and feel" of the same), and subsequent updates or upgrades of any of the foregoing made generally available by Bank, including without limitation the APIs, the API Documentation, any URLs, any technical support, and any software or technology provided to Organization in connection with Organization's use of any of the above. All rights not expressly granted to Organization in the Agreement are retained by Bank unless otherwise designated or clearly implied as belonging to third parties.

Organization hereby irrevocably assigns and agrees to irrevocably assign, without charge, all intellectual property rights relating to oral and written comments and suggestions provided by Organization (e.g., through an Authorized Administrator or other Authorized User) relating to the CCP Channels ("Feedback"). At Bank's expense, Organization will take all actions deemed necessary by Bank in order for Bank to record, perfect, and maintain Bank's rights in and to all Feedback. Without limiting the foregoing, Bank will have an unlimited, worldwide, royalty-free right to use and modify all Feedback, and Bank will have no confidentiality obligations with respect to any Feedback.

- k. No Reverse Engineering: Organization agrees not to use the CCP Channels for any purpose other than as expressly authorized by Bank. By using the CCP Channels, Organization expressly agrees that Organization,



## COMMERCIAL CARD TERMS

Authorized Administrator(s), and Authorized Users will not:

- a. decompile, reverse engineer, or otherwise access or attempt to access the source code for the CCP Channels;
- b. use any automated system (e.g., robot, bot, screenscraper, etc.) to access the CCP Channels or its features;
- c. use the CCP Channels in a destructive way, such as by transmitting viruses or exploiting bugs;
- d. access Capital One's services or systems other than as permitted by the Agreement;
- e. use the CCP Channels for anything illegal; or
- f. provide Bank with fake or incorrect information about Organization's Card Program (including, e.g., Master Accounts, Related Accounts, Cards, and Transactions) or other financial information.

6. **ELECTRONIC COMMUNICATIONS.** Organization agrees that all electronic communications that Bank receives on or through the CCP Channels, such as those directing Bank to take an action with respect to the Organization's Card Program that match the security credentials or other identity information Organization, Authorized Administrators, or Authorized Users have provided when enrolling in or using the Card Program will be deemed valid, authentic, and binding obligations. These communications will be given the same legal effect as Organization's written and signed paper communications and shall be considered a "writing" or "in writing." They also shall be deemed to have been "signed" and to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

Organization agrees that electronic copies of communications are valid and that Organization will not contest the validity or enforceability of such communications or any related transactions, absent proof of altered data or tampering, under the provisions of any applicable law relating to whether certain agreements are required to be in writing or signed by the party to be bound thereby, and such copies shall be admissible as evidence in any judicial, arbitration, mediation, or administrative proceeding to the same extent and under the same conditions as other business records originated and maintained in paper form.

Organization agrees that Bank will not be liable for: 1) any delays, failure to deliver, or misdirected delivery of any communication if such delay, failure, or misdirection resulted from Organization's acts or omissions or was otherwise due to factors beyond Bank's control; 2) there were errors in the content of a communication that were caused by the Organization's acts or omissions or were otherwise due to factors beyond Bank's control; 3) any actions taken or not taken by Organization or any third party in reliance on a communication.

Bank may offer both security alerts and optional alerts and communications about the Organization's Card Program (including regarding, e.g., Master Accounts, Related Accounts, Cards, Transactions, and Authorized Users). Security alerts are provided for fraud protection and when certain important changes to these accounts occur, such as password and user name updates or changes in the physical or primary email address associated with Organization, Authorized Administrators, or Authorized Users. These alerts may be sent automatically by email to the designated primary email address for Organization, Authorized Administrators, or Authorized Users and by text message to their respective mobile device number, if one has been provided and to the extent permitted by law. To receive security alerts or other communications via text message, the receiving mobile device must be subscribed to a wireless service on a participating mobile carrier and must be able to receive text messages using the mobile device and the applicable carrier's service.

7. **BANK'S USE OF THIRD PARTY VENDORS.** Organization acknowledges and agrees that Bank may utilize one or more third party vendors (each a "Third Party Vendor") in creating, producing, delivering, or otherwise providing the Card Program. Organization acknowledges and agrees that Bank may delegate its duties under the Agreement, in whole or in part, to any Third Party Vendor. Organization acknowledges that each Third Party Vendor has the right to modify, update, and enhance from time to time the function, product, or application that Third Party Vendor provides to Bank. If any such modification, update, or enhancement will have a material adverse impact on the Organization's ability to use the Card Program, Bank shall employ a commercially reasonable manner and timeframe to provide notice to the Organization of that material adverse impact. Organization understands and agrees that Bank is neither responsible nor liable for any monitoring of any Third Party Vendor's performance nor is Bank responsible or liable for a Third Party Vendor's inability or failure to perform.



## COMMERCIAL CARD TERMS

- 8. PAYMENTS.** Bank will deliver Organization periodic billing statements for the Card Program, reflecting the total of all activity for the Card Program's Master Accounts, Related Accounts, and Cards during the preceding billing cycle. Organization shall pay the entire "New Balance" on the "Payment Due Date" as set forth on each billing statement.
- a. Organization covenants, agrees, and affirms to Bank that all payments remitted by Organization shall be made from a commercial demand deposit account (any such account a "Commercial DDA"). For the avoidance of doubt, no personal account will qualify as a Commercial DDA under the Agreement. Bank may, at any time, request proof that any payment remitted by Organization does, in fact, originate from a Commercial DDA and the sufficiency of such proof shall be at Bank's sole discretion. Failure to comply with this provision shall constitute a material breach by Organization of the Agreement. Organization acknowledges and understands that payments originating from a Commercial DDA may be processed via Automated Clearing House (ACH). Payments may be made in any other manner to which Bank has agreed or notified Organization of in writing.
  - b. Bank may apply payments and credits to the amounts owed for the Card Program in any order that Bank establishes. If the Organization has selected the Auto Debit option, the "New Balance" shown on the face of the Organization's billing statement(s) will be the amount debited from the Commercial DDA designated by Organization (e.g., as through the actions of an Authorized Administrator). If Organization does not pay the New Balance in full by the specified Payment Due Date, Bank may assess a late fee as set forth in the Commercial Card Fee Schedule. Organization agrees that Bank will not be liable for the validity of any item on, or any error in, any billing statement unless the Organization provided to the Bank written notice of the alleged error within sixty (60) days after the billing statement is made available to the Organization and Bank has, in its sole reasonable discretion, agreed that an error was made.
  - c. If Organization makes a payment request through the Card Program (e.g., as through the act of an Authorized Administrator or Authorized User), Organization hereby acknowledges, agrees, and represents that: (i) Organization is a legal owner of the Commercial DDA to be debited upon payment and that Organization has full authority to authorize such payments; (ii) Bank is authorized to make a one-time electronic fund transfer (debit) from the Commercial DDA designated by Organization from time to time in accordance with Organization's specific authorization; (iii) Bank is authorized to maintain information concerning Organization's Commercial DDA and to process Organization's payment requests; (iv) Bank may withdraw the funds from Organization's Commercial DDA as early as the same day Bank receives Organization's payment request; (v) Organization will ensure that the Commercial DDA information is accurate each time a payment is requested and that there are sufficient funds in the Commercial DDA to cover any such payment request; (vi) any payment requests made regarding the Card Program may take 5 business days or longer before the payment is posted to the designated recipient account; (vii) Organization is solely responsible for submitting payment requests far enough in advance to ensure timely payment; (viii) Bank is not liable for any penalties, overdraft charges, insufficient fund charges, or late payment charges resulting from Organization's failure to maintain sufficient funds to cover such payment requests or delays in processing the payment request; and (ix) Bank is not responsible if any merchant, company, financial institution, or other intended recipient rejects a payment made using the Card Program.
  - d. Relay functionality for Virtual Card Solution Master Account(s): From time to time, Bank may permit Organization to make a payment that creates or adds to Organization's available Card Program credit balance ("Available Credit Balance"); this functionality may be referred to as "Overpay" or "Relay."

Nevertheless, Bank, in its sole and absolute discretion, may: (1) reject and return any payment (from any source) that is intended to create or add to Organization's Available Credit Balance; and (2) not increase Organization's Available Credit Balance. Bank reserves the right to hold any payment that is intended to create or add to Organization's Available Credit Balance unless and until Bank is satisfied that the payment was both made from a Commercial DDA and has cleared. Bank will reduce the amount of Organization's Available Credit Balance to the extent Organization incurs any new charges, Transactions, fees, or other amounts due Bank for any reason under the Agreement.





## COMMERCIAL CARD TERMS

Organization understands and acknowledges that no interest can or shall be earned on any funds or payments that create or add to Organization's Available Credit Balance.

- e. Organization hereby acknowledges and agrees that transmissions across the Internet can fail for various reasons and without warning. A payment request as described above will not be considered transmitted to Bank until it appears as a posted Transaction. Organization shall not assume that Bank has received Organization's payment request if Organization does not see it posted. Bank will not fulfill any Organization payment request if there is an inaccuracy in the Commercial DDA information provided by Organization or if there are insufficient funds available in the Commercial DDA. Bank is not required to notify Organization about such payment failures and Bank will not be liable for such payment failures, including any associated fees or charges incurred by Organization. It is always Organization's responsibility to initiate payment requests and to confirm that the intended recipient has received the requested funds. Organization acknowledges and understands that payments originating from a Commercial DDA may be processed via Automated Clearing House (ACH).
- f. Late Payments. If Organization fails to make a payment in full by the "Payment Due Date" for any "New Balance" on a Card Program billing statement, Organization shall be: (i) deemed late and delinquent; and (ii) responsible for paying Bank a late fee as disclosed on the Card Program Schedule; and (iii) responsible for payment of all of collection expenses incurred by Bank, including reasonable attorney fees incurred prior to litigation to collect any payment as well as those reasonable attorney fees incurred in any litigation and on appeal or review. Organization's payment of any late fee shall not cure any default, whether caused by Organization's late payment or otherwise. The provisions of this section shall also be applicable to all amounts owed at the time the Card Program is established, if any.
- g. Returned Payments. A Returned Payment Fee as disclosed on the Card Program Schedule may be assessed as a purchase Transaction against the Card Program (e.g., against a Master Account or Related Account) if (i) any check or other negotiable instrument Organization attempted to use to pay its Card Program obligations is returned unpaid to Bank, or (ii) any Automated Clearing House (ACH) transaction results in a returned ACH item.

**9. ENTIRE BALANCE DUE.** Bank can declare the entire balance of the Card Program due and payable at once without notice or demand if: (i) Organization fails to make a required payment when due; or (ii) Organization breaks any other promise under the Agreement; or (iii) Organization makes any false or misleading statements on any application or in any other information provided to Bank while the Agreement is in effect; or (iv) Organization (or any Guarantor) is in default under any other agreement with Bank; or (v) a voluntary or involuntary bankruptcy case is filed by or against Organization; or (vi) a receiver or trustee for the benefit of creditors is appointed for Organization; or (vii) Organization or Bank cancels the Card Program; or (viii) the Agreement is terminated.

**10. TERMINATING AUTHORIZATION.** Organization may terminate an Authorized User's authorization to use a Card or any part of the Card Program as requested by Authorized Administrator (including but not limited to requests made through the CCP Channels, by written notice, or by calling Bank's Commercial Card Servicing Team at 866-772-4497). To the extent permitted by applicable law and until Bank has received proper notice from the Organization of the Authorized User's termination of authorization, Organization shall be liable for all charges made under the Card Program by the individual to whom the Master Account, Related Account(s), and Card(s) were issued or to which the individual had access or apparent authority; Bank and any merchant or other financial institution may rely on the individual's continuing apparent authority to use the Card Program.

**11. CREDIT LIMIT.** The total credit limit established for the Organization's Card Program ("Total Credit Limit") will be disclosed within the Card Program Schedule. Bank may increase or decrease the Total Credit Limit in Bank's sole and absolute discretion. Bank may assign a portion of the Total Credit Limit to be available for use amongst the Master Account(s) and associated Related Account(s) for each Solution. The portion of the Total Credit Limit assigned to a Solution can be adjusted by Bank at any time without notice.



## COMMERCIAL CARD TERMS

The Total Credit Limit will cap the total dollar amount of the permissible Transactions that can be made by Organization under the Card Program. These charges may include, without limitation, Transactions for purchases, cash advances, credit extended by use of ATMs, and all other charges, fees, and costs assessed to the Card Program. Organization will be responsible for ensuring that the balance of each Master Account (including all Related Accounts) does not exceed the credit limit established by Bank for Organization on that account; Organization is also responsible for ensuring that the total of all Card Program account balances does not exceed the Total Credit Limit.

Bank may, but is never required to, permit Transactions on a Card or Related Account that would allow the Card Program's balance to exceed the applicable credit limit. Organization agrees to immediately pay for any such Transactions. If, on the closing date of any billing cycle for any Master Account or Related Account within the Organization's Card Program, the "New Balance" disclosed on the billing statement exceeds the "Credit Limit" disclosed on the same billing statement, Bank may assess an Overlimit fee to the Card Program as disclosed within the Card Program Schedule. If Organization exceeds any credit limit established by Bank for the Card Program (including any Master Account, or any Related Account), Bank may review the applicable account(s) or the entire Card Program and, in Bank's sole discretion, take any (or multiple) of the following actions: (i) take no action; or (ii) increase the applicable credit limit; or (iii) reject any transactions until a payment is made to reduce the Card Program balance below the Total Credit Limit; or (iv) revoke and cancel all privileges arising with respect to the applicable Master Account, Related Account, or Card Program.

- 12. LIMITING AUTHORIZATION.** On a case by case basis, Organization may request that Bank restrict Card Transactions to merchants falling within certain MCC categories/merchants; if Organization requests such restrictions, Bank will take commercially reasonable steps to prevent authorization of Card Transactions from other types of MCC categories/merchants. However, Bank will not be liable to Organization if a merchant accepts a Card for other types of Transactions or if Bank does not give authorization for the Transaction. An Authorized Administrator may grant, designate, or limit authorization and permissions regarding any Authorized User, Master Account, Related Account, and Card.
- 13. ANNUAL FEES FOR CARDS.** Organization shall be responsible for paying Bank a nonrefundable annual fee ("AMF fee") for each Card in the amount as disclosed on the Card Program Schedule. The AMF will be due and payable for each Card when the applicable Card Program is initially established and in the same month annually thereafter (the "Anniversary Date"). Each year, the AMF fee(s) shall be assessed against the Card Program on the applicable Anniversary Date and will be based upon the total number of Cards open under the Card Program. For Cards issued between Anniversary Dates, Bank shall charge a pro-rata AMF fee that will be due and payable on the first calendar day following the month that such a Card is issued. Organization agrees that the AMF fees may be charged to the Related Account to which the Card is linked; the AMF fee will appear as a purchase Transaction. All AMF fees are nonrefundable notwithstanding the following: (i) Bank may at any time revoke or cancel all or any part of the privileges related to the Master Accounts, Related Accounts, or Cards; or (ii) Bank may at any time amend the Agreement; or (iii) that Organization may fail to utilize any of the conveniences of a Card or the Related Account to which it is linked.
- 14. ORGANIZATION'S ADDITIONAL AFFIRMATIVE OBLIGATIONS TO BANK.** Organization further acknowledges and agrees that Organization shall immediately provide to Bank written notice of the following:
- a. Any change in Organization's ownership or Organization's Beneficial Owners;
  - b. Any change in Organization's Key Executives, Authorized Representative(s), and Authorized Administrator(s);
  - c. Any change to the address, phone number, email, or other contact information applicable to the Organization or the Card Program (including, e.g., changes the address(es) at which Bank can send notices to the Organization);
  - d. Any change to the Guarantor(s) and any change to any Guarantor's ability to pay or perform any obligations, liability, or indebtedness to Bank under the Agreement;
  - e. If Organization (or any Guarantor) becomes insolvent or if bankruptcy or other insolvency proceedings are commenced by or against Organization (or any Guarantor);
  - f. If a receiver or trustee for the benefit of creditors is appointed for Organization;
  - g. Organization's merger with or consolidation into another entity;



## COMMERCIAL CARD TERMS

- h. Organization's sale to another entity;
- i. Organization's purchase of another entity;
- j. Any entry of a judgment against Organization of a material nature or amount;
- k. Any seizure or forfeiture of, or the issuance of any writ of possession, garnishment or attachment, or any turnover for any material property of Organization

Organization agrees that its obligations are ongoing and that Bank shall have the right, but not the obligation, to make demand from time to time that Organization demonstrate its compliance with the terms of the Agreement.

Organization further hereby agrees that, upon Bank's demand and at the Organization's sole expense, the Organization will promptly execute and deliver financial and other documentation including (but not limited to): fiscal year-end financial statements prepared by an independent Certified Public Accountant in accordance with GAAP consistently applied, interim financial statements (e.g., Annual and Quarterly Statements), schedules of aged accounts receivable and aged accounts payable, statements of income, and statements of retained earnings and cash flows.

- 15. SECURITY INTEREST.** To the extent permitted by applicable law, Organization shall be liable for all amounts owed to Bank under the Agreement regarding the Card Program. As collateral security for repayment of all amounts due under the Agreement, as well as to secure any and all other loans, notes, indebtedness and obligations that Organization (or any Guarantor) may now or in the future owe to Bank or incur in Bank's favor, whether direct or indirect, absolute or contingent, due or to become due, of any nature and kind whatsoever (with the exception of any indebtedness under a consumer credit card account), Organization hereby grants to Bank a continuing security interest in any and all present and future funds on deposit with the Bank including certificates of deposit and other deposit accounts in which Organization is an accountholder (with the exception of IRA, pension and other tax-deferred deposits), as well as any other assets pledged to Bank under a UCC-1 financing statement. Organization agrees that, should there be a default hereunder, Bank may at any time thereafter apply any such funds on deposit with the Bank, including certificates of deposit and other deposit accounts in which Organization is an accountholder, toward any unpaid balance of the Card Program and any and all other present and future indebtedness and obligations that Organization may then owe to Bank.

- 16. ALLEGED LOST OR STOLEN CARDS & UNAUTHORIZED USE.** In the event of the alleged loss, theft, or unauthorized use of a Card or Related Account, Organization will immediately notify Bank. Organization shall be liable to pay Bank for all Card Program spend that occurs before Bank is notified of the alleged loss, theft, or unauthorized use. Notwithstanding the foregoing, if Bank has issued less than ten (10) Cards to Organization, Organization's liability for Transactions by a person who does not have the actual, implied, or apparent authority to use the Card and whose use does not result in a direct or indirect benefit to Organization will not exceed \$50 on that Card. All claims of alleged loss, theft, or unauthorized use of a Card or Related Account are subject to investigation.

Organization will make every reasonable effort to recover the Card(s) from any person whose authority to use the Card Organization intends to or has terminate(d) or from any unauthorized individual with possession or access to the Card(s). Organization also agrees to give Bank and any law enforcement authority all reasonable assistance with any prosecution of unauthorized use, including without limitation, obtaining an affidavit or similar written, signed statement from the applicable Authorized User. Organization will cooperate in all legal action against any such person, and in connection therewith, will promptly provide all available information and will cause Organization's employees and agents to testify.

Bank may assess a Card Replacement fee as disclosed on the Card Program Schedule if Bank reissues a replacement Card for each lost or stolen Card; the Card Replacement fee will be charged as a purchase Transaction to the Related Account linked to the Card.

- 17. AMENDMENTS.** Bank may at any time amend any term or condition of the Card Program (including any terms communicated on the Card Program Schedule) or may otherwise amend the Agreement without notice, except as required by law. Amendments will be made in any manner deemed acceptable by Bank. Examples of methods Bank may (but is not required to) employ to communicate amendments to Organization include, but are not limited to: (i) amending the information on the Card Program Schedule and providing the same to Organization, or (ii) by general



## COMMERCIAL CARD TERMS

posting on the Bank's main website or through the CCP Channels, or (iii) sending notice by mail or email to the address(es) provided by the Organization for that purpose, or (iv) including identified amendments within the Card Program billing statement(s).

Organization acknowledges that if Bank amends the Card Program or the Agreement by general posting on the Bank's website or through the CCP Channels, Bank shall be under no obligation to otherwise notify Organization of the amendments as Organization understands that Organization's access to the website or CCP Channels is assumed and shall be sufficient notice. Any change in terms will apply to any outstanding account balances on the effective date of the change.

Organization's continued use of the Card Program (as, e.g., through use of any Master Account, Related Account, or Card by an Authorized Administrator or Authorized User) after the effective date of the amendment constitutes acceptance by the Organization of all such amendments. The Parties agree that Bank does not need to furnish to any Guarantor(s) separate notice of any amendment to the Card Program or the Agreement.

- 18. TERMINATION/CANCELLATION OF THE CARD PROGRAM.** The Cards are Bank's property and, except as otherwise required by applicable law, Bank may without liability or notice to Organization or any Authorized User, suspend, revoke, cancel, or otherwise terminate all or any part of the Agreement, the privileges of the Card Program (including each and every Master Account, Related Account, Card), or use of the Card Program by any Authorized User.

Organization may cancel/terminate the Card Program and Organization may cancel one or more Master Accounts or Related Accounts by giving Bank written notice of cancellation at the address designated herein for notices to the Bank. Any such cancellation will be effective only after Bank has received and had a reasonable opportunity to act upon the actual written notice. Organization remains liable for all obligations (including all outstanding balances and amounts for which Organization has yet to be billed) resulting from the use of the Card Program, even after Bank receives written notice of cancellation.

Upon any cancellation of the Agreement: (i) the entire balance outstanding on the Card Program becomes immediately due and payable and (ii) Organization will immediately destroy and will ensure that all Cards issued to Authorized Users are immediately destroyed, and (iii) Bank shall not be liable in contract, tort, or otherwise for failure to honor the Card(s) under any circumstances.

Cancellation will not affect Organization's liability for any charges or other obligations under the Agreement which may have arisen or accrued prior to such cancellation/termination. After cancellation, Organization may not make or cause to be made Transactions using the Master Account(s), Related Account(s), and Card(s). However, all other terms and obligations of the Agreement remain in full force and effect until Organization pays in full and entirely satisfies all outstanding obligations under the Agreement. If any Card Program Transactions are made after cancellation, Organization will continue to be liable for those until they are paid in full.

- 19. USE OF TRADE NAMES, SERVICE MARKS, ETC.** Other than expressly agreed to by the Parties in the Agreement, neither Party shall use the names, trademarks, trade dress, logos, service marks or trade names of the other Party in connection with any representation, solicitation, advertising, promotion, sales or marketing publication or advertisement without prior full disclosure to and written permission from the other Party, which approval may be withheld in the other Party's sole reasonable discretion. Capital One and its logo are trademarks of Capital One. All other trademarks use in relation to the Card Program are property of Capital One unless otherwise designated or clearly implied herein as belonging to third parties. Nothing contained in the Agreement shall be construed as granting by implication, estoppel, or otherwise any license or right under any patent, trademark, copyright (except as expressly stated herein) or proprietary rights of Capital One or of any third party.

- 20. LIMITATION OF BANK'S LIABILITY.** Organization agrees that an immaterial deviation by Bank from the terms set forth in the Agreement shall not be deemed a failure to exercise ordinary care or to act in good faith. Organization further agrees that Bank shall not be liable to anyone for any error or mistake in judgment or for any act done or step taken or omitted, or for any mistake in fact or law, or for anything which it may do or refrain from doing in connection with the Agreement, except that which results solely from Bank's gross negligence or willful misconduct. In connection



## COMMERCIAL CARD TERMS

with any matter or cause of action relating to or arising out of the Agreement, Bank shall not be responsible for the acts or omissions of Organization or of any other person or entity (including without limitation any Third Party Vendor or agent selected or used by Bank) or due to other causes beyond Bank's reasonable control. Organization acknowledges that Bank does not assume any of the Organization's obligations in any way connected to the Card Program.

Except as limited by applicable state law, Bank shall not be liable for lost profits, indirect, special, consequential, or punitive damages, foreseeable or non-foreseeable, which may arise in connection with the performance or nonperformance by Bank regarding the Card Program and the Agreement, even if Bank has been advised of the possibility of such damages. Organization agrees that Organization will indemnify Bank and hold Bank harmless from and against any claim arising out of honoring or acting upon any instructions received from the Organization (e.g., as through its Authorized Administrator(s) and Authorized Users) related to the Card Program.

- 21. GOVERNING LAW.** Except to the extent federal law may apply, the Agreement and any and all claims relating to or arising out of the Agreement, whether sounding in contract, tort, or otherwise, in each case, shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without reference to principles of conflict of laws or choice of laws. Each Party irrevocably and unconditionally consents to the exclusive jurisdiction of the state and federal courts sitting in New York County, New York for any actions, suits or proceedings arising out of or relating to the Agreement.
- 22. DISPUTES OVER TRANSACTIONS.** Bank has no liability for goods or services purchased with, or for a merchant's failure to honor purchases or Transactions made with a Card or Related Account. In a dispute with a merchant, Bank will be subrogated to Organization's rights and each Cardholder's rights against the merchant. Organization shall make a good faith effort to resolve or otherwise settle all disputes in any way related to goods or delivery of services or performance directly with the merchant involved; notwithstanding any dispute Organization may have with a merchant, Organization shall pay to Bank the entire balance outstanding on the Card Program. Neither Organization (nor any Guarantor) shall assert against Bank any claims or defenses that Organization (or any Guarantor) may have or believe that it, he, or she has against any merchant.
- 23. NOTICES.** All notices or other communications that must be in writing or sent by email shall be deemed effective when delivered by hand or sent and received by certified mail, postage prepaid with return receipt requested, at such addresses appearing herein, or to such other addresses as either Party may specify in writing to the other Party or upon receipt by the receiving Party by email. Organization must send to Bank all notices regarding the Card Program and the Agreement at the following addresses:

Capital One, National Association  
Commercial Card  
P.O. Box 60024  
New Orleans, LA 70160  
Phone: 866-772-4497  
Fax 855-718-0613  
Email: TM-CommercialCardSupport@capitalone.com

**24. OPTIONAL CARD PROGRAM SERVICES.**

**1. CDF Service (Physical Card Solution only)**

- i. The following terms apply only if Organization utilizes Bank's Common Data Format Service; this service allows Organization to receive certain Card data for Physical Cards via a file from Mastercard in a Common Data Format ("CDF"). The CDF Service serves as both a description of corporate card activity and as the transport medium for that information. There are in excess of 35 Record Types defined by Mastercard CDF Specification (accessible via Mastercard's website). Organization is not required to use each of these Record Types, but the full complement of records facilitates a more complete specification of a Physical Card's Authorized Cardholder, the Organization, and the Transactions that Authorized Cardholders make on the Cards.



## COMMERCIAL CARD TERMS

- ii. Depending on the Organization's needs for detailed specification of the Transaction made by Authorized Cardholders on the Cards, the Organization may use a very few Record Types or the entire complement of records available. The CDF layout provides records to specify Organization's merchants and to transmit Transactions. Transactions require that the Organization's merchants be specified and enrolled before Transactions to them can be processed. The CDF format allows inbound CDF users to provide updates to Transactions and annotate records that have already been sent to Mastercard. This allows enhanced Transaction information and annotations later received to flow through to the CDF Services.
- iii. Organization agrees to provide to Bank all available information that is reasonably required by Bank or any Third Party Vendor to effectively provide CDF. Notwithstanding anything to the contrary herein, the CDF Service shall terminate or be suspended automatically upon the termination or suspension of Bank's agreement(s) with Third Party Vendor from which Bank obtains services necessary to enroll Organization's merchants in the CDF Service.

### **2. SMART DATA GENERATION 2 SERVICE (Physical Card Solution only)**

- i. The following terms apply only if Organization utilizes the Smart Data Generation 2 Service in relation to the Card Program. Bank will facilitate Organization's access to Smart Data Generation 2 ("SDG2"), a web-based expense management system that allows the Organization to generate comprehensive spending reports for Authorized Administrators and Authorized Cardholders and to accurately integrate Transaction data into the Organization's accounting system. Organization can review the comprehensive Smart Data Corporate Company Administrator Guide available in Mastercard's online SDG2 Resource Center to assist in understanding the functionalities associated with the SDG2 Service.
- ii. The SDG2 Service is provided by Mastercard. Bank is not responsible for any loss or damage suffered or incurred of whatsoever type in relation to the Organization's use of the SDG2 Service, including any availability of the service or any errors, inaccuracy, or omission of any data or information.
- iii. For the purposes of providing the SDG2 Services, Organization agrees that Bank may supply to Mastercard or any other Third Party Vendor the details of the Organization's Authorized Cardholder(s) and any Transactions completed using a Card.
- iv. Organization's Authorized Cardholder(s) shall receive an SDG2 Identification Code and one or more passwords (collectively, the "Identification") which will permit access to those features of the SDG2 Service selected by Organization. Organization understands and agrees that any one person who provides the correct Identification may have access to any and all accounts subject to the SDG2 Service. Organization agrees to limit disclosure of the Identification only to those of its Authorized Administrators and Authorized Cardholders that Organization authorizes to use the SDG2 Service and to establish adequate internal procedures to prevent disclosure of the Identification to other persons and the unauthorized use of the SDG2 Service. Organization understands and agrees that Organization is solely responsible for the risks associated with disclosure of the Identification and the unauthorized use of the SDG2 Service and that Bank is fully entitled, protected, and authorized to perform any and all SDG2 Service Transactions or requests entered under valid Identification, whether or not the person actually entering such transactions is authorized by Organization to perform such Transactions or requests.
- v. Organization shall be responsible for paying Bank the SDG2 Service fees as disclosed on the Card Program Schedule. Organization agrees that these fees may be charged to the Card Program as a purchase Transaction on a Master Account or Related Account.



## COMMERCIAL CARD TERMS

### 25. CONFIDENTIALITY.

- a. Organization and Bank each acknowledge that they may be furnished with, receive or otherwise have access to information of or concerning the other Party that such Party considers to be confidential, a trade secret or otherwise restricted. "Confidential Information" means all information, in any form, furnished or made available directly or indirectly by one Party to the other that is marked confidential, restricted, or with a similar designation, or information which, under the circumstances of its disclosure, a reasonable party would deem to be confidential information. The terms and conditions of the Agreement shall be deemed Confidential Information of each Party. Confidential Information shall also include: (i) all non-public information pertaining to a Party's operations, affairs and businesses as well as a Party's financial condition and projections, business ventures, strategic plans and marketing strategies and programs; (ii) any strategic insights or statistical models about Capital One's customers or former or prospective customers and their behavior; and (iii) any other information that is customarily or reasonably deemed confidential, a trade secret or otherwise restricted under the circumstances.
- b. Confidential Information does not include information that: (i) was, at the time of disclosure to the receiving Party, in the public domain or, after disclosure to the receiving Party, becomes part of the public domain through no act or omission of receiving Party; (ii) is or was developed independently by the receiving Party without use of or reference or access to the disclosing Party's Confidential Information; (iii) was lawfully in the possession of the receiving Party at the time of disclosure to it without obligation of confidentiality; or (iv) was received after disclosure to the receiving Party from a third party who had a lawful right to disclose such information to the receiving Party without any obligation to restrict its further use or disclosure.
- c. Confidential Information furnished prior to and after the execution of the Agreement by one Party to the other Party shall be (i) received and kept in confidence by the receiving Party in accordance with its policies for maintaining the confidence of its own information of similar content, provided that no less than a reasonable degree of care shall be used in protecting the Confidential Information, (ii) used only for the purposes contemplated by the Agreement, and (iii) not used for any other purpose or disclosed to any third party without the prior written consent of the disclosing Party. Each Party may use Confidential Information of the other Party only to carry out its obligations under the Agreement.
- d. If the receiving Party is legally compelled (whether by regulatory request, deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the disclosing Party's Confidential Information, the receiving Party shall, to the extent permitted by law, promptly notify the disclosing Party in writing of such requirement so that the disclosing Party may seek a protective order or other appropriate remedy and may waive compliance with the provisions hereof. The receiving Party will use commercially reasonable efforts, at the disclosing Party's expense, to obtain or assist the disclosing Party in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, the receiving Party may disclose, without liability hereunder, that portion of such Confidential Information that it has been advised by counsel that the receiving Party is legally compelled to disclose; however, the receiving Party agrees to use commercially reasonable efforts to obtain assurance, at no cost to the receiving Party, that confidential treatment will be accorded such Confidential Information by the person or persons to whom it is disclosed.
- e. In the event of any actual or suspected misuse, disclosure or loss of, or inability to account for, any Confidential Information of the disclosing Party (hereinafter, a "Confidential Information Violation"), the receiving Party promptly shall: (i) notify the disclosing Party upon becoming aware thereof; (ii) furnish to the disclosing Party full details of the Confidential Information Violation and use commercially reasonable efforts to assist the disclosing Party in investigating or preventing the recurrence of the Confidential Information Violation; (iii) take such actions as may be necessary, appropriate or reasonably requested by the disclosing Party to minimize the impact of the Confidential Information Violation; and (iv) cooperate in all reasonable respects with the disclosing Party to minimize the impact of the Confidential Information Violation and any losses resulting therefrom.



## COMMERCIAL CARD TERMS

- f. Upon written request, each receiving Party shall, in its sole discretion, either destroy (and certify in writing to the disclosing Party regarding such destruction) or return to the disclosing Party all Confidential Information of the disclosing Party in its possession and will cease all further use of such Confidential Information; provided however, the receiving Party may retain a copy of any of the other Party's Confidential Information, including summaries, compilations or analyses thereof to the extent: (i) required by applicable law; (ii) required by the receiving Party's internal document retention and governance policies; or (iii) it would be unreasonably burdensome to destroy such Confidential Information (such as archived computer records). Any Confidential Information retained pursuant to (immediately preceding) subsections (i), (ii) or (iii) shall continue to be treated as Confidential Information subject to the restrictions set forth in the Agreement, notwithstanding any termination or expiration hereof. The return or destruction of Confidential Information shall not relieve the receiving Party of its obligations set forth in the Agreement.
- g. Each Party acknowledges that all Confidential Information is considered to be proprietary and of competitive value, and in many instances, trade secrets. Because of the unique nature of Confidential Information, each Party agrees that a breach of this Confidentiality section of the Agreement may cause the non-breaching Party irreparable harm, and money damages and other remedies available at law in the event of a breach may not be adequate to compensate the non-breaching Party. Accordingly, each Party agrees that the non-breaching Party shall be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including, without limitation, injunctive relief and specific performance, as a remedy for any such breach. Such relief shall be in addition to, and not in lieu of, all other remedies available to the non-breaching Party, whether at law or in equity.
- h. Notwithstanding anything to the contrary in this Confidentiality section of the Agreement, (i) Bank may disclose Organization Confidential Information to affiliates of Bank if and to the extent necessary for Bank and its affiliates to exercise their respective rights or to comply with their respective obligations under the Agreement, and (ii) Bank may disclose Organization Confidential Information to third party service providers of Bank and its affiliates if and to the extent necessary for Bank and its affiliates to exercise their respective rights or to comply with their respective obligations under the Agreement, provided that such third party service providers are bound by confidentiality obligations to Bank substantially as protective as those described herein.
- i. Each Party's Confidential Information shall remain the property of that Party. Nothing contained in this Confidentiality section of the Agreement shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party any rights or license, express or implied, to the Confidential Information of the other Party, and any such obligation or grant shall only be as provided by other provisions of the Agreement.
- j. This Confidentiality section of the Agreement shall survive for two (2) years following termination of the Agreement.

### 26. MISCELLANEOUS.

- a. **The Relationship.** Nothing herein contained shall constitute the Parties as partners or co-venturers or render either Party liable for the debts or liabilities of the other Party.
- b. **Assignability.** The Agreement shall be binding upon and shall inure to the benefit of the Organization and Bank and their respective successors and assigns. The Agreement, or any of the rights hereunder, may not be assigned by the Organization without Bank's prior written consent. Organization further agrees that, prior to any sale, transfer, or assignment of Organization's business or business interests, Organization shall give written notice of the existence of the Agreement to any purchaser, transferee, assignee, or other successor in interest of the Organization; Organization shall immediately provide to Bank a written copy of any such notice. In no event shall Organization be relieved of any liability to Bank arising hereunder unless and until a purchase, transferee, assignee, or other successor in interest to the Organization's business shall expressly assume such liability in writing and Bank, in its sole and absolute discretion, accepts the written assumption





## COMMERCIAL CARD TERMS

of the liability. Bank may assign the Card Program, in whole or in part, and any of Bank's rights under the Agreement without Organization's consent.

- c. **Exercise of Bank's Rights.** No delay or omission by Bank to exercise any right under the Agreement shall impair such right or be construed to be a waiver of any default or an acquiescence therein, and the authorization of Transactions shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right by Bank shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment, or other variation of the terms, conditions, or provisions of the Agreement whatsoever shall be valid unless in writing, and then only to the extent set forth in such writing. All remedies contained herein or afforded by law shall be cumulative and all shall be available to Bank until the Organization's obligations under the Agreement have been paid in full and entirely satisfied.
- d. **Special Requests.** From time-to-time, Organization may request special reports or rush delivery of cards or other information. If Bank complies with Organization's special requests, Bank may assess additional fees to the Card Program as disclosed on the Card Program Schedule.
- e. **Currency Conversion.** If Organization has a Transaction authorized through the Card Program in a currency other than U.S. Dollars, then Mastercard's currency conversion procedure then in effect shall convert the impacted Transaction(s) to U.S. Dollars and the Transaction will be so reflected on the applicable Card Program billing statement. This currency conversion procedure involves the use of a currency conversion rate that is either the government-mandated exchange rate or a wholesale market rate in effect one day prior to the processing date, increased by one percent. Organization understands that the currency conversion rate applicable on the Transaction's processing date may differ from the rate that would have been used on the Transaction date or Transaction posting date.
- f. **Public Entities.** If Organization is a public entity, Organization expressly agrees that (i) use of the Cards shall be limited to Transactions made in the ordinary course of administration, (ii) notwithstanding any conflicting provisions contained in the Agreement, cash advances are prohibited, and (iii) Organization will comply with all laws and regulations applicable to the validity, execution, and compliance herewith.

### 27. CARD PROGRAM REWARDS PROGRAM TERMS.

Through the Card Program, Organization can earn rewards and take advantage of either the "Rebates" redemption option or the Mastercard "Rewards" redemption options as further explained below. Organization must choose between these redemption options; if Organization elects to redeem its rewards through the Rebate redemption option, Organization will be unable to redeem its rewards for any of the below listed Mastercard Rewards redemption options. For purposes of the Agreement and Card Program, Bank shall use the generic term "Rewards Program" to describe the rewards earn and redemption options applicable to Organization; thus, even if Organization chooses to redeem its rewards as a Rebate, the phrase "Rewards Program" may nevertheless be used to describe Organization's Rewards Program terms and conditions ("Rewards Program Terms").

By participating in the Card Program, Organization agrees to these Rewards Program Terms.

#### A. REWARDS PROGRAM OVERVIEW

- (i) Bank reserves the right to modify, cancel, restrict, suspend, or terminate the Rewards Program at any time without notice.
- (ii) The Rewards Program is void where prohibited by federal, state or local law.
- (iii) Organization is responsible for any fees, taxes, and charges for any Reward or Rebate paid.
- (iv) Bank reserves the right to suspend or restrict Organization's ability to earn or redeem rewards during any timeframe within which any Master Account, Related Account, or Card is or was not in good standing (such determination to be made at Bank's sole and absolute discretion).



## COMMERCIAL CARD TERMS

- (v) Bank reserves the right to use any Rebate or deduct Rewards points earned by Organization to offset past due balances Organization has regarding the Card Program. Such a deduction will be made at a rate of \$.01 per Rewards point.
- (vi) If Organization has a dispute related to any Rebate or Rewards points that Organization believes it should have earned for a Transaction, Organization must provide written notice to Bank within 180 days of the date upon which the Transaction posted. Such a dispute must be made by sending an email to [TM-CommercialCardSupport@capitalone.com](mailto:TM-CommercialCardSupport@capitalone.com) identifying the Transaction, the date on which it was made, and amount of rewards Organization believes it should have earned.
- (vii) If Bank terminates, restricts, cancels, or suspends Organization's Card Program or any Master Account or Related Account, all accrued points or Rebates may be immediately forfeited.
- (viii) Fraud or abuse relating to the accrual or the redemption of rewards may result in forfeiture of the accrued rewards as well as termination of Organization's Card Program, any Master Account, or any Related Account.
- (ix) Bank reserves the right to interpret these Rewards Program Terms and Bank will be the final authority on Organization's Rewards or Rebate qualification for rewards earn or redemption.

### B. REWARDS PROGRAM EARN

The Card Program Schedule will provide the Rebate earn rates or Rewards points earn rates (by Purchase Category Type) that are applicable to Organization; these earn rates shall be calculated as a multiple of Organization's total Net Purchase Volume. "Net Purchase Volume" is defined as Organization's total purchase Transactions across the entire Card Program less the following: credit chargebacks, credit losses, cash advances, delinquency assessments, fees, and charges or other Transactions determined (in Bank's sole reasonable discretion) to be unauthorized. Certain Transactions, including but not limited to the following, will be excluded from Organization's Net Purchase Volume calculation: cash disbursements, cash advances, person-to-person money transfers, a quasi-cash transaction including the purchase of travelers checks, foreign currency, or money orders, truck stop transactions (any transactions at a truck stop other than an ATM at fuel desks), weigh stations, public scales, ports of entry, gambling transactions, utilities, international transactions, warehouse transactions, balance transfers, convenience checks, credit chargebacks, credit losses, annual fees, late payment fees, over-limit fees, insurance charges, card-related service charges, finance charges, fees, unauthorized charges, and Merchant Partner Program (as defined by Mastercard) Transactions.

### C. REWARDS PROGRAM REDEMPTION OPTIONS

#### (i) **MASTERCARD REWARDS:**

1. When Organization's Rewards Program is established with Mastercard Rewards as the redemption option, Organization understands and agrees that:
  - i. Each respective Master Account within Organization's Card Program will have a separate "Mastercard Rewards Account"; and
  - ii. Organization must enroll each Master Account in the Rewards Program through [capitalonebankrewards.com](http://capitalonebankrewards.com) to redeem Rewards points for the Mastercard Rewards Account linked to the respective Master Account. Organization may contact its Capital One Sales Manager with any questions regarding enrollment; and
  - iii. Rewards points will not be aggregated across the Organization's Mastercard Rewards Accounts; and
  - iv. A maximum of two (2) Authorized Administrators at any time can manage, control, operate, modify, access, and close each respective Mastercard Rewards Account linked to a Master Account; and



## COMMERCIAL CARD TERMS

- v. If Organization chooses to permit Authorized Cardholders to redeem rewards, an Authorized Administrator for the respective Mastercard Rewards Account must provide or update the information necessary for Bank to provide the Authorized Cardholder the requisite access to the [capitalonebankrewards.com](http://capitalonebankrewards.com) rewards site; and
- vi. Unless explicitly outlined in the “Rewards Redemption Options” section below, Organization may not redeem Rewards points for cash or cash-equivalents (e.g., paper check, money order, gambling chips, etc.); and
- vii. There is no limit to the number of points Organization can earn. Points are non-transferable and have no expiration date.

### 2. **Mastercard Rewards redemption options:**

#### i. Statement Credit

- A. Organization can redeem Rewards points earned through the Rewards Program in the form of a statement credit to the applicable Master Account. When redeeming for a statement credit, Rewards points may be paid to Organization at a rate of \$0.01 per point.
- B. A statement credit adjustment is generally applied to and will reduce the existing balance of the Master Account linked to the applicable Mastercard Rewards Account. Receipt of a statement credit does not affect Organization’s responsibility to pay the entire balance reflected on each billing statement Bank issues to Organization. If the combined amount of Organization’s statement credit Rewards redemption and Organization’s other payments results in a credit balance on any Master Account, that Master Account balance will reflect the credit and no portion of Organization’s redemption amount will be converted back to rewards points. Bank may not issue to Customer a cash disbursement of such a credit.
- C. Statement credits are typically processed within 1-2 business days from date of redemption.

#### ii. Merchandise

- A. A current list of merchandise redemption offers can be viewed at: [capitalonebankrewards.com](http://capitalonebankrewards.com). Merchandise redemption options are updated, modified, and canceled regularly and without notice, and are only available while quantities last.
- B. Merchandise will be shipped to the address entered at the time of redemption. Merchandise cannot be shipped to P.O., APO, or FPO boxes. Separate merchandise items redeemed at the same time may arrive separately.
- C. The published point amounts required to redeem for merchandise typically include all taxes, standard shipping, handling, and delivery charges. Additional shipping costs may apply and, if so, will be disclosed at the time of redemption. Expedited and insured delivery of merchandise may be available upon request. Fees associated with expedited delivery and insurance will be your responsibility.
- D. Merchandise rewards redeemed at [capitalonebankrewards.com](http://capitalonebankrewards.com) are offered and provided by independent manufacturers. A manufacturer’s warranty may apply to merchandise redeemed at the rewards site. Bank makes no express or implied representation or warranty and will not be liable for injury, damage, loss, or expense resulting from any individual’s use of the merchandise or from a merchandise item’s defect or failure; Bank disclaims any implied warranty of merchantability or fitness for a particular purpose.

#### iii. Gift Cards



## COMMERCIAL CARD TERMS

- A. Except as otherwise provided by applicable law, Gift Cards are only valid at participating merchants and then only through the expiration date, if any, printed on the Gift Card. Expiration of Gift Cards varies by merchant.
  - B. Acceptance of Gift Cards is the sole responsibility of the participating merchant, not Bank.
  - C. Gift Cards have no cash value and may not be redeemed for cash or its equivalent, and any unused portion may not be returned as cash by the merchant unless a Gift Card states otherwise. Returns will be subject to the merchant's standard return policy.
  - D. Gift Cards are transferable unless otherwise noted on the Gift Card.
  - E. Gift Cards are void where prohibited by law.
  - F. Unless otherwise stated on the Gift Card, Gift Cards for rewards offered do not include any federal, state or local taxes; payment of these taxes is the sole responsibility of the individual using the Gift Card.
  - G. Gift Cards will usually arrive within 4-6 weeks. Expedited and insured delivery of a Gift Card may be available upon request. If you select expedited, express, or international shipping, you may be charged a shipping fee.
  - H. Gift Cards are redeemable for eligible products and services through the merchant location or website.
  - I. A Gift Card is not returnable or exchangeable for cash, except where required by law.
  - J. If a Gift Card is lost, stolen, destroyed, or used in an unauthorized manner, no replacement Gift Card will be provided or refunded.
  - K. Gift Cards are subject to any additional terms, conditions, and restrictions disclosed.
  - L. If the Gift Card has been used, it may not be returned.
- iv. Travel:
- A. Points may be redeemed for certain travel-related rewards. Please visit [capitalonebankrewards.com](http://capitalonebankrewards.com) for specific details. Additional terms and conditions will apply and will be disclosed to Organization (or Authorized Administrator or Authorized User, as applicable) at the time of redemption.

(ii) **REBATE REDEMPTION OPTION:**

1. Organization may request that the rewards earned on purchases made through the Card Program be redeemed as a payment to Organization (or a party designated by the Organization) in the form of a direct deposit into a Commercial DDA. This shall hereinafter be referred to as a "Rebate."
2. When Organization's Rewards Program is established with a Rebate as the redemption option, Organization understands and agrees that:
  - i. A maximum of two (2) Authorized Administrators at any time can manage, control, operate, modify, access, and close Organization's Rewards Program; and
  - ii. No other Authorized Users may manage, control, operate, modify, access, or close Organization's Rewards Program.



## COMMERCIAL CARD TERMS

- iii. Organization must designate (e.g., through the actions of an Authorized Administrator) the Commercial DDA into which the Rebate will be paid by identifying the applicable Bank Routing & Transit Number and full Commercial DDA account number.
  - iv. From time to time, an Authorized Administrator may update the information regarding the Commercial DDA into which the Rebate shall be paid.
  - v. Organization hereby acknowledges and understands that the Rebate payments made the Commercial DDA may be processed via Automated Clearing House (ACH).
3. The Rebate payment shall be made either monthly or annually (such information to be included on the Card Program Schedule). If the Rebate is to be paid annually, the annual Rebate payment will be made within 60 days of each anniversary of the Effective Date of the Agreement.
4. If, for any reason, the Rebate payment is rejected by the receiving bank, Bank will make a reasonable attempt to notify Organization (e.g., by informing an Authorized Administrator) of the rejection and may apply the redemption as a statement credit to the Card Program or may decide to take no further action.