



**Southeast Florida Governmental Purchasing
Cooperative Group**

CONTRACT AWARD

Please complete each of the applicable boxes and submit with bid documents, award notices and tabulations to lpiper@myboca.us for placement on the NIGP SEFL website Cooperative contract page.

BID/RFP No. 2015-16/32

Description/Title: Procurement Card Services

Initial Contract Term: Start Date: 09/01/2016 End Date: 09/01/2021

Renewal Terms of the Contract: 2 (No. of Renewals) Renewal Options for 5 years (Period of Time)

Renewal No. ___ Start Date: _____ End Date: _____

Renewal No. ___ Start Date: _____ End Date: _____

Renewal No. ___ Start Date: _____ End Date: _____

SECTION #1 VENDOR AWARD

Vendor Name: TD Bank

Vendor Address: 5900 North Andrews Avenue, 2nd Floor

Contact: Pamela Ramkalawan

Phone: 954-233-2064 Fax: 954-233-2064

Cell/Pager: 561-866-8368 Email Address: pamela.ramkalawan@td.com

Website: tdbank.com FEIN: _____

SECTION #2 AWARD/BACKGROUND INFORMATION

Award Date: 8/23/16 Resolution/Agenda Item No.: 2015-155

Insurance Required: Yes No _____

Performance Bond Required: Yes _____ No

SECTION #3 LEAD AGENCY

Agency Name: City of Deerfield Beach

Agency Address: 401 SW 4 Street

Agency Contact: Ivelsa Guzman Email iguzman@deerfield-beach.com

Telephone: 954-480-4486 Fax: 954-480-4388

TD COMMERCIAL PLUS CARD

Master Agreement

This TD Bank Commercial Plus Card Master Agreement (the "Agreement") is entered into as of August 23, 2016 between **City of Deerfield Beach** (the "Company"), with its main office in Deerfield Beach, Florida and **TD BANK, N.A.** ("TD"), a national banking association, with its main office in Wilmington, Delaware.

RECITALS

WHEREAS, TD is a member and licensee of Visa U.S.A., Inc. ("Visa") and as such is authorized to issue Visa® charge cards bearing Visa logos and service marks, to open Visa accounts, to offer Visa services and benefits as they may be made available, and to process transactions on Visa networks; and

WHEREAS, TD has developed a commercial card system composed of Visa charge cards, card controls, transaction processing, and select reports to enable a business concern to facilitate, expedite and monitor the purchase of, and payment for, goods and services acquired for the legitimate business benefit of the business concern (the "Program"); and

WHEREAS, the Company desires to participate in the Program, subject to the terms of this Agreement;

This TD Commercial Plus Card Master Agreement shall be and is hereby incorporated by reference into and forms part of the "Contract" between the parties, the terms of which include: (1) the City of Deerfield Beach Request for Proposal #2015-16/32 (the "RFP"); (2) TD Bank's Response to Request for Proposals (RFP) for Banking Services dated April 26, 2016 including the Supplemental Certification (the "Proposal"); and (3) the parties' (a) TD Commercial Plus Card Master Agreement and (b) Exhibit A Rebate Schedule (collectively the "Agreement"). The parties agree that any ambiguity, conflict or inconsistency in the foregoing documents that together constitute the Contract shall be resolved in the following order: (1) the Agreement; (2) the RFP; and (3) the Proposal.

The negotiated terms of this agreement are intended by the parties to be utilized by other public entities in the Southeast Florida Governmental Purchasing Cooperative Group upon mutual agreement by both TD and the public entity. Each public entity's eligibility to enter into this agreement is contingent on credit approval and underwriting of the public entity by TD.

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

SECTION 1 DEFINITIONS

1.1 DEFINITIONS. Certain terms used in this Agreement, unless the context requires otherwise, shall have the following meanings.

"Account" means the Visa account of a Cardholder and/or the Company maintained with TD.

"Billing Cycle" means a monthly period that ends on the same day each calendar month, unless such day is not a Business Day, in which case, the last day of such period shall be the Business Day immediately before or after such day.

"Business Day" means a day, other than a Saturday or a Sunday, on which commercial banks generally are open for business in Delaware.

"Card" means a tangible Visa charge card ("Tangible Card") issued by TD pursuant to this Agreement or a virtual Visa charge card number ("Virtual Card") created by TD pursuant to this Agreement, as appropriate.

"Card Cancellation Confirmation" means a written statement executed by a Program Administrator, as defined in Section 2.6(b), in form and substance satisfactory to TD, identifying certain Cards by Account numbers and Cardholder names and confirming (i) that the Company has retrieved and destroyed such Cards, or (ii) that the Company used reasonable efforts to retrieve such Cards but was unable to do so.

"Cardholder" means an individual in whose name a Card is issued or any other employee, officer or director of, or other individual designated by, the Company as being expressly authorized to use a Card or Account.

"Cardholder Agreement" means an agreement between TD and a Cardholder governing the use of a Card or Account, as amended from time to time.

"Restricted Transaction" means a restricted transaction as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Federal Reserve Board Regulation GG (12 C.F.R. Part 233) and includes, without limitation, those in which credit, electronic fund transfers, checks, or drafts are accepted by gambling businesses in

connection with the participation by others in unlawful Internet gambling.

"Straight Through Processing" means the processing of a Transaction on Visa networks, without the use of a Tangible Card or Virtual Card, using an Account number, whereby the purchase results in a direct credit to the seller's merchant bank account.

"Transaction" means a purchase that results in a debit to an Account.

"Unauthorized Transaction" means any Transaction by a person, other than the Cardholder to whom the relevant Card, if any, was issued, who was not authorized to use such Card or Account by either such Cardholder or the Company and from which Transaction neither the Cardholder nor the Company receives any direct or indirect benefit.

SECTION 2 CARD ISSUANCE

2.1 PROGRAM PARTICIPATION.

Subject to the terms of this Agreement, TD shall issue Cards to, and/or establish Accounts for, the Company with such capabilities and with such processing of Transactions as may be offered by TD and selected by the Company. Tangible Cards shall be issued for a period of three (3) years. **The Company and Cardholders shall use the Cards and Accounts for the business or commercial purposes of the Company only and not for personal, family, or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.** The Company shall instruct all Cardholders to use the Cards and Accounts strictly for the business or commercial purposes of the Company.

2.2 EMBOSSING; LICENSE TO USE MARKS. If requested, TD shall prepare Cards bearing the Cardholder's name and, if the Company so elects, the Company's name, trademark, or logo (the "Marks"), in a form supplied by the Company and conforming to TD and Visa guidelines. If the Company elects to have its Marks embossed on the Cards, or provides them to TD for other purposes, then by doing so the Company grants TD a non-exclusive limited license to apply the Marks to the Cards or to use them for the purposes for which they were

provided, so long as they are used solely in connection with the Program.

2.3 CARD DELIVERY. TD will deliver Cards and related Program materials to the Company. Upon its receipt of any Card, the Company shall promptly deliver such Card to the Cardholder named thereon together with any related Program materials supplied by TD. From time to time during the term of this Agreement, TD may require the Company to follow certain security procedures regarding the custody and handling of Cards. The Company agrees to comply with all such security procedures.

2.4 CREDIT LIMITS; CHANGES AT THE DISCRETION OF TD.

(a) Subject to the terms of this Agreement and the Cardholder Agreements, TD shall authorize extensions of credit with respect to (a) each Card or Account up to a specified total dollar amount (the "Account Credit Limit") set by the Company, and (b) all Cards and Accounts up to a specified total dollar amount (the "Aggregate Credit Limit") set by TD from time to time. In no event shall TD be obligated to grant credit in excess of any applicable credit limit. TD may at any time investigate the financial condition of the Company, in connection with the issuance of Cards, maintenance of Accounts, and establishment of credit limits, or as otherwise provided in this Agreement.

(b) In its sole discretion, TD may decline to issue or establish any Card or Account for any Cardholder. In addition, TD at any time may cancel or suspend the right of any Cardholder to use any Card or Account. As a result of its investigation of the Company's financial condition, TD may increase or decrease any Account Credit Limit, increase or decrease the Aggregate Credit Limit, modify the time for payment of any amount due under this Agreement, or require collateral or additional collateral and the execution of a security agreement in the form provided by TD. In addition, TD may suspend the rights of all Cardholders to use any Cards or Accounts in the event of excessive disputes, or in the event of excessive loss, theft or unauthorized use of Cards or Accounts, as determined by TD in its sole discretion. All such actions may be taken without notice except to the extent that notice is available through the proprietary system provided by TD for use under this Agreement ("TD Commercial Plus Card Online") or as otherwise required by applicable law.

2.5 ISSUANCE, RENEWAL, REPLACEMENT AND CANCELLATION OF CARDS AND LIABILITY FOR UNAUTHORIZED USE.

(a) Promptly following its execution of this Agreement, the Company will provide to TD an initial request (a "Card Request") either electronically, using TD Commercial Plus Card Online, or in writing, using a form provided by TD. Such Card Request shall include the names, titles, business addresses, phone numbers, birth dates and last four digits of Social Security numbers of at least ten Cardholders to whom or for whom the Company wishes TD to issue a Tangible Card and/or establish an Account. The Company may, from time to time, submit additional Card Requests either electronically, using TD Commercial Plus Card Online, or in writing, using a form provided by TD. The Company agrees not to submit, without the prior written consent of TD, a Card Request with respect to any person whose Card or Account privileges have previously been cancelled.

(b) Each Card Request must be submitted by a person identified by Company as a "Program Administrator" as that term is defined in Section 2.6(b) of this Agreement. TD shall incur no liability to the Company in acting upon any Card Request which it believes in good faith to have been made by a Program Administrator.

(c) Where emergency issuance of a Card is requested, TD may fulfill such request at an additional charge as determined by TD from time to time. The current charge in effect as of the date of this Agreement is set forth in a separate rebate schedule provided to Company by TD (the "Rebate Schedule"). If affected through Visa, the Company shall pay any fees charged by Visa for emergency card issuance or replacement. The billing for such charge shall occur in the next billing statement for the relevant Account. Unless TD receives contrary written instructions from the Company, and subject to TD's rights hereunder, TD shall replace each expiring Card with a replacement Card at least 30 days prior to the Card's expiration date.

(d) Each Cardholder shall be required to sign the Card issued to such Cardholder promptly and shall be subject to the terms of the Cardholder Agreement, if any.

(e) The Company shall promptly request that a Card or Account be cancelled, or that the authority of any Cardholder to use a particular Card

or Account be terminated, as the case may be, if the Company or a Cardholder knows of or suspects the loss, theft or possible unauthorized use of a Card or Account. Such request shall be made by telephone at 1-877-839-6911 or such other number as TD may provide, and shall specify (i) the relevant Cardholder's name, Account number and last known home and business address, and (ii) such other information as the Company shall deem appropriate or TD shall reasonably request. The Company's request shall be deemed effective when TD receives such request and makes the corresponding changes in its processing system (which changes shall be made promptly, taking into account the mode of transmission and time of receipt).

(f) The Company shall also promptly request that a Card or Account be cancelled, or that the authority of any Cardholder to use a particular Card or Account be terminated if (i) the Company wishes to cancel a Card or Account or to terminate the authority of any Cardholder to use any particular Card or Account; or (ii) the Cardholder's employment or other relationship with the Company is terminated. Such requests shall be made in accordance with Section 2.5(e).

(g) Notwithstanding any request made by the Company for cancellation of a Card or Account, or for termination of the authority of any Cardholder to use any particular Card or Account, the Company shall be liable for any and all Transactions resulting from the use of the Card or Account prior to and (with respect to pending Transaction authorizations) on or after the effective time of such request (as provided in Sections 2.5(e) and (f), above), including any and all Unauthorized Transactions. The Company shall not be liable for Unauthorized Transactions which are authorized after TD receives notice as provided in accordance with Sections 2.5(e) and (f) above, and TD has had a reasonable opportunity to act on such notice; provided, however, that the notice relates to the Card or Account used in connection with such Unauthorized Transactions.

2.6 TRANSACTION DATA, SECURITY PROCEDURES, PROCESSING PROCEDURES AND ACCOUNT MAINTENANCE.

(a) TD shall provide the Company with user identification code and password-protected daily access to Card and Account transaction data and other reports. Such reporting shall be provided in

accordance with such manuals, training materials and other information as TD shall provide from time to time.

(b) In order to use TD Commercial Plus Card Online and/or the Virtual Card and Straight Through Processing systems made available by TD, the Company agrees to be bound by and to adhere to the following security procedures, terms, and conditions (the "Security Procedures"), which TD may revise from time to time upon notice to the Company:

(i) TD Commercial Plus Card Online and Virtual Card and Straight Through Processing systems may be accessed solely through the use of user identification codes and passwords (collectively, the "Access Code"). TD shall assign an initial Access Code to an individual authorized to create and disseminate additional Access Codes (such individual is referred to as the "Program Administrator").

(ii) The Program Administrator shall assign Access Codes to users designated by the Company as authorized to (1) access and use the Service; (2) create and disseminate Access Codes to individuals who are authorized to use TD Commercial Plus Card Online (such individuals are referred to as "Authorized Users") and (3) designate additional Program Administrators within the Company. The Company shall be responsible for ensuring that each Program Administrator creates and disseminates Access Codes in accordance with TD's Security Procedures.

(iii) The Company shall safeguard all Access Codes and be responsible for all use of Access Codes issued by the Program Administrator. TD may conclusively presume that all business conducted using an Access Code emanates from a Program Administrator or Authorized User and is conducted in the Company's name. Any unauthorized use of an Access Code (except for unauthorized use by a TD employee) shall be solely the responsibility of the Company.

(c) In order to use TD Commercial Plus Card Online and/or the Virtual Card and Straight Through Processing systems made available by TD, the Company agrees to be bound by and to adhere to such processing procedures, terms, and conditions (the "Processing Procedures") as TD shall establish from time to time upon notice to the Company.

(d) TD shall provide such assistance and training to the Company as it reasonably deems necessary to enable the Company to transmit its initial Card Requests through TD Commercial Plus Card Online and/or to initiate Card Transactions through the Virtual Card or Straight Through Processing systems made available by TD. Thereafter, the Company may from time to time, in accordance with this Agreement, and in strict compliance with the Processing Procedures and Security Procedures, initiate Card Transactions through the Virtual Card or Straight Through Processing systems made available by TD and/or use TD Commercial Plus Card Online to make additional Card Requests and to perform certain Account maintenance functions, including, without limitation, adjustment of Account Credit Limits, blocking of Visa Merchant Category Codes ("MCCs"), and cancellations or terminations of Cards or Accounts if the Cardholder's employment or relationship with the Company is terminated or for any reason other than loss, theft, or possible unauthorized use.

SECTION 3 CARD AND ACCOUNT USE

3.1 PURCHASES. Cardholders may use Cards and Accounts to purchase, in the normal course of business, goods and services in accordance with the MCCs selected or blocked at the Company's request and in accordance with any transactional limits established by the Company. TD shall use reasonable efforts to deny a request for any purchase authorization that falls outside such parameters or for any purchase authorization it believes is an Unauthorized Transaction, provided Transaction authorization is required. The parties acknowledge, however, that authorizations and declinations are necessarily based on the accuracy of the Transaction data transmitted to TD. Under no circumstances shall TD be liable to the Cardholder or the Company (nor shall the Company be relieved of its obligation to pay the amounts charged or advanced) in the event any such Transactions are permitted on the basis of inaccurate or misleading data or other factors beyond the reasonable control of TD.

3.2 USE OF CARDS. Each Transaction is subject to the terms and conditions of this Agreement and to the terms and conditions of the Cardholder Agreement, if any, in effect at the time of the Transaction. TD shall have no obligation or responsibility to the Company or to any Cardholder in the event that any merchant, entity or person refuses to honor a Card or Account. A Card or Account may be used only by the Cardholder to whom it is issued or who is authorized to use it, as the case may be, and may not be transferred to another Cardholder or any other person or entity, and any such attempted transfer shall automatically be void.

Without limiting any other rights of TD hereunder or under applicable law, TD may refuse to authorize any Transaction in the event that: (a) any balance owed by the Company in respect of the Account to which such Transaction relates or any balance owed by the Company on any Account, is past due; (b) the amount of the Transaction plus the outstanding balance (including Transactions authorized but not yet posted) of all Accounts would exceed the Aggregate Credit Limit; (c) the amount of the Transaction plus the outstanding balance (including Transactions authorized but not yet posted) of the relevant Account would exceed the Account Credit Limit for such Account; or (d) any other reason exists for declining a Transaction as set forth in this Agreement, in the Cardholder Agreement, if any, in the operating regulations of Visa, or under applicable law.

3.3 ADDITIONAL DUTIES OF THE COMPANY.

The Company shall:

- (a) make sure that there are at least ten Cardholders at all times, if the Company elects to use Tangible Cards;
- (b) not exceed or permit Cardholders to exceed their respective Account Credit Limits or the Aggregate Credit Limit;
- (c) make all reasonable attempts to ensure that each Cardholder complies with the terms of the Cardholder Agreement;
- (d) promptly advise Cardholders of any changes made to their Account Credit Limits, whether made by the Company or by TD;
- (e) not impose any liability on any Cardholder for an Unauthorized Transaction on any Card or Account in excess of the amount permitted

under Regulation Z of the Consumer Financial Protection Bureau, 12 C.F.R. Part 1026, as amended;

(f) return to TD, and/or provide a Card Cancellation Confirmation with respect to, any Card and related Program Materials, promptly following any request for cancellation of such Card, and all Cards and related Program materials, promptly following the expiration or termination of this Agreement; and

(g) permit TD to setoff from the deposit account specified by the Company the amount due by the payment due date specified in the billing statement.

**3.4 EXPENSEREPORTING;
DISCLOSURE OF ACCOUNT
INFORMATION.** The Company may from time to time, by written instruction in form and substance satisfactory to TD, direct TD to furnish specific Transaction data to third parties that provide expense reporting products or services to the Company. Solely for the purpose of facilitating the Company's expense reporting objectives, TD shall transmit to such third parties the Transaction data identified in such instructions.

**3.5 COMPANY OBLIGATIONS
RELATING TO DISCLOSURE OF
ACCOUNT INFORMATION AND
INTERNATIONAL PROGRAMS.** The Company shall clearly disclose to each of its Cardholders the extent, if any, to which TD will provide Transaction and Account information to third parties pursuant to Section 3.4 above or to an alliance bank through an international card program. Furthermore, the Company agrees not to submit a Card Request for any individual residing outside the United States without first obtaining approval from TD.

**3.6 UNLAWFUL INTERNET
GAMBLING.** Restricted Transactions are prohibited from being processed through any Account or relationship with TD. In the event TD identifies a suspected Restricted Transaction, TD may deny services to the Company, close the Company's Account, and prohibit future transactions. Notwithstanding the foregoing, in the event a Restricted Transaction is processed, the Company will be liable for the transaction.

SECTION 4 LIABILITY FOR USE

4.1 PROMISE TO PAY.

(a) Unless prohibited by applicable law, or otherwise provided in accordance with any liability waiver program provided by Visa (the "Visa Liability Waiver Program"), the Company shall be liable for all Transactions that result from the Use of any Card or Account prior to and (with respect to pending Transaction authorizations) on or after the effective time of a request for cancellation or termination of a Card or Account (as provided in Sections 2.5(e) and (f) above), including but not limited to (i) Transactions by a Cardholder for business or commercial purposes of the Company in compliance with this Agreement, (ii) Transactions by a Cardholder, or a person authorized by a Cardholder, for personal family or household purposes, for the purpose of purchasing or carrying margin stock or securities, or for any other purpose, in violation of this Agreement, from which the Cardholder receives a direct or indirect benefit, and (iii) all Unauthorized Transactions resulting from the use of the Card or Account prior to (and with respect to pending Transaction authorizations) on or after the effective time of a request for cancellation or termination of a Card or Account (as provided in Sections 2.5(e) and (f) above). The Company shall not be liable for Unauthorized Transactions which are authorized after TD receives notice as provided in accordance with Sections 2.5(e) and (f) above, and TD has had a reasonable opportunity to act on such notice; provided, however, that the notice relates to the Card or Account used in connection with such Unauthorized Transactions.

(b) Regardless of any Account Credit Limits or the Aggregate Credit Limit, the Company agrees to pay and perform when due all of its obligations under this Agreement ("Obligations"), including without limitation:

(i) with respect to all Accounts, the indebtedness, obligations and liabilities arising under such Accounts, including, without limitation, all fees, finance charges and other amounts payable under or in connection with each such Account; and

(ii) any and all costs (including, but not limited to, reasonable

attorneys' fees and disbursements, court costs, litigation and other expenses) incurred in enforcing the obligations of the Company hereunder.

(c) The Company's Obligations shall be enforceable irrespective of the validity, legality or enforceability of the Cardholders' obligations and shall not in any way be affected by or conditional upon (i) any action taken under the Cardholder Agreements or the exercise of any right or power thereby conferred, (ii) the bankruptcy or similar proceedings involving or affecting a Cardholder, the Company or others, (iii) any modification, alteration, or amendment of, or addition to, any Cardholder Agreement whether with or without the Company's knowledge or consent, or (iv) any other action, inaction or circumstance whatsoever (with or without notice to or knowledge of or consent by the Company) that may in any manner vary the risks of the Company, except to the extent that notice and/or consent may be required by applicable law.

(d) Except as expressly set forth herein, the Company hereby waives all presentments; demands for performance or payment; protests; notices of protest, nonperformance, dishonor, default and non-payment; notices of the existence, creation or occurrence of new or additional obligations by the Cardholders; and all other notices or formalities.

(e) All amounts due under the Cards and Accounts shall be billed directly to the Company via periodic statements and shall be payable in full upon receipt by the Company. Such statements may, at TD's option, be sent by mail or made available electronically via TD Commercial Plus Card Online, the Internet, or other means. The Company shall remit payment to TD under the terms described herein.

(f) All payments hereunder shall be made in U.S. dollars and by ACH debit from an account designated by the Company. In the event that there are insufficient funds in that account, the Company hereby authorizes TD to charge any unrestricted deposit account which the Company may maintain with TD for any payment required hereunder, without prior notice to the Company.

(g) All charges will be posted to Accounts in U.S. dollars. If a Card or Account is used for a transaction in a currency other than U.S. dollars, the transaction will be converted to U.S.

dollars, generally using either a (i) government-mandated rate or (ii) wholesale market rate in effect the day before the transaction processing date, increased by one percent (1%). If the credit has a different processing date then the exchange rate of the credit can be greater/less than that of the original transaction. The currency conversion rate on the day before the transaction processing date may differ from the rate in effect at the time of the transaction or on the date the transaction is posted on the Account.

4.2 DISPUTED AMOUNTS.

(a) The Company and its Cardholders shall use their best efforts to resolve all business-to-business purchase disputes directly with the relevant merchants, including, without limitation, any disputes relating to price discrepancies or to quality, warranty, or performance issues.

(b) The Company may dispute an amount reflected on a billing statement only if (i) the amount does not reflect the actual amount of the Transaction; (ii) the Transaction did not result from the use of the relevant Card or Account; or (iii) the amount being disputed is a fee that is not properly accrued under this Agreement. **Unless otherwise provided in the Visa Liability Waiver Program, or any successor program established by Visa, the Company may not dispute an amount reflected on a billing statement on the grounds that the Transaction is an Unauthorized Transaction (other than an Unauthorized Transaction which is authorized after TD receives notice as provided in accordance with Sections 2.5(e) and (f) above, and TD has had a reasonable opportunity to act on such notice; provided, however, that the notice relates to the Card or Account used in connection with such Unauthorized Transactions), or on the grounds that the Transaction resulted from a Cardholder, or a person authorized by a Cardholder, using a Card or Account for personal, family or household purposes, for the purpose of carrying margin stock or securities, or otherwise in violation of this Agreement, as the result of which the Cardholder received a direct or indirect benefit.**

(c) In addition, the Company may not dispute an amount reflected on a billing statement unless the Company sends a written notice of the dispute that (i) is received by TD at the address for such notices specified by TD no later than 60 days after TD transmitted the first billing statement that reflected the alleged error, (ii) enables TD to identify the Cardholder's name and Account number, and (iii)

to the extent possible, indicates the Company's belief and the reasons for the belief that an error exists, and the type, date and amount of the error. TD shall promptly investigate the dispute. If TD determines that the amount is properly payable, the Company will remit such amount to TD on the Company's receipt of its next billing statement. Fees and finance charges will not accrue with respect to the disputed amount pending resolution of the dispute.

(d) The Company may not withhold payment of any amount due for any goods or services purchased using a Card or Account on the ground that it has a dispute with the merchant as to quality, warranty, or performance issues, even if it has tried in good faith to resolve the dispute with the merchant, even if the merchant is owned or operated by TD, and even if TD mailed or electronically transmitted to the Company the advertisement for the goods or services.

4.3 CHARGEBACKS. If the Company reasonably believes that any Transaction, including any Unauthorized Transaction, has been posted to an Account as a result of fraud, unauthorized use, or any other circumstance under which the merchant may be held liable under applicable Visa rules, the Company shall so notify TD in writing. TD shall attempt to charge the Transaction back to the merchant in accordance with Visa procedures. Any accepted chargeback will be credited to the Company's or Cardholder's next billing statement. Unless otherwise provided in the Visa Liability Waiver Program, or any successor program established by Visa, the Company shall not be relieved of liability for the Transaction if the chargeback is rejected in accordance with Visa rules. If the chargeback is rejected in accordance with Visa rules, the Company will remit such amount to TD on the Company's receipt of its next billing statement. Fees and finance charges will accrue with respect to the Transaction pending resolution of the chargeback but will be assessed only if the chargeback is rejected.

**SECTION 5
PROGRAM FEES, TERM AND
TERMINATION, DEFAULT, REMEDIES AND
DAMAGES**

**5.1 FEES AND PERIODIC
FINANCE CHARGES.**

(a) **Fees:** The Company agrees to pay to TD the fees described in the Rebate Schedule. Such fees will be included in the Company billing statement for the Billing Cycle in which they accrue. Fees not listed in the Rebate Schedule but agreed by the Company may be invoiced separately and each such invoice shall be payable upon receipt. If the Rebate Schedule includes Annual Membership Fees, these fees are earned when assessed, are non-refundable, and are not subject to any pro rata rebate if the Account is terminated prior to expiration of the period for which the fees were assessed.

(b) **Periodic Finance Charges:** The Company agrees to pay to TD Periodic Finance Charges as described in this section 5.1(b). Such finance charges will be included in the Company billing statement for the Billing Cycle in which they accrue. If the "New Balance" of an Account is not paid on the payment due date, a Periodic Finance Charge will begin to accrue on each Transaction in the Account from the date of the Transaction and will continue to accrue to the date of full payment. TD will figure the Periodic Finance Charges on each Account by applying a Monthly Periodic Rate to the Average Daily Balance for the Account, including current purchases, unpaid finance charges, and any other unpaid fees or charges. TD will calculate the Monthly Periodic Rate by dividing the Annual Percentage Rate ("APR") by twelve (12). The APR is set forth in the "Applicable/Potential Fees" section of the Rebate Schedule, under the heading "Finance Charge." To get the Average Daily Balance, each day TD takes the beginning balance of an Account, adds any new purchases, and subtracts applicable credits and payments. This gives the daily balance. Then, TD adds all the daily balances for the Billing Cycle and divides the total by the number of days in the Billing Cycle. This gives the Average Daily Balance, including new purchases, unpaid finance charges, and any other unpaid fees or charges. If the Previous Balance of a current Billing Cycle is either a zero or a credit balance, then the Average Daily Balance will be considered to be zero.

5.2 TERM. This Agreement shall have an initial term (the "Initial Term") of five years commencing on the date hereof and shall be renewed upon mutual written agreement for up to 2 successive five-year terms (each a "Renewal Term") unless written notice of termination is given by either party at least 30 days prior to the end of the Initial Term or any Renewal Term. In addition, either party may terminate this Agreement at any time upon 30 days' prior written notice to the other party. Upon the

expiration or termination of this Agreement for any reason, the Company agrees to retrieve all Cards and related Program materials from Cardholders, cut such Cards in half, return the Cards and related Program materials to TD, and/or provide a Card Cancellation Confirmation with respect to such Cards and related Program materials. Excluding any transaction amounts that have been timely reported by Company and confirmed by TD as Unauthorized Transactions, upon termination of this Agreement for any reason, all amounts due including fees and transactions, shall become immediately due and payable by setoff within the billing grace period in effect at the time of termination.

5.3 DEFAULT. As used in this Agreement, the term "Default" shall mean: (i) failure of the Company to remit payment to TD in accordance with the terms hereof; (ii) the failure of either party to comply with any other term of this Agreement or any other agreement between the parties, provided such failure is not remedied within 15 days of the defaulting party's receipt of written notice from the other party specifying the breach; (iii) the representation by the Company of any facts, either in this Agreement or in its financial information provided to TD in connection with this Agreement, that prove to have been materially incorrect or misleading when such representation was made; (iv) the filing by or against either party of any petition in bankruptcy, insolvency, receivership, or reorganization or pursuant to any other debtor relief law or the entry of any order appointing a receiver, custodian, trustee, liquidator, or any other person with similar authority with respect to the assets of either party; (v) the insolvency, dissolution, reorganization, assignment for the benefit of creditors or any other material adverse change in the financial condition of either party; (vi) the entry of any adverse judgment, order, or award against either party that has a material adverse impact on the financial condition of the party; (vii) any change in control or material change of ownership of the Company or any event of either party having a material adverse financial impact on the party or a detrimental effect on the Company's ability to perform the Obligations, including, without limitation, the taking of any action by the Company to consolidate or merge or sell any substantial part of its assets; (viii) any default by the Company under the terms of any material indebtedness owed by the Company to TD, or other TD related entity; (ix) excessive fraudulent or other unauthorized use of Cards or

Accounts or credit losses with respect thereto as determined by TD, in its sole discretion; or (x) failure of the Company to satisfy the requirements of TD under Section 2.4 (b). In addition, if this Agreement is secured, even as a result of cross collateralization, the term "Default" includes any event not listed above that is a default under the applicable security agreement.

5.4 REMEDIES FOR DEFAULT; DAMAGES.

(a) Either party may terminate this Agreement at any time upon the Default of the other party. Except where a remedy is expressly provided herein or as otherwise provided in this Section 5.4, termination of this Agreement will be a party's sole remedy for breach; provided, that no termination or expiration of this Agreement shall release or discharge the Company from the payment of any amount otherwise payable under this Agreement.

(b) Upon a Default by the Company, in lieu of termination of this Agreement, TD may, in its sole discretion, shorten the Billing Cycle until such time as TD determines to reinstate the interval for the Billing Cycle or suspend all services and obligations hereunder until such time as TD determines to reinstate such services and obligations. By shortening the Billing Cycle or suspending its services and obligations, TD shall not be deemed to have waived any right which it may have, whether as a result of the Default or otherwise, to terminate this Agreement.

(c) A breaching party shall be liable for any actual damages caused by its breach, but neither party will be liable under any provision of this Agreement for any punitive or exemplary damages, or for any special, indirect or consequential damages (including, without limitation, costs incurred in developing and implementing the Program, lost revenues, lost profits, or lost prospective economic advantages) arising from or in connection with any performance or failure to perform under this Agreement, even if such party knew or should have known of the existence of such damages, and each party hereby releases and waives any claims against the other party for such damages.

**SECTION 6
MISCELLANEOUS**

6.1 REPRESENTATIONS AND WARRANTIES. Each party represents and warrants that this Agreement constitutes the legal, valid, binding and enforceable agreement of such party and that its execution and performance of this Agreement (a) do not constitute a breach of any agreement of such party with any third party, or of any duty arising in law or equity, (b) do not violate any law, rule or regulation applicable to it, (c) are within its corporate powers, and (d) have been authorized by all necessary corporate action of such party. In addition, if this Agreement is secured, even as a result of cross collateralization, the Company also makes the representations and warranties set forth in the applicable security agreement.

6.2 NOTICES. Except as otherwise provided herein, any notice or other communication required to be given under this Agreement may be given electronically, using the TD Commercial Plus Card Online system or the e-mail address of the primary contact for the Company. TD shall incur no liability to the Company in acting upon any notice or other communication given electronically which it believes in good faith to have been made by an Authorized User. Any notice or other communication required to be in writing shall be delivered personally, by overnight delivery via a nationally-recognized delivery service or by prepaid registered or certified mail, return receipt requested, addressed to the relevant party at such address as such party may from time to time designate in writing to the other. The date of delivery of a notice (i) delivered personally shall be deemed to be the date delivered; (ii) sent by overnight delivery shall be deemed to be the following day; and (iii) sent by mail shall be deemed to be three Business Days after the date on which such notice is deposited in the United States mail.

6.3 CHANGES. With respect to the rebate schedule and service fees provided on pages 42 and 43 of the Proposal, during the Initial Term, TD may amend upon mutual written agreement. For all other provisions, and with respect to the rebate schedule and services fees during any Renewal Term, TD may, at any time, amend this Agreement, any Cardholder Agreement, and/or the Program in its sole discretion. Except as expressly provided

otherwise elsewhere in this Agreement or as required by applicable law, changes to this Agreement and/or the Program generally will be effective immediately upon notice to Company. Changes to any Cardholder Agreement shall be effective immediately upon receipt by the Cardholder of notice of such changes unless otherwise required by applicable law. Company will be deemed to accept any such changes if Company or any Cardholder utilizes the Program after the date on which the change becomes effective. Company will remain obligated under this Agreement, including without limitation, being obligated to pay all amounts owing hereunder, even if TD amends this Agreement. Notwithstanding anything to the contrary in this Agreement, if TD believes immediate action is required for security purposes, TD may immediately initiate changes to any security procedures and provide prompt subsequent notice thereof to Company.

6.4 FINANCIAL STATEMENTS; NOTICE OF BOND RATING CHANGE. The Company agrees to furnish TD copies of its financial statements, in a form acceptable to TD, as soon as available, but not later than 150 days following the end of each fiscal year of the Company. All such financial statements shall include an income statement for the applicable fiscal year and a balance sheet, shall have been prepared in accordance with generally accepted accounting principles, consistently applied, and shall be in accordance with the books and records of the Company. In addition, the Company shall provide, in a timely manner, procurement or purchase-related transaction and spending data and such other current financial information concerning the Company and the use of the Cards and Accounts as TD may request. If applicable, the Company will notify TD within five business days of any change in the Company's bond rating.

6.5 ASSIGNMENT. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns; provided, that the Company may not assign this Agreement or any interest, payment, or rights hereunder without the prior written consent of TD, and any such attempted assignment without such consent shall automatically be void.

6.6 FORCE MAJEURE. If either party is rendered unable, wholly or in part, by a

force outside the control of such party (including, but not limited to, an act of God, war, fire, flood, explosion, act of governmental authority, strike, civil disturbance or breakdown of telephone, computer or automated mailing equipment) to carry out its obligations under this Agreement (other than a payment obligation), or TD is notified by a state or federal regulatory body or by Visa that any aspect of the Program or this Agreement does not comply with any applicable law, regulation, rule, policy, or order applicable to TD, the affected party shall give the other party prompt written notice to that effect. Thereafter, the affected obligations of the party giving the notice shall be suspended and the failure to perform such obligations shall not be deemed a breach of or Default under this Agreement so long as the affected party is unable to so perform for such reason. A party excused from performance pursuant to this Section 6.6 shall exercise all reasonable efforts to continue to perform its obligations hereunder and shall thereafter continue with reasonable due diligence and good faith to remedy its inability to so perform.

6.7 ENTIRE AGREEMENT. This Agreement contains the entire agreement and understanding between and among the parties on the subject matter hereof and supersedes all prior proposals, negotiations, agreements and understandings between the parties. All recitals, exhibits and addenda attached hereto are hereby incorporated by reference and made a part of this Agreement.

6.8 SEVERABILITY AND WAIVER. If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby. No course of dealing and no delay or omission by either party in exercising any of its rights under this Agreement in a particular instance shall be construed as a waiver of those rights or any other rights for any purpose and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of either party on any future occasion.

6.9 CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with federal law, and, to the extent not preempted, the substantive laws of the state where

the Company has its main office, without regard to the conflict of law principles thereof, except that pursuant to requirement of the National Bank Act 12 USC 85, all credit shall be extended from Delaware and all credit terms, including, but not limited to, the account set up charges, the fees and periodic finance charges, the date finance charges begin to accrue if the new balance is not paid on the payment due date, the method of determining the balance upon which periodic finance charges will be imposed, and the allocation of payments and credits, will be governed by and construed in accordance with federal law and the laws of the State of Delaware, to the extent incorporated into federal law, without regard to the conflict of law principles thereof.

6.10 SURVIVAL. Sections 1, 4, 5.4, 6.9, 6.10, 6.11, 6.16, 6.17, 6.18, 6.19 and 6.20 shall survive the termination or expiration of this Agreement.

6.11 CONFIDENTIALITY. All information furnished by either party in connection with this Agreement, the Program, or the Transactions contemplated hereby shall be kept confidential (and shall be used by the other party only in connection with this Agreement), except to the extent that such information (a) is already lawfully known when received, (b) thereafter becomes lawfully obtainable from other sources, (c) is required to be disclosed in any document filed with the Securities and Exchange Commission, federal banking regulators, Florida's Public Records Law, or any other agency of any government, or (d) is required by law to be disclosed, provided that notice of such disclosure has been given (when legally permissible) by the party proposing to make such disclosure, which notice, when practicable, shall be given sufficiently in advance of the proposed disclosure to permit the other party to take legal action to prevent the disclosure. The parties shall advise all employees, consultants, advisors, agents and other representatives (collectively, "representatives") who will have access to any confidential information of the obligations contained herein. The parties shall not distribute, disclose, or disseminate confidential information to anyone except its representatives who are involved in this Agreement, the Program, or the Transactions contemplated by the parties. Upon termination of this Agreement, each party shall promptly cause all copies of documents or extracts thereof containing any such information and data which has been provided by or which relates to the other

party to be returned to such other party; provided, that each party may retain in its files copies of such materials as it shall deem necessary solely for archival purposes.

6.12 NAME AND TRADEMARK.

Except as otherwise provided herein, neither party shall use the name or logo of the other party without such party's written consent.

6.13 VISA FEE ADJUSTMENTS.

In the event that there is a change deemed by TD to be material in the way TD is compensated by Visa, TD may seek to renegotiate the financial terms of this Agreement. The Company shall have no obligation to renegotiate such terms; provided, that if the parties cannot agree on an adjustment of such terms, then TD at its option may (a) allow this Agreement to remain in effect without any such adjustment, or (b) terminate this Agreement upon written notice to the Company.

6.14 RELATIONSHIP OF PARTIES.

Nothing contained in this Agreement shall be construed as constituting or creating a partnership, joint venture, agency, or other association or relationship between TD and the Company. To the extent that either party undertakes or performs any duty for itself or for the other party as required by this Agreement, the party shall be construed to be acting as an independent contractor and not as a partner, joint venturer, or agent for the other party.

6.15 PATRIOT ACT; ANTI-TERRORISM LAWS. (a) Neither the Company nor any affiliate of the Company is in violation of any statute, treaty, law (including common law), ordinance, regulation, rule, order, opinion, release, injunction, writ, decree or award of any governmental authority relating to terrorism or money laundering, including Executive Order No. 13224 and the USA Patriot Act (collectively, "Anti-Terrorism Law") or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. (b) Neither the Company nor any affiliate of the Company, or to the Company's knowledge, any Cardholder, is any of the following (each a "Blocked Person"):
(i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (ii) a person owned

or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (iii) a person with which TD is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224; (v) a person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or (vi) a person who is affiliated with a person listed above.

6.16 JURISDICTION AND VENUE.

TD and the Company irrevocably submits to the nonexclusive jurisdiction of Federal or state located in the 17th Judicial Circuit, Broward County Florida over any suit, action or proceeding arising out of or relating to this Agreement. TD and the Company irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. TD and the Company hereby consent to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the address shown in this Agreement or as notified to either party and (ii) by serving the same upon either party in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the party.

6.17 JURY WAIVER. THE COMPANY AND TD EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS HEREUNDER, ALL MATTERS CONTEMPLATED HEREBY AND ALL DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH

ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. THE COMPANY CERTIFIES THAT NEITHER TD NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT TD WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

6.18 SAVINGS CLAUSE. If the Company is at any time obligated to pay fees or finance charges in excess of the maximum fees or finance charges permitted by applicable law, then the fees and finance charges, as appropriate, shall be immediately reduced to the maximum amount permitted by applicable law and all payments in excess of the maximum amount shall be deemed to have been payments in reduction of the unpaid balance of the Account.

6.19 LIMITATION OF LIABILITY

(a) Limitation of Liability. To the maximum extent provided by law neither party will be liable to the other for any special, punitive, exemplary, indirect or consequential damages, including but not limited to, lost profits and lost revenues, without regard to the form of the claim or action or whether the claim is in contract, tort or otherwise, and even if the defending party knew or should have known such losses or damages were possible or likely, but shall only be liable for damages arising from its negligence, willful misconduct or breach of this Agreement. Notwithstanding anything to the contrary in this Agreement, in no event shall TD be liable to the Company for losses or damages of any kind whatsoever incurred during the term, including by way of breach or indemnity, in an amount greater than \$10,000 in the first year of the Agreement and for subsequent years, one-half of one percent (0.5%) of the preceding year's annual Net Spend by the Company Without limiting the generality of anything contained in this section, TD shall not be liable for any damages of any kind, no matter what the cause, that arise, occur or result from: (i) the Company using the TD Commercial Plus Card Online system, (ii) the Company's opening ports on its firewalls, or (iii) problems with or defects in equipment, software or services not provided by TD.

Notwithstanding the foregoing, the Company, hereby agrees that TD, its affiliates, and their respective directors, officers, employees, agents, and attorneys (collectively, the "TD Group") shall not be liable or responsible to the Company under this Agreement for any loss, claim, damages, liability, cost, expense, action or cause of action whatsoever that the Company, any Cardholder, or any third party now have or may hereafter have or threaten against any member of the TD Group, or to which any member of the TD Group may become subject, arising out of or relating to this Agreement, for, (i) actions taken by TD upon the instructions of the Company or any Authorized User, (ii) any maintenance activity performed by any member of the Company Group or by any other person (other than an employee or agent of TD) using a Company Access Code; provided, however, that Company shall not be liable for unauthorized use of a Company Access Code after the Company provides notice to TD that the Access Code has been lost, stolen or compromised, and TD has had a reasonable opportunity to act on such notice, or (iii) any Unauthorized Transaction resulting from the use of the Card or Account prior to (and with respect to pending Transaction authorizations) on or after the effective time of a request for cancellation or termination of a Card or Account (as provided in Sections 2.5(e) and (f) above). The Company shall not be liable for Unauthorized Transactions which are authorized after TD receives notice as provided in accordance with Sections 2.5(e) and (f) above, and TD has had a reasonable opportunity to act on such notice; provided, however, that the notice relates to the Card or Account used in connection with such Unauthorized Transactions.

(b) No Guaranty of Uninterrupted/Error-Free Program. TD attempts to ensure that Cards will be operational. However, TD cannot warrant that the Program will be uninterrupted or error free, due to limitations of TD's authorization systems, systems management and ordinary stand-in processes, and of the applicable network commercial card system including Merchant set-up features, and other systems outside of the TD's reasonable control. The Company therefore waives any and all claims that it may have against TD arising out of the use and performance of the Program, except for claims for damages referred to in Section 6.19(a).

(c) **Disclaimer of Bank Liability for Defective/Poor-Quality Merchandise or Services Acquired via Card.** TD is not responsible for any defects in or poor quality of the merchandise or services obtained by means of any Card Account. Any claim or dispute between the Company and a Merchant or Supplier, including with respect to the Merchant's or Supplier's right to compensation, will be the object of a direct settlement among the Company and the Merchant or Supplier and any such dispute will not affect the Company's obligation to pay all Charges in full to TD in accordance with the terms of this Agreement.

(d) **Disclaimer of Bank Liability for Third-Party Actions/Omissions.** The Company also acknowledges that some aspects of the Program, benefits or enhancements may from time-to-time be supplied directly to Company by third-parties who are not Affiliates of TD. TD is not responsible or liable for anything in connection with products or services provided by such third-parties directly to the Company. This agreement is only between TD and the Company and neither party shall have liability hereunder to any third party.

(e) **Company Obligation.** Except as limited by the Florida Constitution and Section 768.28, Florida Statutes (2014), as amended or revised, Company shall reimburse TD for any and all judgments in tort, including any award of reasonable attorneys' fees and any award of reasonable expenses, (collectively "Claims") entered against TD that arise out of or relate to any and all: (i) Company's or any Cardholder's/Authorized User's/Program Administrator's material breach of this Agreement, including, but not limited to confidentiality and information security breaches and breaches of representations and warranties; (ii) Company's or any Cardholder's/Authorized User's/Program Administrator's negligent or wrongful act or omission; (iii) judgments in favor of a third party (including, without limitation, TD's providers whose products or services are utilized for Program delivery, suppliers from whom Company, Cardholders or Authorized

Users purchase products/services pursuant to the Program, or governmental and other regulatory authorities), which TD has reimbursed or may be obligated to pay as a result of any of the foregoing matters described in subsections (i) and (ii) above. (iv) For purposes of this section, if any such claims are not torts under Florida law, then TD may immediately terminate this Agreement if it becomes apparent, in the opinion of its counsel, that TD will face unreimbursed exposure to any of the foregoing claims. In such case, TD reserves the right to pursue any other remedy available by law. Company further acknowledges that, subject to the conditions and limitations stated in this Agreement, it is responsible for the uses of a card by a Cardholder/Authorized User as specified in this Agreement, and therefore Company agrees that it shall either pursue or settle directly with any Cardholder any dispute related to such use, and that TD shall not be responsible or liable for any such uses and that TD may also immediately terminate this Agreement if it becomes apparent, in the opinion of its counsel, that TD will face unreimbursed exposure for any such uses in such circumstances. Company further acknowledges and agrees that, in the absence of negligence or intentional misconduct on the part of the TD, any actions TD takes or any actions TD decides not to take based on directions or instructions of the Company, a Cardholder, any Authorized User or Program Administrator shall be deemed authorized by the Company, and Company shall make no claims against TD for such actions, and that TD may immediately terminate this Agreement if it becomes apparent, in the opinion of its counsel, that TD will face unreimbursed exposure to any such claims made by Company or any other person. TD acknowledges that Company is a Florida municipal corporation and enjoys sovereign immunity. Nothing in this Agreement is intended, nor shall be construed or interpreted, to alter or waive the Company's entitlement to sovereign immunity, or to extend or modify the Company's liability beyond the limits established in Section 768.28, Florida Statutes, as may be amended from time to time, or any successor statute.

6.20 COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

IN WITNESS WHEREOF, the duly authorized representative of the Company has executed this Agreement as an instrument under seal as of the day and year first written above.

COMPANY: City of Deerfield Beach

By: Jean M. Robb

Print Name: Jean M. Robb

Title: Mayor

TD Bank, N.A.

By: Pamela Ramkalawan

Print Name: Pamela Ramkalawan

Title: Vice President

Pricing Prepared for: Southeast FL Governmental Purchasing Cooperative Group

Rebate Program:

The TD Commercial Plus Card & TD ePayables Rebate Program financially rewards clients for making procurement, travel and AP payments using their TD Bank issued commercial card solution. The program offers an increased rebate incentive for incrementally expanding annual spend volumes. The attractive program's annual spend and rebate tiers are outlined below:

Rebate Schedule - Level I, II and III Interchange			
Grace Period - 14 days/monthly, 7days/bi-weekly & 2 days/weekly			
Annual Spend ¹	Settlement Cycle		
	Monthly	Bi-Weekly	Weekly
	Rebate in Basis Points ²		
> \$28,000,000	173	178	183
\$18,000,000 - \$28,000,000	168	173	178
\$10,000,000 - \$17,999,999	153	158	163
\$5,000,000 - \$9,999,999	130	140	145
\$1,000,000 - \$4,999,999	100	105	110
>\$500,000 - \$999,999	60	70	75
Rebate Schedule - Specialized B2B Interchange			
Interchange Type	Rebate in Basis Points ²		
Visa Purchasing Large Ticket (PLT)	35		
Visa Large Purchase Advantage (LPA)	20		

¹ Annual Dollar Spend = Purchase totals less returns for 12 month period from first month with spend

² Rebates paid annually



Bank

America's Most Convenient Bank®

Exhibit A

Rebate Schedule

Sign On Bonus:

As an added benefit to the entities that comprise the **Southeast FL Governmental Purchasing Cooperative Group**, TD Bank may, at its sole discretion, negotiate an additional annual bonus with individual government entities that will commit to a five year term AND individually exceed \$10,000,000 in annual spend within a calendar year.

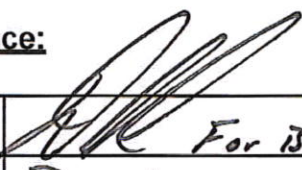
Contingency:

Enrollment in this program is contingent on credit approval and underwriting.

Applicable / Potential Fees:

Custom logo on cards	\$700.00
Custom logo on cards	(Waived for annual spend over \$300,000)
Outbound reporting file:	
- Custom mapping and programming	\$150.00 per hour
- Data Transmission	\$200.00 per month
- Data Transmission	(Waived for annual spend over \$300,000)
Data Transmission File (Visa VCF 4.4)	\$150 per month
Commercial Card Online	\$90 per month (Annual spend under \$300,000)
Commercial Card Online	(Waived for annual spend over \$300,000)
Special request items:	
- Express Card Delivery	\$25.00 per card
- Printed Statements	\$1.00 per statement
Cash Advance:	3.00%. Minimum of \$5.00 / Maximum of \$50.00
Foreign Transaction Fee	1.00%
Finance Charge	13.90% APR

Client Acceptance:

Signature:			
Printed Name:	For Burgess Hanson David Santucci		
Title:	Acting Asst. City Manager	Date:	8/31/16



Bank

America's Most Convenient Bank®

Exhibit A

Rebate Schedule

TD Bank, N.A.

By:	Pamela Ramkalawan		
Printed Name:	Pamela Ramkalawan		
Title:	Vice President	Date:	



Bank

America's Most Convenient Bank®

Rebate Schedule

Pricing Prepared for: Southeast FL Governmental Purchasing Cooperative Group

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Rebate Schedule - Level I, II and III Interchange			
	Grace Period - 2 Days		
	Settlement Cycle		
Annual Spend ¹	Monthly	Bi-Weekly	Weekly
	Rebate in Basis Points ²		
> \$28,000,000	173	178	183
\$18,000,000 - \$28,000,000	168	173	178
\$10,000,000 - \$17,999,999	153	158	163
\$5,000,000 - \$9,999,999	130	140	145
\$1,000,000 - \$4,999,999	100	105	110
>\$500,000 - \$999,999	60	70	75
Rebate Schedule - Specialized B2B Interchange			
Interchange Type	Rebate in Basis Points ²		
Visa Purchasing Large Ticket (PLT)	35		
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¹ Annual Dollar Spend = Purchase totals less returns for 12 month period from first month with spend

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Bank

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Rebate Schedule

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Commercial Card Online	\$90 per month (Annual spend under \$300,000)
Commercial Card Online	(Waived for annual spend over \$300,000)
Special request items:	
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- Printed Statements	\$1.00 per statement
Cash Advance:	3.00%. Minimum of \$5.00 / Maximum of \$50.00
Foreign Transaction Fee	1.00%
Finance Charge	13.90% APR

Client Acceptance:

Signature:			
Printed Name:			
Title:		Date:	

P-Card Program Comparison

ITEM	SUN TRUST (Fort Lauderdale Piggyback)	TD BANK (Co-op Agreement)	Bank of America (State Contract)																																																																								
Initial Term	12/3/2014-12/2/2019	9/1/2016 - 08/31/2021	01/05/2016 -01/04/2021																																																																								
Contract Term	5 yrs.	5 yrs	5 yrs																																																																								
Renewals	Open-ended contract	2 @ 5 yrs	1 @ 5 yrs																																																																								
Card Network	Visa	Visa	Visa																																																																								
Bank Set-up Fees	<u>One Time Fees</u>																																																																										
Card Design (Logo)	Waived	Waived	Waived																																																																								
Card Design (Custom)	Upon Request	\$700 Waived @ > \$300,000/year	As quoted																																																																								
File Set-up Fee (Standard)	Included	Waived	Waived																																																																								
File Set-up and Maintenance Fee (Custom) per File	\$2,500	\$150/hr Custom Mapping/Programming	Waived																																																																								
Data Extract: Auto-Generate Set-up Fee	\$1,500	\$200/hr Waived @ > \$300,000/year	Waived																																																																								
Data Extract: Auto-Delivery Set-up Fee	\$1,500		Waived																																																																								
	<u>Other Fees</u>																																																																										
Standard Online Forms	Included																																																																										
Custom Online Forms	Up to \$1000 per form																																																																										
Date Import Setup (custom interface)	\$5,000 per 3rd party																																																																										
Training on-site	\$2,500/day																																																																										
Rebate Structure & Grace Period	<u>Payment Settlement</u>	<u>Payment Settlement</u>	<u>Payment Settlement</u>																																																																								
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SECTION I - RESPONSE REQUIREMENTS

1. Submission and Receipt of Responses

- a. The City of Deerfield Beach uses the eProcurement Marketplace to administer the competitive solicitation process, including but not limited to soliciting and receiving responses, issuing addenda, tabulating responses, posting results and issuing notification of an intended decision. Responses will only be accepted from Offeror's who have submitted a response through the eProcurement Marketplace by the Close Date and Time indicated. Offerors are strongly encouraged to read the various Supplier Guides and Tutorials available in the eProcurement Marketplace well in advance of their intention of submitting a response to ensure familiarity with the eProcurement Marketplace and submitting a response through it. The City shall not be responsible for an Offeror's inability to submit a response by the closing date and time for any reason, including issues arising from the use of the eProcurement Marketplace.
- b. All information submitted by Offeror shall be typewritten, scanned as an attachment, or provided as otherwise instructed to in the solicitation. Offerors shall use and submit any applicable or required forms provided by the City and attach such to their response. Failure to use the forms may cause the response to be rejected and deemed non-responsive.
- c. Responses shall be submitted by an authorized representative of the firm. Responses must be submitted in the business entities name by the President, Partner, Officer or Representative authorized to contractually bind the business entity. Responses shall include an attachment evidencing that the individual submitting the response, does in fact have the required authority stated herein.
- d. All responses will become the property of the City of Deerfield Beach. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the City.
- e. Responses will be publicly opened in the Purchasing Division, 2nd Floor, 401 SW 4th Street, Deerfield Beach, FL 33441. Offerors and the Public are invited to attend. Only the Offeror's name will be read aloud, unless for construction or repairs on a public building or public work. Offeror will be tabulated and made available for review by the Public at such time as the City provides notice of an intended decision or until 30 days after the closing date and time, whichever is earlier; unless for construction or repairs on a public building or public work, in which case the price will be made available immediately.

2. Required Documents and Information

The City deems certain documentation and information important in the determination of responsiveness and for the purpose of evaluating responses. The documents and information the City requires each Offeror to submit with their response can be found in the "Response Attachments" tab within the eProcurement Marketplace for this competitive solicitation. Responses should seek to avoid information in excess of that requested, must be concise, and must specifically address the issues of this competitive solicitation. The responses shall be organized and divided into the sections indicated. The "Response Attachments" are not inclusive of all the information that may be necessary to properly evaluate the response and meet the requirements of the scope of work and/or specifications. Additional documents and information should be provided as deemed appropriate by the Offeror in response to specific requirements stated herein or through the competitive solicitation.

SECTION II - EVALUATION AND AWARD PROCEDURES

The City reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all responses, or terminate the competitive solicitation process at any time and secure the solicited products and services by any other lawful means. The City also reserves the right to waive minor irregularities or variations to the specifications and in the competitive solicitation process.

1. Evaluation Procedures

Evaluation of the responses will be conducted by an Evaluation Committee of qualified City Staff, or other persons selected by the City Manager or designee. Proposals shall be evaluated based upon the information and references contained in the responses as submitted. The Evaluation Committee will evaluate all responsive proposals at duly advertised public evaluation meetings in accordance with Florida Law. All responsive respondents will be notified of public evaluation meetings. The City reserves the right to award the contract to that Proposer who will best serve the interest of the City.

a. Tentative Evaluation Committee Meeting Dates

The City will use the following tentative schedule in the evaluation process. The City reserves the right to change and/or delay scheduled events.

Event	Date
Change to Oral Presentations/Software Demonstration	5/9/16 – 5/11/16
Oral Presentations/Final Ranking (if applicable)	5/23/16 – 5/24/16

b. Weighted Criteria

The Evaluation Committee shall evaluate all responsive responses based on the following weighted criteria. Each member will conduct an independent review prior to the scheduled public evaluation meeting. Each weighted criteria will be given a score of one to ten (1-10), ten being the highest; thereafter, the score will be multiplied by the weight and scores will be totaled. Each member of the evaluation committee will individually rank the responsive responses and those ranking will be the basis for the cumulative ranking.

Criteria	Weight
Software System Capabilities and Ease of Use	2
Qualifications and Experience of Firm and Assigned Staff	3
Understanding the Project and Co-Op Objectives	2
Availability and Commitment During Implementation and Contract Term	1
Rebate Structure	3
References and Past Performance	2

- c. At the conclusion of an initial evaluation the Committee will shortlist responses for the purpose of further evaluation. The shortlist shall include the top three (3) ranked firms, assuming that three responses were received, resulting from the initial evaluation. The Committee will then require oral presentations and software demonstration from the shortlisted firms. At the conclusion of a subsequent evaluation of the shortlisted firms, the Committee shall re-rank the shortlisted firms in accordance with the weighted criteria. The initial evaluation and ranking does not impact the final evaluation and ranking.
- d. The City reserves the right to negotiate a final contract with the Offeror being recommended for award. The final contract to be presented to the City Commission for award may include mutually negotiated and agreed upon terms and conditions including but not limited to changes in

quantities, prices, scope of services, or other contract provisions. However, the final Contract shall substantially comply with and be consistent with the intent of the competitive solicitation and the Offeror's response.

2. Contract Award

a. The Evaluation Committee's recommendation shall be presented to the City Commission based on its final ranking. The City Commission shall, in its sole discretion, have the authority to either (1) approve the evaluation committee's ranking/evaluation and recommendation; (2) recommend rejection of all responses based upon a stated reason; or (3) send the ranking/evaluation back to the evaluation committee to conduct further evaluations consistent with the requirements of the competitive solicitation and the evaluation committee may either ratify the ranking/evaluation or re-rank the firms. The City Commission reserves the right to re-rank in accordance with Section 38-130 of the Code of Ordinances. Upon award of a Contract by the City Commission, the City Manager is authorized to execute the Contract on behalf of the City.

b. Tentative Award Event Dates

The City will use the following tentative schedule in the award process. The City reserves the right to change and/or delay scheduled events.

Event	Date
City Commission Meeting	6/21/16
Contract Commencement	7/1/16

SECTION III - GENERAL TERMS AND CONDITIONS

1. Independent Contractor

The Offeror represents itself to be an independent business offering such products and/or services to the general public and shall not represent itself or its employees to be employees of the City of Deerfield Beach. Therefore, the Offeror shall assume legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, and other expenses, and agrees to indemnify, save, and hold the City of Deerfield Beach, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

2. Subcontractors

If the Offeror proposes to use subcontractors in the course of providing these products and/or services to the City, this information shall be a part of the Offeror's response. Such information shall be subject to review, acceptance and approval of the City, prior to any Contract award. The City reserves the right to approve or disapprove of any proposed subcontractor in its best interest.

3. Addenda, Changes, and Interpretations

It is the sole responsibility of the Offeror to notify the Buyer in writing and request modification or clarification of any ambiguity, conflict, discrepancy, omission or other error discovered in this competitive solicitation. Requests for clarification, modification, interpretation, or changes must be received prior to the "Last Date for Questions" as indicated in the "Tentative Schedule of Events". Requests received after this date will not be addressed. Clarifications, modifications, interpretations, and changes shall only be made by the issuance of official addenda. Under no circumstances shall an oral explanation given by any City official, officer, staff, or agent be binding upon the City and should be disregarded. All requests from Offerors and explanations from the City shall be communicated via the eProcurement Marketplace. All addenda are a part of the competitive solicitation documents and each Offeror will be bound by such addenda, whether or not acknowledged by them. It is the responsibility of each Offeror to read and comprehend all addenda issued. Addenda will be posted no later than the "Last Date for Addenda" indicated in the "Tentative Schedule of Events".

4. Multiple Responses

More than one response to competitive solicitation from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Such a circumstance will lead to rejection of all responses in which the Offeror is involved, except for circumstances where Offeror is subcontractor of another Offeror's response. If there is reason to believe that collusion exists between Offerors, those parties' responses will be rejected and deemed for City purposes to be a conviction of a public entity crime.

5. Omission of Details

The apparent silence of the specifications and any amendment regarding any details or the omission from the specifications of a detailed description concerning any services or material requested, shall be regarded as unintentional and should not serve to alleviate the contractor of their performance responsibilities.

6. Mistakes

Offerors are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, and delivery instructions pertaining to the solicitation. Failure of the Offeror to examine all pertinent documents shall not entitle them to any relief from the conditions imposed herein and may lead to rejection of the response.

7. Costs Incurred

The City shall not be liable for any costs incurred by Offerors in responding to this solicitation.

8. Withdrawal of Responses

Any response may be withdrawn up until the close date and time. Any response not so withdrawn shall upon close date and time constitute as an irrevocable offer to the City to provide the product and/or services

set forth in the solicitation. Offeror warrants by virtue of submitting the response that the response and any prices quoted in the response will be firm for acceptance by the City for a period of ninety (90) days from the close date unless otherwise agreed upon by the City and Offeror.

9. Acceptance of Responses / Minor Irregularities

The City reserves the right to accept or reject any or all responses, part of responses, and to waive minor irregularities or variances to specifications contained in responses which do not make the response conditional in nature, and minor irregularities in the solicitation process. A minor irregularity shall be a variation from the solicitation that does not affect the price of the contract or does not give a respondent an advantage or benefit not enjoyed by other respondents, does not adversely impact the interests of other Offerors or, does not affect the fundamental fairness of the solicitation process.

10. Responsiveness

In order to be considered responsive to the solicitation, the Offeror's response shall fully conform in all material respects to the solicitation and all of its requirements, including all form and substance.

11. Responsibility

In order to be considered as a responsible Offeror, Offeror shall be fully capable to meet all of the requirements of the solicitation and subsequent contract, must possess the full capability, including financial and technical, to perform as contractually required, and must be able to fully document the ability to provide good faith performance.

12. Offeror's Qualifications

Offeror shall be in the business of providing the products and/or services required and must possess sufficient financial support, equipment, and organization to insure that it can satisfactorily perform the work if awarded a Contract. The City shall have the right to investigate the financial condition, experience record, qualifications, and references of each Offeror and determine to its satisfaction the competency, reputation, quality of products and/or services, and responsibility of each to perform the required work, meet the specifications, and conform in all material respects to the solicitation and all of its requirements. Offeror shall satisfy each of the following requirements cited below. Failure to do so may result in the response being deemed non-responsive or rejected. **(a)** Offeror, including any principal, officer, agent, or proposed subcontractor, shall have no record of judgments, pending lawsuits against the City or criminal activities involving moral turpitude and not have any conflicts of interest that have not been waived by the City Commission. **(b)** Offeror, including any principal, officer, agent, or proposed subcontractor of Offeror, shall be in arrears or in default of any debt or contract involving the City, (as a party to a contract, or otherwise); nor have failed to perform faithfully on any previous contract with the City.

13. Order of Precedence

In the event of inconsistency between provisions of this solicitation and the resulting Contract, the inconsistency shall be resolved by giving precedence in the following order ("a" having the least precedence): **(a)** General Terms and Conditions, **(b)** Special Terms and Conditions, **(c)** Scope of Services/Work and Technical Specifications, **(d)** Attachments and Enclosures of the competitive solicitation document whether attached thereto or incorporated by reference, **(e)** The Contract.

14. Insurance and Surety Bonds

The Offeror's response shall include evidence of insurability meeting the minimum insurance requirements attached herein and evidence of Offerors ability to obtain required surety bonds, when insurance and surety bonds are required. The successful Offeror shall not commence the work or otherwise perform the work as required by the resulting Contract, until a certificate of insurance naming the City of Deerfield Beach as additionally insured and required surety bonds have been received and approved by the City. The Offeror shall assume full responsibility and expense to obtain all necessary insurance and surety bonds.

15. Legal Requirements

Applicable provisions of all federal, state, and county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all responses received and shall govern any and all claims and disputes which may arise between person(s) submitting a response and the City by and through

its officers, employees and authorized representatives, or any other person, natural or otherwise. Lack of knowledge by any Offeror shall not constitute a cognizable defense against the legal effect thereof.

16. Protest Procedures

In accordance with Section 38-139 of the City of Deerfield Beach Code of Ordinances, if a Offeror intends to protest a solicitation or proposed award the following shall apply: **(a)** Any respondent (also known as Bidder/Proposer) to competitive solicitation who is aggrieved in connection with the pending award of a competitive solicitation or any element of the process leading to the award of a competitive solicitation may protest to the Purchasing Director. A protest must be filed within five (5) business days of the first date that the respondent to the competitive solicitation knew or should have known of the facts giving rise to the protest, but no later than five (5) business days after notification of notification of intent to award the recommendation of the selection/evaluation committee or any right to protest is forfeited. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest is received by the Purchasing Director together with the protest fee. Delivery may be by hand delivery, regular mail, certified mail, or electronic mail. **(b)** Upon receipt of a protest of the pending award of a competitive solicitation, the Purchasing Director shall review the charge to determine whether the protest was timely filed. If upon review the Purchasing Director determines that the protest was not timely filed, the Purchasing Director shall dismiss the protest. If it is determined that the protest was timely filed, the Purchasing Director shall notify all Bidders/Proposers of the protest and inform them of the scheduled hearing before the City Commission and of their right to intervene. Any Bidder/Proposer may formally intervene in the proceeding by filing a request to intervene with the Purchasing Director within three (3) business days of receipt of such notice. Delivery may be by hand delivery, regular mail, certified mail, or electronic mail. **(c)** The Purchasing Director shall require a protest fee from a protester to compensate the City for the expenses of administering the protest. If the protest is decided in the protester's favor, the entire protest fee shall be returned to the protester. If the protest is not decided in the protester's favor, the protest fee shall be forfeited to the City. The protest fee shall be in the form of cash, a cashier's check, or a payment bond and shall be in the amount of 1% of the amount of the pending award, with a minimum amount of \$ 500 and a maximum amount of \$5,000. **(d)** The protester and intervener(s) may file written documentation relating to the protest with the Purchasing Director. It shall be the obligation of such protester or intervener(s) to deliver said documentation at least one week prior to City Commission action on the protest. **(e)** The City Commission may hear from the protester and intervener(s) in its discretion or may dispose of the protest without permitting presentations on the protest. If, on its face, the protest does not state sufficient cause to warrant remedial action, the City Commission may deny the protest without further participation by the protester or intervener(s). The Commission, in its sole discretion, may deny the protest, grant the relief requested by the protest, fashion relief or remedial action as it deems appropriate, or reject all responses and begin the competitive solicitation process again.

17. Cone of Silence

In accordance with Section 38-140 of the City of Deerfield Beach Code of Ordinances, during the course of a competitive solicitation, a Cone of Silence shall apply as follows: **(a)** A Cone of Silence shall be in effect during a Competitive Solicitation process beginning upon the advertisement for the competitive solicitation or during such other procurement activities as declared by the City Commission. The Cone of Silence shall terminate at the time the City Commission takes final action or gives final approval of a contract, rejects all bids or responses to the Competitive Solicitation, or takes other action which ends the Competitive Solicitation process. The Cone of Silence shall continue through the negotiation phase for requests for proposals and requests for qualifications and shall not end until the Commission gives final approval of the contract. **(b)** Any person or entity that seeks a contract, contract amendment, award, recommendation, or approval related to a Competitive Solicitation or that is subject to being evaluated or having its response evaluated in connection with a Competitive Solicitation, including a person or entity's representative shall not have any communication with any City Commissioner, the City Manager and their respective support staff or any person or group of persons appointed or designated by the City Commission or the City Manager to evaluate, select, or make a recommendation to the City Commission or the City Manager regarding a Competitive Solicitation. **(c)** The Cone of Silence shall not apply to written or oral communications with legal counsel for the City or the Purchasing and contract administration division staff

for the City. (d) Any action in violation of this section shall be cause for disqualification of the bid or the proposal. The determination of a violation and the penalty shall be made by the City Commission.

18. Ethics Code

Offerors are required to acquaint themselves with the provisions in the City of Deerfield Beach's Ethics Code Chapter 2, Article IX Code of Ordinances. The City Commission will strictly apply the Ethics Code. Section 2-505 "Disclosure and Behavior Requirements of Applicants and Person/Entity seeking a City contract or currently doing business with the City" is of immediate interest. Offeror shall complete the "Ethics Code Disclosure" contained herein. Failure to do so may result in the response being deemed non-responsive.

19. Public Records / Confidential Information

(a) Florida law provides that municipal records shall at all times be open for personal inspection by any person, unless otherwise exempt. Information and materials received by the City in connection with an Offeror's response shall be deemed to be public records subject to public inspection. However, certain exemptions to the public records law are statutorily provided for in Section 119.07, F.S. Section 119.07, F.S. provides an exemption from public records law for sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier. (b) If the Proposer believes any of the information contained in the response is exempt from the Public Records Law, then the Proposer must in the response specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption, otherwise, the City will treat all materials received as public records.

20. Public Entity Crimes Information Statement

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a Proposer, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for category two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

21. Anti-Collusion

The Offeror certifies that it has not divulged, discussed or compared its response and the contents contained therein with other respondents, except subcontractors if they form part of the response, and has not colluded with any other Offerors or parties to a response whatsoever. No premiums, rebates or gratuities are permitted either with, prior to, or after any delivery of material or service. Any violation of this provision will result in the immediate cancellation of the contract and removal from the Vendor List.

22. Conflict of Interest

(a) The Offeror covenants that they presently have no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. The Offeror further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in the contract. (b) No contract will be awarded to a Offeror who has City elected officials, officers or employees affiliated with it, unless the Offeror has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Offeror must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Offeror and removal of the Offeror from the City's Vendor List and prohibition from engaging in any business with the City.

23. Entire Agreement

This competitive solicitation, all attachments and exhibits, addenda, and the resulting Contract and/or purchase order states the entire contract between the parties hereto with respect to the subject matter hereof, and all prior and contemporaneous understandings, representations and agreements are merged herein or superseded hereby. Generally, a purchase order will be issued for commodities and a contract

will be issued for services. If a contract will be executed, a draft contract containing the major business concerns for the City may be attached to this competitive solicitation.

24. Waiver

It is agreed that no waiver or modification of this contract or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting the contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that provisions of this paragraph may not be waived except by a duly executed writing.

25. Warranty

(a) Warranty of Title - The Offeror warrants that all goods and materials offered in their response or furnished under a resulting contract will be new unless otherwise specified and that Offeror possesses good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods and materials. All goods and materials not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. **(b) Warranty of Specifications** - The Offeror warrants that all goods, materials and workmanship offered in their response or furnished under a resulting contract, whether by Offeror or its sub-contractors and suppliers, will comply with the specifications, plans, and other descriptions and requirements supplied or adopted. **(c) Warranty of Merchantability** - The Offeror warrants that the goods offered in their response or furnished under the resulting contract are merchantable, of good quality and free from defects, whether patent or latent in material or workmanship. **(d) Warranty of Material and Workmanship** - The Successful Offeror (Contractor) warrants all material and workmanship for a minimum of three (3) years from date of delivery and acceptance by the City. The Successful Offeror shall provide a warranty certificate bound with manuals stating the terms and conditions of the warranty. If within the warranty period, or within such larger period of time as may be prescribed by law or warranted by the Successful Offeror and product manufacturers, any of the materials and workmanship is found to be defective or not in accordance with the Contract documents, the Successful Offeror shall after receipt of a written notice from the City to do so, promptly correct the condition unless the City has previously given the Successful Offeror a written acceptance of such condition. **(e) Warranty of Intellectual Property** - The Offeror warrants that there has been no violation of copyright, patent, or other intellectual property rights either in the United States of America or in foreign countries in connection with the work to be performed pursuant to this competitive solicitation and resulting contract.

26. Survivorship Rights

The contract pursuant to this competitive solicitation shall be binding on both parties to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assignees.

27. Severability

If any term or provision of the contract pursuant to this competitive solicitation is found to be illegal and unenforceable, such term(s) shall be deemed stricken and the remainder of the contract shall remain in full force and effect.

28. Default and Termination

(a) Termination for Cause - In the event the Successful Offeror (Contractor) shall default in any of the terms, obligations, restrictions or conditions in the contract documents, the City shall give the Contractor written notice by registered, certified mail of the default and that such default shall be corrected or actions taken to correct such default shall be commenced within three (3) calendar days thereof. In the event the Contractor has failed to correct the conditions(s) of the default or the default is not remedied to the satisfaction and approval of the City, the City shall have all legal remedies available to it, including, but not limited to termination of the Contract in which case the Contractor shall be liable for any and all damages permitted by law arising from the default and breach of the contract. **(b) Termination for Convenience** - Upon thirty (30) calendar days written notice to the Contractor, the City may without cause and without prejudice to any other right or remedy, terminate the contract for the City's convenience whenever the City determines that

such termination is in the best interest of the City. Where the contract is terminated for the convenience of the City the notice of termination to the Contractor must state that the contract is being terminated for the convenience of the City under the termination clause and the extent of termination. The Contractor shall discontinue all work on the appointed last day of service. (c) Cancellation for Unappropriated Funds - The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period, regardless of contract term, is subject to appropriation of funds, unless otherwise authorized by law.

29. Venue

The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida and that all litigation between them in the federal courts shall take place in the US District Court for the Southern District of Florida.

30. Prevailing Party

In the event of any litigation between the parties concerning this competitive solicitation or resulting contract, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees incurred to and through appellate and supplemental proceedings.

31. Service Test Period

If the Offeror has not previously provided the goods or services to the City, the City reserves the right to require a service test period to determine if the Offeror can perform in accordance with the requirements of the Contract, to the City's satisfaction, and within the rights of the City in determining an award recommendation. The length of such test period shall be determined by the City, and shall be an appropriate timeframe for the City to effectively evaluate the goods and services offered. The service test period shall be conducted under all specifications, terms and conditions contained in the Contract.

32. Transfer of Responsibility

Upon expiration, termination, or cancellation of the contract, the contractor shall assist City of Deerfield Beach to insure an orderly transfer of responsibility and/or continuity of those products and services required under the terms of the contract to an organization designated by City of Deerfield Beach, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities: (a) The contractor shall deliver, FOB destination, prepaid, all records, documentation, reports, data, recommendations, master, or printing elements, etc., which were required to be produced under the terms of the contract to City of Deerfield Beach and/or to City of Deerfield Beach's designee within seven (7) calendar days after receipt of the written request. Any and all records which are on electronic media must be delivered in a format which is compatible with the system(s) currently in use by City of Deerfield Beach. (b) The contractor shall agree to continue providing any part or all of the services in accordance with the terms and conditions of the contract for a period not to exceed ninety (90) calendar days after the expiration, termination or cancellation date of the contract for a price not to exceed those prices set forth in the contract.

33. Risk of Loss

The risk of loss, injury or destruction, regardless of the cause of the casualty, shall be on the Successful Offeror until the delivery of completed project and facilities to the City, and inspection and final acceptance of the entire project by the City. Title to all goods, chattel and facilities shall pass to City upon delivery and acceptance of the goods by City as evidenced in writing.

34. Delivery

All items shall be delivered FOB destination to a specified City address. All delivery costs and charges must be included in the bid price. The City reserves the right to cancel orders or any part thereof, without obligation if delivery is not made at the time specified in the contract.

SECTION IV - SPECIAL TERMS AND CONDITIONS

1. Nonexclusive Contract

Offeror agrees and understands that any contract entered into pursuant to this competitive solicitation shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services at its sole option.

2. Minimum Qualifications

To be considered responsive to this competitive solicitation the Offeror or any proposed sub-contractors must meet the following requirements:

- Be a Federal or Florida chartered bank.
- Be a member of the Federal Reserve System.

3. Contract Term

(a) Initial Term and Renewal Options - The initial contract term shall be for five (5) year and shall commence upon final execution of the Contract by the City or as otherwise indicated in the final contract. The City reserves the right to extend the contract for two (2) additional five (5) year renewal terms providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City. **(b) Contract Extension** - In the event services are scheduled to end because of the expiration of the contract, the Contractor shall continue the service upon the request of the City Manager or designee. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Proposer shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.

4. Federal, State and Local Regulations

The successful Offeror shall comply with all federal, state, and local ordinances, regulations, and rules as well as any other laws that would apply to the proposed project.

5. Software Demonstrations

The City will require a software demonstration from the shortlisted proposers. Software demonstrations will be provided during the oral presentations/software demonstration portion of the evaluation process. Please refer to Section 5 for further details.

SECTION V - INSURANCE REQUIREMENTS

The Offeror's response shall include evidence of insurability meeting the insurance requirements stated herein. The successful Offeror shall not commence the work or otherwise perform the work as required by the resulting Contract until the requirements stated herein are met and the Certificate(s) of Insurance are approved by the City. The Successful Offeror shall assume full responsibility and expense to obtain all necessary insurance.

1. General

- a. Successful Offeror shall furnish to the Purchasing Division a Certificate of Insurance or endorsements evidencing the insurance coverage specified herein within fifteen (15) calendar days after notification of award of the Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to the Contract (Solicitation Title and Number), and state that such insurance is as required by this Contract. Contractor's failure to provide to City the Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Contract.
- b. Such policy or policies shall be without any deductible amount unless otherwise noted in this Contract and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. Contractor shall pay all deductible amounts, if any. Contractor shall specifically protect City and the Deerfield Beach City Commission by naming City and the Deerfield Beach City Commission as additional insured under the Commercial Liability Policy as well as on any Excess Liability Policy coverage.
- c. Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of Contractor is complete including all renewal terms. All policies must be endorsed to provide City with at least thirty (30) days' notice of expiration, cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- d. City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Contract, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage. If Contractor uses a subcontractor, Contractor shall ensure that subcontractor names City and the Deerfield Beach City Commission as additional insured under the Commercial Liability Policy as well as on any Excess Liability Policy coverage.

2. Coverages

Successful Offeror shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Contract the following insurance as indicated with a checkmark:

- Commercial Liability Insurance** - A Commercial Liability Insurance Policy shall be provided which shall contain limits of no less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury liability, personal injury liability and property damage liability on a per project basis, and shall contain limits of no less than a Two Million Dollars (\$2,000,000.00) aggregate.

Coverage must be afforded on a form no more restrictive than CG 20 10 10 01 and CG 20 37 10 01 Commercial Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: premises and operations, independent contractors, products and/or completed operations for contracts, broad form contractual coverage applicable to this specific Contract including any hold harmless and/or indemnification Contract, personal injury coverage with employee and contractual exclusions removed and policy limits shall be applied on a primary and non-contributory basis.

- Professional Liability (Errors & Omissions) Insurance** - Professional Liability Insurance with the limits of liability provided by such policy for each claim and on a claim made basis or on an occurrence basis to be no less than one million Dollars (\$1,000,000) per occurrence with a limit of no less than two million dollars (\$2,000,000) aggregate with a deductible per claim not to exceed ten percent (10%) of the limit of liability. Consultant shall notify the City in writing within thirty (30) days of any claim filed or made against its Professional Liability Insurance Policy. Consultant acknowledges that the City is relying on the competence of the Consultant to design the project to meet its functional intent. If it is determined during construction of the project that changes must be made due to Consultant's negligent errors and omissions, Consultant shall promptly rectify them at no cost to City and shall be responsible for additional costs, if any, of the project to the proportional extent caused by such negligent errors or omissions.
- Business Automobile Liability** - Business Automobile Liability shall be provided with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence or combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must at a minimum include liability coverage symbols: 2 (owned vehicles), 8 (hired vehicles) and 9 (non-owned vehicles).
- Workers Compensation Insurance** - Workers' Compensation insurance to apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable Federal laws. In addition, the policy(ies) must include employers' liability with a limit of One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) aggregate limit by disease and One Million Dollars (\$1,000,000.00) each employee by disease. Additionally, if there will be operations undertaken on or about navigable waters, a coverage endorsement must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act. If exempt for Worker's Compensation, proper documentation shall be provided.
- Fidelity Bond/Crime Insurance** - Contractor shall maintain a Fidelity Bond or Commercial Crime insurance including coverage for employee dishonesty, fraud, forgery, alteration and computer crime, when applicable; also Inside/Outside Money & Securities coverage for city-owned assets in the care, custody and control of the contractor. Coverage limits shall not be less than One Hundred Million Dollars (\$100,000,000.00), the amount scheduled in the contract.
- Pollution Liability Insurance** - Pollution Liability Insurance for bodily injury, property damage, clean-up costs or corrective action and defense coverage with a limit of no less than \$1,000,000 each incident and a general aggregate limit of no less than \$1,000,000.

This insurance shall include coverage for, but not be limited to; sudden and accidental discharges; dispersal; seepage; release or escape of any solid, liquid gaseous or thermal irritant or contaminant, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste material into or upon land or any structure on land, the atmosphere or any watercourse or body of water, including groundwater.

SECTION VI – SCOPE OF WORK

1. The City of Deerfield Beach, as the lead agency for this contract and on behalf of the Southeast Florida Governmental Purchasing Cooperative Group. The City of Deerfield Beach is a community of 78,000 residents located in Northern Broward County. The City is midway between Fort Lauderdale and West Palm Beach and is neighbored by Boca Raton, Coral Springs and Pompano Beach. This 16.3 square mile community and is home to a diverse residential, commercial and industrial population.

2. DEFINITIONS

- a. Cardholder: A person to who a procurement card is issued.
- b. Company Account: The corporate account established for the Participating Entity.
- c. Department Coordinator: The designated staff by the Participating Entity who will manage the Purchasing Card Program for the entity.
- d. Departmental Card: A Purchasing Card issued in the name of a department, commodity or service.
- e. Declining Balancing Card: A "Cardless Account" set up with funding for a single amount used for a specific purpose and time period.
- f. ePayable: an electronic payment that replaces a traditional paper check payment with a procurement card payment.
- g. Group: A department such as a parent group or subgroup.
- h. Qualified Large Ticket Transaction: A transaction which, based on the merchant and dollar amount, is subject to the Large Ticket Interchange program, as determined by and amended by Visa and MasterCard.
- i. Participating Entity: A participating governmental entity of the Southeast Florida Governmental Purchasing Co-Operative Group may elect to utilize the resulting contract subject to the mutual agreement public entity and the Contractor. Below is a list of entities which have elected to participate:
 - City of Aventura
 - City of Coral Springs
 - City of Deerfield Beach
 - City of Hallandale Beach
 - City of Margate
 - City of North Lauderdale
 - City of Oakland Park
 - City of Plantation
 - Town of Southwest Ranches
 - City of Sunny Isles Beach

- Town of Davie
- Village of North Palm Beach
- City of West Palm Beach

Potential agencies:

- | | |
|---|-----------------------------|
| City of Boca Raton | City of Miami Gardens |
| Broward College | Town of Miami Lakes |
| Broward County Housing Authority | City of Miramar |
| Broward County Purchasing | City of North Miami Beach |
| Broward County School Board | Town of Palm Beach |
| Broward Sheriff Office | Palm Beach Sheriff's Office |
| Children's Svs Council of Palm Beach County | Village of Palm Springs |
| City of Coconut Creek | Town of Pembroke Park |
| City of Cooper City | City of Pembroke Pines |
| City of Greenacres | City of Pompano Beach |
| City of Hollywood | City of Riviera Beach |
| Town of Lantana | City of Sunrise |
| City of Lauderdale Lakes | City of Tamarac |
| City of Lauderhill | Village of Wellington |
| City of Lighthouse Point | City of Weston |
| City of Miami | City of Wilton Manors |
| City of Miami Beach | |

- j. Program Administrator: The designated staff by the Participating Entity to oversee their respective Purchasing Card Program.
- k. Purchasing Card: a "Purchasing Card", "Departmental Card", "Term Account" or "Declining Balance Card".
- l. Proxy: The designated staff by the Participating Entity who will reconcile transactions in web-based card management application on behalf of a cardholder.
- m. Scoped: A designated or specified group.
- n. Term Account: A "Ghost" or "Cardless Account".
- o. User: An individual who is assigned a login in the web-based card management application.

3. INTRODUCTION

- a. The CONTRACTOR must have a web-based card management application that is capable of producing an interface.

- b. Due to the widespread merchant acceptance of Visa or MasterCard, the CONTRACTOR'S Purchasing Card Program must utilize a Visa or MasterCard.
- c. The Purchasing Card Program may be utilized by the listed Participating Entities (See Section 2 g) of the Southeast Florida Governmental Purchasing Co-Operative Group only or as authorized by the lead agency City of Deerfield Beach.
- d. The City of Deerfield Beach shall be the lead agency for the Contract promulgated from this RFP.
- e. Each Participating Entity will be responsible for obtaining their respective entity's approval for use of this Contract and for control of their own Purchasing Card Program under the terms and conditions of this RFP and subsequent Contract. In no event shall the City of Deerfield Beach be liable for acts or omissions of other Participating Entity's activities under their own Purchasing Card Program.
- f. The Southeast Florida Governmental Purchasing Co-Operative Group does not guarantee any minimum amount of purchases by Purchasing Cards as a result of this RFP or guarantee a minimum number of cards requested for issuance to employees of any participating entity or combination of all participating entities.
- g. The Purchasing Card Service Program shall permit designated employees in each Participating Entity to make purchases for commodities and services; shall allow each Participating Entity to establish individual card limits; and shall include controls which shall allow oversight of Purchasing Card use including, but not limited to, initial approval, final approval and revocation of authority for all or individual card accounts by each Participating Entity.
- h. Employees designated as cardholders by each Participating Entity shall be trained in all aspects of the Purchasing Card use and in responsibilities of each Participating Entity's Program and the CONTRACTOR as specified in Section 16.

4. SCOPE OF SERVICES - GENERAL

- a. The Contract Shall:
 - i. Provide a Purchasing Card Program at no upfront cost to the Participating Entities;
 - ii. Provide an accounts payable electronic payment solution targeting disbursement and spending at no cost to the Participating Entities;
 - iii. Provide potential shared savings opportunities to the Participating Entities;
- b. The CONTRACTOR will be required to:
 - i. Provide a web-based card management application with proper system and application controls;

- ii. Commit knowledgeable, experienced, responsive staff responsible for customer service, program management and support with web-based card management application and accounts payable electronic payment solution;
- iii. Interface electronic data with the Participating Entity's accounting system(s) on a user-defined schedule;
- iv. Provide updates to interface as needed;
- v. Provide upgrades to web-hosted card management application at no cost to the Participating Entities;
- vi. Provide a prototype or demo environment as part of implementation;
- vii. Provide a smooth transition between the current and new CONTRACTOR with minimal impact on cardholders and Program Administrators;
- viii. Provide direct support through the first monthly migration of a web-based card management application in an effort to minimize a disruption of business;
- ix. Shall complete a post-implementation review to determine if the Participating Entity's expectations were met; In the event the expectation were not met, the Contractor shall take corrective actions and provide a remedy to the Participating Entity.
- x. Work with the Participating Entities to develop an understanding of the needs, processes and policies;
- xi. Assist the Participating Entities in developing best practices individual spending limitations and other Program restrictions and controls;
- xii. Understand the Participating Entities' financial responsibilities and billing and payment procedures;
- xiii. Assist Participating Entities in developing periodic internal reports;
- xiv. Provide a comprehensive summary of its Purchasing Card Program incorporating mandatory requirements to meet the needs of the Participating Entities;
- xv. Provide action plan(s) for assisting the Participating Entities in the development, implementation and modification of procedures and processes and recommend changes to rules and policies relative to Purchasing Card use;
- xvi. Commit to increased usage of the Purchasing Card and identify areas for greater efficiency through an annual assessment;
- xvii. Provide training and conference opportunities for the Participating Entities' Program Administrators and users;

- xviii. Provide toll-free phone numbers for all communications related to the contract;
- xix. Provide the option of term accounts, departmental cards and declining balance cards;
- xx. Establish individual credit limits for the Participating Entities;
- xxi. Not sell, rent, or otherwise distribute cardholder information or spend data without the express written consent of the Participating Entity;
- xxii. Not allow cash, cash advances or ATM usage under the scope of this contract; and
- xxiii. Have an established program to recruit new businesses when notified by the Participating Entities that a vendor did not accept the Purchasing Card.

5. WEB-BASED CARD MANAGEMENT APPLICATION

- a. The CONTRACTOR shall be required to deliver, install, maintain, and offer support services for its web-based card management application to the Participating Entities at no cost.
- b. Program Administrator shall:
 - i. Have access to all administrative functions in application;
 - ii. View real-time decline/authorization data;
 - iii. Change Merchant Category Code Groups (MCCG) real-time;
 - iv. Manage card accounts online real-time;
 - v. Manage Global settings;
 - vi. Create card profiles to specify the credit limits and transaction controls for groups or individual Cards. Transaction controls can include transaction limits, restricting automatic signoff, the amount of discretionary funds available, and the permitted Merchant Category Codes (MCCs) that determine the type of merchants where the cardholder can make purchases;
 - vii. Request new cards, request replacement cards, and deactivate cards (permanently disable or report as lost or stolen);
 - viii. Update the default general code segments;
 - ix. Control the funds available on a card by managing two types of funds: discretionary and incremental; and assign cardholders, Approvers, Scoped Accountants and/or Department Coordinators to a group.
 - x. Discretionary funds; are defined as the funds assigned to a card based on a respective card limit. These funds are restored each cycle based on cardholder, disputed transactions, approver or scoped accountant sign-off (a defined setting).

- xi. Incremental funds; are defined as funds temporarily added as additional funds that would exceed discretionary funds. Incremental funds would be temporarily added to a card upon approval of an electronic request in the web-based management application.
- c. Card Control shall:
 - i. Allow for a single transaction limit, a daily limit and a cycle limit restriction on Cards; and
 - ii. Allow the Participating Entity to establish individual card limits.
- d. Card Program Spending shall:
 - i. Allow defined program settings to notify the respective Program Administrators when the Participating Entity's spending matches a percentage of the master credit limit.
- e. Spend Reconciliation shall:
 - i. Provide a reconciliation process that allows appropriate cardholders review, fully allocate and signoff on all transactions in the application; and
 - ii. Document in the application the name, date and time of the User who signed off on each transaction.
- f. Groups shall:
 - i. Allow for each group to include a Coordinator(s) and at least one Approver; and
 - ii. Allow defined roles to be directly assigned to all members that are added to the parent group and subgroups from the parent group.
- g. Cardholder Review and Signoff shall:
 - i. Allow for a designated proxy role to allocate and signoff transactions on a cardholder's behalf;
 - ii. Notify a cardholder/proxy via email when a transaction enters the cardholder's queue;
 - iii. Reconcile a transaction by:
 - Editing the transaction to change its General Ledger allocation and add a proper description; notes, etc.
 - iv. Dividing, and/or disputing the transaction before signoff.
 - v. Restrict a transaction that does not have complete General Ledger information or is not fully allocated to the total dollar amount of the transaction to be signed off; and

- vi. Allow signed off transactions to electronically route real-time to the next program defined role.
- h. Approver Review and Signoff shall:
 - i. Notify an Approver via email when a transaction enters the Approver's queue;
 - ii. Allow the program defined Approver role to access transactions from the queue and proceed to edit, flag, dispute, or signoff transactions;
 - iii. Never be allowed to signoff their own transactions as the Approver;
 - iv. Allow signed off transactions to electronically route real time to the next program defined role; and
 - v. Allow program defined Approver role to temporarily delegate authority.
- i. Scoped Accountant shall:
 - i. Allow for multiple Scoped Accountants responsible for signing off transactions for scoped departments;
 - ii. Allow for multiple Scoped Accountants responsible for signing off transactions from the queue and proceed to sweep, edit, flag, dispute, or close transactions; The term "Flag" would be used for a Scoped Accountant to electronically send a transaction back to its initiator (cardholder or proxy) to correct or elaborate on a transaction; and
 - iii. Allow signed off transactions to electronically route real-time to the queue for transactions ready to batch
- j. Accountant shall:
- k. Allow the program defined Accountants to access closed transactions from a ready to batch queue and proceed to export transactions, lock the batch and/or unlock the batch, and generate customized reports.
- l. Department Coordinator shall:
 - i. Allow for one individual or more in each department to view User and Card information related to their scoped users and reporting of such.
- m. Merchant Category Codes (MCC) and MCC Groups (MCCG) shall:
 - i. Allow for customized Merchant Category Code grouping if currently used by the entity; and
 - ii. Allow MCCG's to control whether a purchase is permitted for use with merchants within a particular category.

- n. User Name shall:
 - i. Allow the User Name to be a pre-defined alpha numeric sequence (i.e. HBCXXXX); and
 - ii. Allow User Name to be available as criteria to print with a customized report listing card information (last four digits of card, department and name, etc.) and transaction information; and
 - iii. Allow Users to call a toll-free number to reset their passwords or through the website.
- o. General Ledger Settings shall:
 - i. Allow two segments to make up the completed general ledger code;
 - ii. Allow the segments to include a description chart of accounts;
 - iii. Allow for an eight (8) to twelve (12) alpha numeric segment combination known as an Index Code;
 - iv. Allow for a four digit numeric segment combination known as a Sub-Object Code;
 - v. Allow for a forward slash (to separate the Index and Sub-Object Code segments);
 - vi. Allow for cardholder information to include a default general ledger segment that is mapped to all transactions posting into the application; and
 - vii. Not allow a default segment for a cardholder to be removed upon rendering a card lost or stolen.
- p. Reports shall:
 - i. Be available in a PDF file format or other electronic format acceptable by the Project Manager;
 - ii. Include the criteria of a User Name as part of report; and
 - iii. Generated auto e-mail on decline transactions; and
 - iv. Identify and report if a cardholder exceeded their single transaction limit with a vendor in a given day.

6. CUSTOMER SERVICE/ACCOUNT MANAGER

- a. The CONTRACTOR shall assign individuals to each Participating Entity to act in the capacity of an Account Manager and Customer Service Representative.
- b. The CONTRACTOR shall assign an Account Manager proximate to the Participating Entities.

- c. The CONTRACTOR shall provide after-hour contact information.
- d. Upon receipt, these individuals shall return urgent calls/emails within two (2) hours and routine calls/emails within 24-hours.
- e. Failure of the Account Manager to respond as stated above may be grounds for a Participating Entity to request a different Account Manager for itself or a Participating Entity.

7. CENTRAL ACCOUNT BILLING STATEMENT/CARDHOLDER STATEMENTS

- a. Cardholder statements with a zero balance shall not be mailed out.
- b. Consolidated billing statement shall be received electronically or as specify by user agency.
- c. Consolidated billing statement each cycle to the Participating Entity shall be received no later than ten (10) business days prior to the payment due date.

8. BILLING CYCLES

- a. The Southeast Florida Governmental Purchasing Co-Operative Group requires the CONTRACTOR to provide a monthly billing cycle.

9. CARD FORMATTING

- a. The CONTRACTOR shall provide a card format distinctive to the other Participating Entities with the following minimum elements:
- b. The phrase, "SALES TAX EXEMPTION NUMBER" followed by the Participating Entities' exemption number.
- c. The CONTRACTOR'S 24-hour toll-free help line telephone number shall be printed on the back.
- d. There shall be no reference to Automatic Teller Machines (ATM's), or other advertising.
- e. Layout and artwork shall be subject to approval of the Participating Entity before distribution begins.

10. CARD ISSUANCE

- a. Initial Card: Each Participating Entity will administer its own procurement function and determine to whom the cards shall be issued and at what limits. The CONTRACTOR shall not issue any cards without the approval of the respective Program Administrator and each card shall be delivered within five (5) business days of order via overnight or bulk mail.

- b. Additional Cards: Requests for additional cards shall be fulfilled within five (5) business days after receipt of a properly authorized request via overnight or bulk mail.
- c. Replacement Cards: The CONTRACTOR shall fulfill a card replacement request within 48 hours of notification of a lost or stolen card via overnight mail.

11. PROGRAM MONITORING

- a. The CONTRACTOR shall specify any other limits or controls which are available for the Participating Entity's determination on Purchasing Card usage which may be added at the Entity's option to the Contract as part of the Purchasing Card Service Program.

12. MISUSE AND LIABILITY

- a. Lost/Stolen Card:
 - i. Upon cancellation notification by the participating entity, lost or stolen cards shall be cancelled immediately by the CONTRACTOR after notification. The Participating Entities will NOT be liable for any charges resulting from unauthorized use.
 - ii. The Participating Entities will NOT be liable for any charges resulting from unauthorized use.
- b. Fraud:
 - i. Proposers shall identify in its proposal appropriate controls for implementation to identify fraudulent use of any Purchasing Card and appropriate responses by the parties upon identification of such fraudulent use.
 - ii. The CONTRACTOR will contact the Program Administrator in situations where the cardholder cannot be reached to verify suspicious transactions in an effort to limit cards being temporarily blocked without the cardholder's knowledge.
 - iii. Transactions determined to be fraudulent by the CONTRACTOR and the Participating Entities shall not result in the Company Account being in default.
- c. Misuse: Each Participating Entity shall implement internal procedures that address misuse of Purchasing Cards by their cardholders.

13. DISPUTED ITEMS

- a. Disputed items arise as a result of an unauthorized transaction, charge amount does not agree with order authorizing the charge, merchandise or services not received; defective or wrong merchandise, recurring charge after cancellation, recurring charges already paid by other means, credit appears as a charge, credit from Merchant not received, hotel reservation cancelled, double or multiple charges, or do not recall the transaction.
- b. Transactions placed in dispute by the Participating Entities will not result in the Company Account being in default.

14. PARTICIPATING ENTITY ENROLLMENT

- a. Procedures relative to CONTRACTOR establishing each Participating Entity's account shall be performed as described in the CONTRACTOR'S proposal.
- b. The CONTRACTOR shall provide the Participating Entity name, address and authorized representative's telephone number and email address.

15. REVENUE SHARING INCENTIVE

- a. Revenue sharing incentive will be fixed under the term of the contract and any renewals, unless more favorable terms are offered and accepted by the lead agency.
- b. If for any reason, during the term of the contract, the CONTRACTOR increases the incentive for similar services or products to another entity with similar or smaller contract volume, the Southeast Florida Governmental Purchasing Co-Operative Group shall receive an equivalent increase in incentives if applicable.
- c. Incentives shall be paid within sixty (60) days after a consecutive 12 month period and be paid directly from the CONTRACTOR to each Participating Entity. Due to the start and end date of the contract, the first and last revenue sharing incentive may be less than a 12 month period.
- d. Revenue Sharing Incentive Calculation:
 - i. CONTRACTOR shall calculate incentives for the Southeast Florida Governmental Purchasing Co-Operative Group based on the aggregate net purchase volume tier and grace period of the Participating Entities.
- e. Revenue Sharing Incentives Reporting:
 - i. CONTRACTOR shall send a report to the Southeast Florida Governmental Purchasing Co-Operative Group of net purchase volume for each Participating Entity.
 - ii. The report shall be sent via email to each Program Administrator within sixty (60) days after a consecutive 12 month. Due to the start and end date of the contract, the first and last report may be less than a 12 month period.
 - iii. The report shall be formatted in Microsoft Excel or other electronic format acceptable by the Southeast Florida Governmental Purchasing Co-Operative Group.
 - iv. The Southeast Florida Governmental Purchasing Co-Operative Group will verify its net purchase volume by comparing the figure provided by the CONTRACTOR to figures in the web-based card management application. In the event of a discrepancy, the CONTRACTOR shall review its calculation and provide a determination to the Southeast Florida Governmental Purchasing Co-Operative Group.
- f. Revenue Sharing Incentive Payment

- i. CONTRACTOR shall pay incentives directly to Participating Entities. The incentives shall be calculated based on the appropriate net purchase volume tier and grace of their respective net purchase volume.

16. TRAINING

- a. The CONTRACTOR shall provide training for each Participating Entities at no additional cost. Training shall be provided on a "train the trainer" basis. On-site training shall be available at the location designated by the user agency at implementation and/or on a needed basis. Every attempt will be made to consolidate training sessions as applicable. The following topics will be addressed:

- i. Cardholders/Proxy

- Access application
- Log in/out application
- Password rules
- Layout of application
- Navigating application
- Managing requests
- Managing transaction allocation and signoff
- Reports

- ii. Approvers

- Access application
- Log in/out
- Password rules
- Layout of application
- Navigating application
- Approving/rejecting requests
- Approving/rejecting transactions
- Group approval rules and delegating approval authorities
- Reports

- iii. Scoped Accountants

- Access application
- Log in/out application
- Passwords rules
- Layout of application Navigating application Filtering transactions
- Transaction review and close
- Sweep transactions
- Reports

- iv. Accountants

- Access application

- Log in/out application
- Passwords rules
- Layout of application
- Navigating application
- Transaction report
- Export batch
- Batch lock/unlock

v. Administration

- Access application
- Log in/out application
- Passwords rules
- Layout of application
- Navigating application
- Application structure overview
- Program defined settings
- Managing users and groups
- Managing requests
- Managing Payable Documents
- Managing card profiles
- Managing cards
- Reports

TD COMMERCIAL PLUS CARD

Master Agreement

This TD Bank Commercial Plus Card Master Agreement (the “**Agreement**”) is entered into as of _____ 2020 , between the **City of Cooper City** (the “**Company**”), with its main office in Deerfield Beach, Florida and **TD BANK, N.A.** (“**TD**”), a national banking association, with its main office in Wilmington, Delaware.

RECITALS

WHEREAS, TD is a member and licensee of Visa U.S.A., Inc. (“**Visa**”) and as such is authorized to issue Visa® charge cards bearing Visa logos and service marks, to open Visa accounts, to offer Visa services and benefits as they may be made available, and to process transactions on Visa networks; and

WHEREAS, TD has developed a commercial card system composed of Visa charge cards, card controls, transaction processing, and select reports to enable a business concern to facilitate, expedite and monitor the purchase of, and payment for, goods and services acquired for the legitimate business benefit of the business concern (the “**Program**”); and

WHEREAS, the Company desires to participate in the Program, subject to the terms of this Agreement;

This TD Commercial Plus Card Master Agreement shall be and is hereby incorporated by reference into and forms part of the “Contract” between the parties, the terms of which include: (1) the City of Deerfield Beach Request for Proposal #2015-16/32 (the “RFP”); (2) TD Bank’s Response to Request for Proposals (RFP) for Banking Services dated April 26, 2016 including the Supplemental Certification (the “Proposal”); and (3) the parties’ (a) TD Commercial Plus Card Master Agreement (the “Agreement”). The parties agree that any ambiguity, conflict or inconsistency in the foregoing documents that together constitute the Contract shall be resolved in the following order: (1) the Agreement; (2) the Proposal; and (3) the RFP.

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

SECTION 1 DEFINITIONS

1.1 DEFINITIONS. Certain terms used in this Agreement, unless the context requires otherwise, shall have the following meanings.

“**Account**” means the Visa account of a Cardholder and/or the Company maintained with TD.

“**Billing Cycle**” means a monthly period that ends on the same day each calendar month, unless such day is not a Business Day, in which case, the last day of such period shall be the Business Day immediately before or after such day.

“**Business Day**” means a day, other than a Saturday or a Sunday, on which commercial banks generally are open for business in Delaware.

“**Card**” means a tangible Visa charge card (“**Tangible Card**”) issued by TD pursuant to this Agreement or a virtual Visa charge card number (“**Virtual Card**”) created by TD pursuant to this Agreement, as appropriate.

“**Card Cancellation Confirmation**” means a written statement executed by a Program Administrator, as defined in

Section 2.6(b), in form and substance satisfactory to TD, identifying certain Cards by Account numbers and Cardholder names and confirming (i) that the Company has retrieved and destroyed such Cards, or (ii) that the Company used reasonable efforts to retrieve such Cards but was unable to do so.

“**Cardholder**” means an individual in whose name a Card is issued or any other employee, officer or director of, or other individual designated by, the Company as being expressly authorized to use a Card or Account.

“**Cardholder Agreement**” means an agreement between TD and a Cardholder governing the use of a Card or Account, as amended from time to time.

“**Restricted Transaction**” means a restricted transaction as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Federal Reserve Board Regulation GG (12 C.F.R. Part 233) and includes, without limitation, those in which credit, electronic fund transfers, checks, or drafts are accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

“Straight Through Processing” means the processing of a Transaction on Visa networks, without the use of a Tangible Card or Virtual Card, using an Account number, whereby the purchase results in a direct credit to the seller’s merchant bank account.

“Transaction” means a purchase that results in a debit to an Account.

“Unauthorized Transaction” means any Transaction by a person, other than the Cardholder to whom the relevant Card, if any, was issued, who was not authorized to use such Card or Account by either such Cardholder or the Company and from which Transaction neither the Cardholder nor the Company receives any direct or indirect benefit.

SECTION 2 CARD ISSUANCE

2.1 PROGRAM PARTICIPATION. Subject to the terms of this Agreement, TD shall issue Cards to, and/or establish Accounts for, the Company with such capabilities and with such processing of Transactions as may be offered by TD and selected by the Company. Tangible Cards shall be issued for a period of three (3) years. **The Company and Cardholders shall use the Cards and Accounts for the business or commercial purposes of the Company only and not for personal, family, or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.** The Company shall instruct all Cardholders to use the Cards and Accounts strictly for the business or commercial purposes of the Company.

2.2 EMBOSSING; LICENSE TO USE MARKS. If requested, TD shall prepare Cards bearing the Cardholder’s name and, if the Company so elects, the Company’s name, trademark, or logo (the **“Marks”**), in a form supplied by the Company and conforming to TD and Visa guidelines. If the Company elects to have its Marks embossed on the Cards, or provides them to TD for other purposes, then by doing so the Company grants TD a non-exclusive limited license to apply the Marks to the Cards or to use them for the purposes for which they were provided, so long as they are used solely in connection with the Program.

2.3 CARD DELIVERY. TD will deliver Cards and related Program materials to the Company. Upon receipt of any Card, the Company shall promptly deliver such Card to the Cardholder named thereon together with any related Program materials supplied by TD. From time to time during the term of this Agreement, TD may require the Company to follow certain security procedures regarding the custody and handling of Cards. The Company agrees to comply with all such security procedures.

2.4 CREDIT LIMITS; CHANGES AT THE DISCRETION OF TD.

(a) Subject to the terms of this Agreement and the Cardholder Agreements, TD shall authorize extensions of credit with respect to (a) each Card or Account up to a specified total dollar amount (the **“Account Credit Limit”**) set by the Company, and (b) all Cards and Accounts up to a specified total dollar amount (the **“Aggregate Credit Limit”**) set by TD from time to time. In no event shall TD be obligated to grant credit in excess of any applicable credit limit. TD may at any time investigate the financial condition of the Company, in connection with the issuance of Cards, maintenance of Accounts, and establishment of credit limits, or as otherwise provided in this Agreement.

(b) In its sole discretion, TD may decline to issue or establish any Card or Account for any Cardholder. In addition, TD at any time may cancel or suspend the right of any Cardholder to use any Card or Account. As a result of its investigation of the Company’s financial condition, TD may increase or decrease any Account Credit Limit, increase or decrease the Aggregate Credit Limit, modify the time for payment of any amount due under this Agreement, or require collateral or additional collateral and the execution of a security agreement in the form provided by TD. In addition, TD may suspend the rights of all Cardholders to use any Cards or Accounts in the event of excessive disputes, or in the event of excessive loss, theft or unauthorized use of Cards or Accounts, as determined by TD in its sole discretion. All such actions may be taken without notice except to the extent that notice is available through the proprietary system provided by TD for use under this Agreement (**“TD Commercial Plus Card Online”**) or as otherwise required by applicable law.

2.5 ISSUANCE, RENEWAL, REPLACEMENT AND CANCELLATION OF CARDS AND LIABILITY FOR UNAUTHORIZED USE.

(a) Promptly following its execution of this Agreement, the Company will provide to TD an initial request (a **“Card Request”**) either electronically, using TD Commercial Plus Card Online, or in writing, using a form provided by TD. Such Card Request shall include the names, titles, business addresses, phone numbers, birth dates and last four digits of Social Security numbers of at least ten Cardholders to whom or for whom the Company wishes TD to issue a Tangible Card and/or establish an Account. The Company may, from time to time, submit additional Card Requests either electronically, using TD Commercial Plus Card Online, or in writing, using a form provided by TD. The Company agrees not to submit, without the prior written consent of TD, a Card Request with respect to any person whose Card or Account privileges have previously been cancelled.

(b) Each Card Request must be submitted by a person identified by Company as a "Program Administrator" as that term is defined in Section 2.6(b) of this Agreement. TD shall incur no liability to the Company in acting upon any Card Request which it believes in good faith to have been made by a Program Administrator.

(c) Where emergency issuance of a Card is requested, TD may fulfill such request at an additional charge as determined by TD from time to time. The current charge in effect as of the date of this Agreement is set forth in a separate rebate schedule provided to Company by TD (the "Rebate Schedule"). If affected through Visa, the Company shall pay any fees charged by Visa for emergency card issuance or replacement. The billing for such charge shall occur in the next billing statement for the relevant Account. Unless TD receives contrary written instructions from the Company, and subject to TD's rights hereunder, TD shall replace each expiring Card with a replacement Card at least 30 days prior to the Card's expiration date.

(d) Each Cardholder shall be required to sign the Card issued to such Cardholder promptly and shall be subject to the terms of the Cardholder Agreement, if any.

(e) The Company shall promptly request that a Card or Account be cancelled, or that the authority of any Cardholder to use a particular Card or Account be terminated, as the case may be, if the Company or a Cardholder knows of or suspects the loss, theft or possible unauthorized use of a Card or Account. Such request shall be made by telephone at 1-877-839-6911 or such other number as TD may provide, and shall specify (i) the relevant Cardholder's name, Account number and last known home and business address, and (ii) such other information as the Company shall deem appropriate or TD shall reasonably request. The Company's request shall be deemed effective when TD receives such request and makes the corresponding changes in its processing system (which changes shall be made promptly, taking into account the mode of transmission and time of receipt).

(f) The Company shall also promptly request that a Card or Account be cancelled, or that the authority of any Cardholder to use a particular Card or Account be terminated if (i) the Company wishes to cancel a Card or Account or to terminate the authority of any Cardholder to use any particular Card or Account; or (ii) the Cardholder's employment or other relationship with the Company is terminated. Such requests shall be made in accordance with Section 2.5(e).

(g) Notwithstanding any request made by the Company for cancellation of a Card or Account, or for termination of the authority of any Cardholder to use any particular Card or Account, the Company shall be liable for any and all Transactions resulting from the use of the Card or Account prior to and (with respect to pending

Transaction authorizations) on or after the effective time of such request (as provided in Sections 2.5(e) and (f), above), including any and all Unauthorized Transactions. The Company shall not be liable for Unauthorized Transactions which are authorized after TD receives notice as provided in accordance with Sections 2.5(e) and (f) above, and TD has had a reasonable opportunity to act on such notice; provided, however, that the notice relates to the Card or Account used in connection with such Unauthorized Transactions.

2.6 TRANSACTION DATA, SECURITY PROCEDURES, PROCESSING PROCEDURES AND ACCOUNT MAINTENANCE.

(a) TD shall provide the Company with user identification code and password-protected daily access to Card and Account transaction data and other reports. Such reporting shall be provided in accordance with such manuals, training materials and other information as TD shall provide from time to time.

(b) In order to use TD Commercial Plus Card Online and/or the Virtual Card and Straight Through Processing systems made available by TD, the Company agrees to be bound by and to adhere to the following security procedures, terms, and conditions (the "**Security Procedures**"), which TD may revise from time to time upon notice to the Company:

(i) TD Commercial Plus Card Online and Virtual Card and Straight Through Processing systems may be accessed solely through the use of user identification codes and passwords (collectively, the "**Access Code**"). TD shall assign an initial Access Code to an individual authorized to create and disseminate additional Access Codes (such individual is referred to as the "**Program Administrator**").

(ii) The Program Administrator shall assign Access Codes to users designated by the Company as authorized to (1) access and use the Service; (2) create and disseminate Access Codes to individuals who are authorized to use TD Commercial Plus Card Online (such individuals are referred to as "**Authorized Users**") and (3) designate additional Program Administrators within the Company. The Company shall be responsible for ensuring that each Program Administrator creates and disseminates Access Codes in accordance with TD's Security Procedures.

(iii) The Company shall safeguard all Access Codes and be responsible for all use of Access Codes issued by the Program Administrator. **TD may conclusively presume that all business**

conducted using an Access Code emanates from a Program Administrator or Authorized User and is conducted in the Company's name. Any unauthorized use of an Access Code (except for unauthorized use by a TD employee) shall be solely the responsibility of the Company.

(c) In order to use TD Commercial Plus Card Online and/or the Virtual Card and Straight Through Processing systems made available by TD, the Company agrees to be bound by and to adhere to such processing procedures, terms, and conditions (the "Processing Procedures") as TD shall establish from time to time upon notice to the Company.

(d) TD shall provide such assistance and training to the Company as it reasonably deems necessary to enable the Company to transmit its initial Card Requests through TD Commercial Plus Card Online and/or to initiate Card Transactions through the Virtual Card or Straight Through Processing systems made available by TD. Thereafter, the Company may from time to time, in accordance with this Agreement, and in strict compliance with the Processing Procedures and Security Procedures, initiate Card Transactions through the Virtual Card or Straight Through Processing systems made available by TD and/or use TD Commercial Plus Card Online to make additional Card Requests and to perform certain Account maintenance functions, including, without limitation, adjustment of Account Credit Limits, blocking of Visa Merchant Category Codes ("MCCs"), and cancellations or terminations of Cards or Accounts if the Cardholder's employment or relationship with the Company is terminated or for any reason other than loss, theft, or possible unauthorized use.

SECTION 3 CARD AND ACCOUNT USE

3.1 PURCHASES. Cardholders may use Cards and Accounts to purchase, in the normal course of business, goods and services in accordance with the MCCs selected or blocked at the Company's request and in accordance with any transactional limits established by the Company. TD shall use reasonable efforts to deny a request for any purchase authorization that falls outside such parameters or for any purchase authorization it believes is an Unauthorized Transaction, provided Transaction authorization is required. The parties acknowledge, however, that authorizations and declinations are necessarily based on the accuracy of the Transaction data transmitted to TD. Under no circumstances shall TD be liable to the Cardholder or the Company (nor shall the Company be relieved of its obligation to pay the amounts charged or advanced) in the event any such Transactions are permitted on the basis of inaccurate or misleading data or other factors beyond the reasonable control of TD.

3.2 USE OF CARDS. Each Transaction is subject to the terms and conditions of this Agreement and to the terms and conditions of the Cardholder Agreement, if any, in effect at the time of the Transaction. TD shall have no obligation or responsibility to the Company or to any Cardholder in the event that any merchant, entity or person refuses to honor a Card or Account. A Card or Account may be used only by the Cardholder to whom it is issued or who is authorized to use it, as the case may be, and may not be transferred to another Cardholder or any other person or entity, and any such attempted transfer shall automatically be void.

Without limiting any other rights of TD hereunder or under applicable law, TD may refuse to authorize any Transaction in the event that: (a) any balance owed by the Company in respect of the Account to which such Transaction relates or any balance owed by the Company on any Account, is past due; (b) the amount of the Transaction plus the outstanding balance (including Transactions authorized but not yet posted) of all Accounts would exceed the Aggregate Credit Limit; (c) the amount of the Transaction plus the outstanding balance (including Transactions authorized but not yet posted) of the relevant Account would exceed the Account Credit Limit for such Account; or (d) any other reason exists for declining a Transaction as set forth in this Agreement, in the Cardholder Agreement, if any, in the operating regulations of Visa, or under applicable law.

3.3 ADDITIONAL DUTIES OF THE COMPANY. The Company shall:

(a) make sure that there are at least ten Cardholders at all times, if the Company elects to use Tangible Cards;

(b) not exceed or permit Cardholders to exceed their respective Account Credit Limits or the Aggregate Credit Limit;

(c) make all reasonable attempts to ensure that each Cardholder complies with the terms of the Cardholder Agreement;

(d) promptly advise Cardholders of any changes made to their Account Credit Limits, whether made by the Company or by TD;

(e) not impose any liability on any Cardholder for an Unauthorized Transaction on any Card or Account in excess of the amount permitted under Regulation Z of the Consumer Financial Protection Bureau, 12 C.F.R. Part 1026, as amended; and

(f) return to TD, and/or provide a Card Cancellation Confirmation with respect to, any Card and related Program Materials, promptly following any request for cancellation of such Card, and all Cards and related Program

materials, promptly following the expiration or termination of this Agreement.

3.4 EXPENSE REPORTING; DISCLOSURE OF ACCOUNT INFORMATION. The Company may from time to time, by written instruction in form and substance satisfactory to TD, direct TD to furnish specific Transaction data to third parties that provide expense reporting products or services to the Company. Solely for the purpose of facilitating the Company's expense reporting objectives, TD shall transmit to such third parties the Transaction data identified in such instructions.

3.5 COMPANY OBLIGATIONS RELATING TO DISCLOSURE OF ACCOUNT INFORMATION AND INTERNATIONAL PROGRAMS. The Company shall clearly disclose to each of its Cardholders the extent, if any, to which TD will provide Transaction and Account information to third parties pursuant to Section 3.4 above or to an alliance bank through an international card program. Furthermore, the Company agrees not to submit a Card Request for any individual residing outside the United States without first obtaining approval from TD.

3.6 UNLAWFUL INTERNET GAMBLING. Restricted Transactions are prohibited from being processed through any Account or relationship with TD. In the event TD identifies a suspected Restricted Transaction, TD may deny services to the Company, close the Company's Account, and prohibit future transactions. Notwithstanding the foregoing, in the event a Restricted Transaction is processed, the Company will be liable for the transaction.

SECTION 4 LIABILITY FOR USE

4.1 PROMISE TO PAY.

(a) Unless prohibited by applicable law, or otherwise provided in accordance with any liability waiver program provided by Visa (the "Visa Liability Waiver Program"), the Company shall be liable for all Transactions that result from the Use of any Card or Account prior to and (with respect to pending Transaction authorizations) on or after the effective time of a request for cancellation or termination of a Card or Account (as provided in Sections 2.5(e) and (f) above), including but not limited to (i) Transactions by a Cardholder for business or commercial purposes of the Company in compliance with this Agreement, (ii) Transactions by a Cardholder, or a person authorized by a Cardholder, for personal family or household purposes, for the purpose of purchasing or carrying margin stock or securities, or for any other purpose, in violation of this Agreement, from which the Cardholder receives a direct or indirect benefit, and (iii) all Unauthorized Transactions resulting from the

use of the Card or Account prior to (and with respect to pending Transaction authorizations) on or after the effective time of a request for cancellation or termination of a Card or Account (as provided in Sections 2.5(e) and (f) above). The Company shall not be liable for Unauthorized Transactions which are authorized after TD receives notice as provided in accordance with Sections 2.5(e) and (f) above, and TD has had a reasonable opportunity to act on such notice; provided, however, that the notice relates to the Card or Account used in connection with such Unauthorized Transactions.

(b) Regardless of any Account Credit Limits or the Aggregate Credit Limit, the Company agrees to pay and perform when due all of its obligations under this Agreement ("Obligations"), including without limitation:

(i) with respect to all Accounts, the indebtedness, obligations and liabilities arising under such Accounts, including, without limitation, all fees, finance charges and other amounts payable under or in connection with each such Account; and

(ii) any and all costs (including, but not limited to, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred in enforcing the obligations of the Company hereunder.

(c) The Company's Obligations shall be enforceable irrespective of the validity, legality or enforceability of the Cardholders' obligations and shall not in any way be affected by or conditional upon (i) any action taken under the Cardholder Agreements or the exercise of any right or power thereby conferred, (ii) the bankruptcy or similar proceedings involving or affecting a Cardholder, the Company or others, (iii) any modification, alteration, or amendment of, or addition to, any Cardholder Agreement whether with or without the Company's knowledge or consent, or (iv) any other action, inaction or circumstance whatsoever (with or without notice to or knowledge of or consent by the Company) that may in any manner vary the risks of the Company, except to the extent that notice and/or consent may be required by applicable law.

(d) Except as expressly set forth herein, the Company hereby waives all presentments; demands for performance or payment; protests; notices of protest, nonperformance, dishonor, default and non-payment; notices of the existence, creation or occurrence of new or additional obligations by the Cardholders; and all other notices or formalities.

(e) All amounts due under the Cards and Accounts shall be billed directly to the Company via periodic statements and shall be payable in full upon receipt by the Company.

Such statements may, at TD's option, be sent by mail or made available electronically via TD Commercial Plus Card Online, the Internet, or other means. The Company shall remit payment to TD under the terms described herein.

(f) All payments hereunder shall be made in U.S. dollars and by ACH debit from an account designated by the Company. In the event that there are insufficient funds in that account, the Company hereby authorizes TD to charge any unrestricted deposit account which the Company may maintain with TD for any payment required hereunder, without prior notice to the Company.

(g) All charges will be posted to Accounts in U.S. dollars. If a Card or Account is used for a transaction in a currency other than U.S. dollars, the transaction will be converted to U.S. dollars, generally using either (i) government-mandated rate or (ii) wholesale market rate in effect the day before the transaction processing date, increased by one percent (1%). If the credit has a different processing date then the exchange rate of the credit can be greater/less than that of the original transaction. The currency conversion rate on the day before the transaction processing date may differ from the rate in effect at the time of the transaction or on the date the transaction is posted on the Account.

4.2 DISPUTED AMOUNTS.

(a) The Company and its Cardholders shall use their best efforts to resolve all business-to-business purchase disputes directly with the relevant merchants, including, without limitation, any disputes relating to price discrepancies or to quality, warranty, or performance issues.

(b) The Company may dispute an amount reflected on a billing statement only if (i) the amount does not reflect the actual amount of the Transaction; (ii) the Transaction did not result from the use of the relevant Card or Account; or (iii) the amount being disputed is a fee that is not properly accrued under this Agreement. **Unless otherwise provided in the Visa Liability Waiver Program, or any successor program established by Visa, the Company may not dispute an amount reflected on a billing statement on the grounds that the Transaction is an Unauthorized Transaction (other than an Unauthorized Transaction which is authorized after TD receives notice as provided in accordance with Sections 2.5(e) and (f) above, and TD has had a reasonable opportunity to act on such notice; provided, however, that the notice relates to the Card or Account used in connection with such Unauthorized Transactions), or on the grounds that the Transaction resulted from a Cardholder, or a person authorized by a Cardholder, using a Card or Account for personal, family or household purposes, for the purpose of carrying margin stock or securities, or otherwise in violation of this**

Agreement, as the result of which the Cardholder received a direct or indirect benefit.

(c) In addition, the Company may not dispute an amount reflected on a billing statement unless the Company sends a written notice of the dispute that (i) is received by TD at the address for such notices specified by TD no later than 60 days after TD transmitted the first billing statement that reflected the alleged error, (ii) enables TD to identify the Cardholder's name and Account number, and (iii) to the extent possible, indicates the Company's belief and the reasons for the belief that an error exists, and the type, date and amount of the error. TD shall promptly investigate the dispute. **If TD determines that the amount is properly payable, the Company will remit such amount to TD on the Company's receipt of its next billing statement. Fees and finance charges will not accrue with respect to the disputed amount pending resolution of the dispute.**

(d) **The Company may not withhold payment of any amount due for any goods or services purchased using a Card or Account on the ground that it has a dispute with the merchant as to quality, warranty, or performance issues, even if it has tried in good faith to resolve the dispute with the merchant, even if the merchant is owned or operated by TD, and even if TD mailed or electronically transmitted to the Company the advertisement for the goods or services.**

4.3 CHARGEBACKS. If the Company reasonably believes that any Transaction, including any Unauthorized Transaction, has been posted to an Account as a result of fraud, unauthorized use, or any other circumstance under which the merchant may be held liable under applicable Visa rules, the Company shall so notify TD in writing. TD shall attempt to charge the Transaction back to the merchant in accordance with Visa procedures. Any accepted chargeback will be credited to the Company's or Cardholder's next billing statement. **Unless otherwise provided in the Visa Liability Waiver Program, or any successor program established by Visa, the Company shall not be relieved of liability for the Transaction if the chargeback is rejected in accordance with Visa rules. If the chargeback is rejected in accordance with Visa rules, the Company will remit such amount to TD on the Company's receipt of its next billing statement. Fees and finance charges will accrue with respect to the Transaction pending resolution of the chargeback but will be assessed only if the chargeback is rejected.**

**SECTION 5
PROGRAM FEES, TERM AND
TERMINATION, DEFAULT, REMEDIES AND
DAMAGES**

5.1 FEES AND PERIODIC FINANCE CHARGES.

(a) **Fees:** The Company agrees to pay to TD the fees described in the Rebate Schedule. Such fees will be included in the Company billing statement for the Billing Cycle in which they accrue. Fees not listed in the Rebate Schedule but agreed by the Company may be invoiced separately and each such invoice shall be payable upon receipt. If the Rebate Schedule includes Annual Membership Fees, these fees are earned when assessed, are non-refundable, and are not subject to any pro rata rebate if the Account is terminated prior to expiration of the period for which the fees were assessed.

(b) **Periodic Finance Charges:** The Company agrees to pay to TD Periodic Finance Charges as described in this section 5.1(b). Such finance charges will be included in the Company billing statement for the Billing Cycle in which they accrue. If the "New Balance" of an Account is not paid on the payment due date, a Periodic Finance Charge will begin to accrue on each Transaction in the Account from the date of the Transaction and will continue to accrue to the date of full payment. TD will figure the Periodic Finance Charges on each Account by applying a Monthly Periodic Rate to the Average Daily Balance for the Account, including current purchases, unpaid finance charges, and any other unpaid fees or charges. TD will calculate the Monthly Periodic Rate by dividing the Annual Percentage Rate ("APR") by twelve (12). The APR is set forth in the "Applicable/Potential Fees" section of the Rebate Schedule, under the heading "Finance Charge." To get the Average Daily Balance, each day TD takes the beginning balance of an Account, adds any new purchases, and subtracts applicable credits and payments. This gives the daily balance. Then, TD adds all the daily balances for the Billing Cycle and divides the total by the number of days in the Billing Cycle. This gives the Average Daily Balance, including new purchases, unpaid finance charges, and any other unpaid fees or charges. If the Previous Balance of a current Billing Cycle is either a zero or a credit balance, then the Average Daily Balance will be considered to be zero.

5.2 TERM. This Agreement shall have an initial term (the "**Initial Term**") of five years commencing on the date hereof and shall be renewed upon mutual written agreement for up to 2 successive five-year terms (each a "**Renewal Term**") unless written notice of termination is given by either party at least 30 days prior to the end of the Initial Term or any Renewal Term. In addition, either party may terminate this Agreement at any time upon 30 days' prior

written notice to the other party. Upon the expiration or termination of this Agreement for any reason, the Company agrees to retrieve all Cards and related Program materials from Cardholders, cut such Cards in half, return the Cards and related Program materials to TD, and/or provide a Card Cancellation Confirmation with respect to such Cards and related Program materials.

5.3 DEFAULT. As used in this Agreement, the term "Default" shall mean: (i) failure of the Company to remit payment to TD in accordance with the terms hereof; (ii) the failure of either party to comply with any other term of this Agreement or any other agreement between the parties, provided such failure is not remedied within 15 days of the defaulting party's receipt of written notice from the other party specifying the breach; (iii) the representation by the Company of any facts, either in this Agreement or in its financial information provided to TD in connection with this Agreement, that prove to have been materially incorrect or misleading when such representation was made; (iv) the filing by or against either party of any petition in bankruptcy, insolvency, receivership, or reorganization or pursuant to any other debtor relief law or the entry of any order appointing a receiver, custodian, trustee, liquidator, or any other person with similar authority with respect to the assets of either party; (v) the insolvency, dissolution, reorganization, assignment for the benefit of creditors or any other material adverse change in the financial condition of either party; (vi) the entry of any adverse judgment, order, or award against either party that has a material adverse impact on the financial condition of the party; (vii) any change in control or material change of ownership of the Company or any event of either party having a material adverse financial impact on the party or a detrimental effect on the Company's ability to perform the Obligations, including, without limitation, the taking of any action by the Company to consolidate or merge or sell any substantial part of its assets; (viii) any default by the Company under the terms of any material indebtedness owed by the Company to TD, or other TD related entity; (ix) excessive fraudulent or other unauthorized use of Cards or Accounts or credit losses with respect thereto as determined by TD, in its sole discretion; or (x) failure of the Company to satisfy the requirements of TD under Section 2.4 (b). In addition, if this Agreement is secured, even as a result of cross collateralization, the term "Default" includes any event not listed above that is a default under the applicable security agreement.

5.4 REMEDIES FOR DEFAULT; DAMAGES.

(a) Either party may terminate this Agreement at any time upon the Default of the other party. Except where a remedy is expressly provided herein or as otherwise provided in this Section 5.4, termination of this Agreement will be a party's sole remedy for breach; provided, that no termination or expiration of this Agreement shall release or discharge the

Company from the payment of any amount otherwise payable under this Agreement.

(b) Upon a Default by the Company, in lieu of termination of this Agreement, TD may, in its sole discretion, shorten the Billing Cycle until such time as TD determines to reinstate the interval for the Billing Cycle or suspend all services and obligations hereunder until such time as TD determines to reinstate such services and obligations. By shortening the Billing Cycle or suspending its services and obligations, TD shall not be deemed to have waived any right which it may have, whether as a result of the Default or otherwise, to terminate this Agreement.

(c) A breaching party shall be liable for any actual damages caused by its breach, but neither party will be liable under any provision of this Agreement for any punitive or exemplary damages, or for any special, indirect or consequential damages (including, without limitation, costs incurred in developing and implementing the Program, lost revenues, lost profits, or lost prospective economic advantages) arising from or in connection with any performance or failure to perform under this Agreement, even if such party knew or should have known of the existence of such damages, and each party hereby releases and waives any claims against the other party for such damages.

(d) Excluding any transaction amounts that have been timely reported by Company and confirmed by TD as Unauthorized Transactions, upon a Default by the Company, TD, in addition to any rights available to it under applicable law, shall have the right to immediately set off against amounts due under this Agreement, any monies in any unrestricted deposit account which the Company may maintain with TD, without prior notice to the Company. TD shall use commercially reasonable efforts to provide notice of any such set-off as soon as reasonably possible. TD shall be deemed to have exercised such right to set off and to have made a charge against any such money immediately upon the occurrence of any of the foregoing events of default even though such charge is made or entered on the books of TD subsequent to those events. In addition, if this Agreement is secured, even as a result of cross collateralization, TD shall also have such rights as are set forth in the applicable security agreement.

(e) TD's liability to the Company hereunder shall be limited to direct damages arising from TD's gross negligence or willful misconduct. Regardless of the form of action, in no event shall TD be liable for any indirect, consequential, punitive, exemplary or special damages, even if TD is advised as to the possibility of such damages. Except for liability which the Company may otherwise incur under this Agreement, the Company's liability to TD hereunder shall be limited to direct damages arising from the Company's gross negligence or willful misconduct. Regardless of the form of

the action, in no event shall the Company be liable for any indirect, consequential or special damages, even if the Company is advised as to the possibility of such damages. Without limiting the generality of anything contained in this section, TD shall not be liable for any damages of any kind, no matter what the cause, that arise, occur or result from: (i) the Company using the TD Commercial Plus Card Online system, (ii) the Company's opening ports on its firewalls, or (iii) problems with or defects in equipment, software or services not provided by TD.

SECTION 6 MISCELLANEOUS

6.1 REPRESENTATIONS AND WARRANTIES. Each party represents and warrants that this Agreement constitutes the legal, valid, binding and enforceable agreement of such party and that its execution and performance of this Agreement (a) do not constitute a breach of any agreement of such party with any third party, or of any duty arising in law or equity, (b) do not violate any law, rule or regulation applicable to it, (c) are within its corporate powers, and (d) have been authorized by all necessary corporate action of such party. In addition, if this Agreement is secured, even as a result of cross collateralization, the Company also makes the representations and warranties set forth in the applicable security agreement.

6.2 NOTICES. Except as otherwise provided herein, any notice or other communication required to be given under this Agreement may be given electronically, using the TD Commercial Plus Card Online system or the e-mail address of the primary contact for the Company. TD shall incur no liability to the Company in acting upon any notice or other communication given electronically which it believes in good faith to have been made by an Authorized User. Any notice or other communication required to be in writing shall be delivered personally, by overnight delivery via a nationally-recognized delivery service or by prepaid registered or certified mail, return receipt requested, addressed to the relevant party at such address as such party may from time to time designate in writing to the other. The date of delivery of a notice (i) delivered personally shall be deemed to be the date delivered; (ii) sent by overnight delivery shall be deemed to be the following day; and (iii) sent by mail shall be deemed to be three Business Days after the date on which such notice is deposited in the United States mail.

6.3 CHANGES. With respect to the rebate schedule and service fees provided on pages 42 and 43 of the Proposal, during the Initial Term, TD may amend upon mutual written agreement. For all other provisions, and with respect to the rebate schedule and services fees during any Renewal Term, TD may, at any time, amend this Agreement, any Cardholder Agreement, and/or the Program in its sole discretion. Except as expressly provided otherwise elsewhere

in this Agreement or as required by applicable law, changes to this Agreement and/or the Program generally will be effective immediately upon notice to Company. Changes to any Cardholder Agreement shall be effective immediately upon receipt by the Cardholder of notice of such changes unless otherwise required by applicable law. Company will be deemed to accept any such changes if Company or any Cardholder utilizes the Program after the date on which the change becomes effective. Company will remain obligated under this Agreement, including without limitation, being obligated to pay all amounts owing hereunder, even if TD amends this Agreement. Notwithstanding anything to the contrary in this Agreement, if TD believes immediate action is required for security purposes, TD may immediately initiate changes to any security procedures and provide prompt subsequent notice thereof to Company.

6.4 FINANCIAL STATEMENTS; NOTICE OF BOND RATING CHANGE. The Company agrees to furnish TD copies of its financial statements, in a form acceptable to TD, as soon as available, but not later than 150 days following the end of each fiscal year of the Company. All such financial statements shall include an income statement for the applicable fiscal year and a balance sheet, shall have been prepared in accordance with generally accepted accounting principles, consistently applied, and shall be in accordance with the books and records of the Company. In addition, the Company shall provide, in a timely manner, procurement or purchase-related transaction and spending data and such other current financial information concerning the Company and the use of the Cards and Accounts as TD may request. If applicable, the Company will notify TD within five business days of any change in the Company's bond rating.

6.5 ASSIGNMENT. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns; provided, that the Company may not assign this Agreement or any interest, payment, or rights hereunder without the prior written consent of TD, and any such attempted assignment without such consent shall automatically be void.

6.6 FORCE MAJEURE. If either party is rendered unable, wholly or in part, by a force outside the control of such party (including, but not limited to, an act of God, war, fire, flood, explosion, act of governmental authority, strike, civil disturbance or breakdown of telephone, computer or automated mailing equipment) to carry out its obligations under this Agreement (other than a payment obligation), or TD is notified by a state or federal regulatory body or by Visa that any aspect of the Program or this Agreement does not comply with any applicable law, regulation, rule, policy, or order applicable to TD, the affected party shall give the other party prompt written notice to that effect. Thereafter, the affected obligations of the party giving the notice shall be suspended and the failure to perform such

obligations shall not be deemed a breach of or Default under this Agreement so long as the affected party is unable to so perform for such reason. A party excused from performance pursuant to this Section 6.6 shall exercise all reasonable efforts to continue to perform its obligations hereunder and shall thereafter continue with reasonable due diligence and good faith to remedy its inability to so perform.

6.7 ENTIRE AGREEMENT. This Agreement contains the entire agreement and understanding between and among the parties on the subject matter hereof and supersedes all prior proposals, negotiations, agreements and understandings between the parties. All recitals, exhibits and addenda attached hereto are hereby incorporated by reference and made a part of this Agreement.

6.8 SEVERABILITY AND WAIVER. If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby. No course of dealing and no delay or omission by either party in exercising any of its rights under this Agreement in a particular instance shall be construed as a waiver of those rights or any other rights for any purpose and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of either party on any future occasion.

6.9 CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with federal law, and, to the extent not preempted, the substantive laws of the state where the Company has its main office, without regard to the conflict of law principles thereof, except that all credit shall be extended from Delaware and all credit terms, including, but not limited to, the account set up charges, the fees and periodic finance charges, the date finance charges begin to accrue if the new balance is not paid on the payment due date, the method of determining the balance upon which periodic finance charges will be imposed, and the allocation of payments and credits, will be governed by and construed in accordance with federal law and the laws of the State of Delaware, to the extent incorporated into federal law, without regard to the conflict of law principles thereof.

6.10 SURVIVAL. Sections 1, 4, 5.4, 6.9, 6.10, 6.11, 6.16, 6.17, 6.18, 6.19 and 6.20 shall survive the termination or expiration of this Agreement.

6.11 CONFIDENTIALITY. All information furnished by either party in connection with this Agreement, the Program, or the Transactions contemplated hereby shall be kept confidential (and shall be used by the other party only in connection with this Agreement), except to the extent that such information (a) is already lawfully known when received,

(b) thereafter becomes lawfully obtainable from other sources, (c) is required to be disclosed in any document filed with the Securities and Exchange Commission, federal banking regulators, or any other agency of any government, or (d) is required by law to be disclosed, provided that notice of such disclosure has been given (when legally permissible) by the party proposing to make such disclosure, which notice, when practicable, shall be given sufficiently in advance of the proposed disclosure to permit the other party to take legal action to prevent the disclosure. The parties shall advise all employees, consultants, advisors, agents and other representatives (collectively, "representatives") who will have access to any confidential information of the obligations contained herein. The parties shall not distribute, disclose, or disseminate confidential information to anyone except its representatives who are involved in this Agreement, the Program, or the Transactions contemplated by the parties. Upon termination of this Agreement, each party shall promptly cause all copies of documents or extracts thereof containing any such information and data which has been provided by or which relates to the other party to be returned to such other party; provided, that each party may retain in its files copies of such materials as it shall deem necessary solely for archival purposes.

6.12 NAME AND TRADEMARK. Except as otherwise provided herein, neither party shall use the name or logo of the other party without such party's written consent.

6.13 VISA FEE ADJUSTMENTS. In the event that there is a change deemed by TD to be material in the way TD is compensated by Visa, TD may seek to renegotiate the financial terms of this Agreement. The Company shall have no obligation to renegotiate such terms; provided, that if the parties cannot agree on an adjustment of such terms, then TD at its option may (a) allow this Agreement to remain in effect without any such adjustment, or (b) terminate this Agreement upon written notice to the Company.

6.14 RELATIONSHIP OF PARTIES. Nothing contained in this Agreement shall be construed as constituting or creating a partnership, joint venture, agency, or other association or relationship between TD and the Company. To the extent that either party undertakes or performs any duty for itself or for the other party as required by this Agreement, the party shall be construed to be acting as an independent contractor and not as a partner, joint venturer, or agent for the other party.

6.15 PATRIOT ACT; ANTI-TERRORISM LAWS. (a) Neither the Company nor any affiliate of the Company is in violation of any statute, treaty, law (including common law), ordinance, regulation, rule, order, opinion, release, injunction, writ, decree or award of any governmental authority relating to terrorism or money laundering, including Executive Order No. 13224 and the USA Patriot Act

(collectively, "Anti-Terrorism Law") or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. (b) Neither the Company nor any affiliate of the Company, or to the Company's knowledge, any Cardholder, is any of the following (each a "Blocked Person"): (i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (iii) a person with which TD is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224; (v) a person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or (vi) a person who is affiliated with a person listed above.

6.16 JURISDICTION AND VENUE. TD and the Company irrevocably submits to the nonexclusive jurisdiction of Federal or state located in the 17th Judicial Circuit, Broward County Florida over any suit, action or proceeding arising out of or relating to this Agreement. TD and the Company irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. TD and the Company hereby consent to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the address shown in this Agreement or as notified to either party and (ii) by serving the same upon either party in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the party.

6.17 JURY WAIVER. THE COMPANY AND TD EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS HEREUNDER, ALL MATTERS CONTEMPLATED HEREBY AND ALL DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. THE COMPANY CERTIFIES THAT NEITHER TD NOR ANY OF ITS REPRESENTATIVES,

AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT TD WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

6.18 SAVINGS CLAUSE. If the Company is at any time obligated to pay fees or finance charges in excess of the maximum fees or finance charges permitted by applicable law, then the fees and finance charges, as appropriate, shall be immediately reduced to the maximum amount permitted by applicable law and all payments in excess of the maximum amount shall be deemed to have been payments in reduction of the unpaid balance of the Account.

6.19 INDEMNIFICATION. The Company, on behalf of itself and its owners, directors, officers, employees, agents, and representatives (collectively, the “**Company Group**”), hereby releases and agrees to indemnify, defend and hold harmless TD, its affiliates, and their respective directors, officers, employees, agents, and attorneys (collectively, the “**TD Group**”) from and against any loss, claim, damages, liability, cost, expense, action or cause of action whatsoever that the Company, any Cardholder, or any third party now have or may hereafter have or threaten against any member of the TD Group, or to which any member of the TD Group may become subject, arising out of or relating to this Agreement, including, but not limited to, (i) actions taken by TD upon the instructions of the Company or any Authorized User, (ii) any maintenance activity performed by any member of the Company Group or by any other person (other than an employee or agent of TD) using a Company Access Code; provided, however, that Company shall not be liable for

unauthorized use of a Company Access Code after the Company provides notice to TD that the Access Code has been lost, stolen or compromised, and TD has a reasonable opportunity to act on such notice, or (iii) any Unauthorized Transaction resulting from the use of the Card or Account prior to (and with respect to pending Transaction authorizations) on or after the effective time of a request for cancellation or termination of a Card or Account (as provided in Sections 2.5(e) and (f) above). The Company shall not be liable for Unauthorized Transactions which are authorized after TD receives notice as provided in accordance with Sections 2.5(e) and (f) above, and TD has had a reasonable opportunity to act on such notice; provided, however, that the notice relates to the Card or Account used in connection with such Unauthorized Transactions.

Notwithstanding the foregoing, Bank shall have no right to be indemnified hereunder for losses resulting from its own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction, or as otherwise limited or prohibited by applicable law, including without limitation, Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time.

6.20 COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

IN WITNESS WHEREOF, the duly authorized representative of the Company has executed this Agreement as an instrument under seal as of the day and year first written above.

COMPANY: City of Cooper City _____

By: _____
(Signature of Authorized Representative)

Name: _____

Title: _____

Print Name: Pamela Ramkalawan _____

Title: Vice President

By: _____
(Signature of Authorized Representative)