

RESOLUTION NO. 2019- 2586

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A COMMERCIAL CARD AGREEMENT WITH SUNTRUST BANK; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside (“Town”) wishes to establish a commercial credit card account to improve efficiencies within the Town; and

**WHEREAS**, the Town has conducted a review of commercial credit card account providers and finds that the proposal provided by SunTrust Bank (“SunTrust”) is in the best interests of the Town; and

**WHEREAS**, the Town wishes to enter into a Commercial Card Agreement and Addendum (collectively, the “Agreement”) with SunTrust in substantially the form attached hereto as Exhibit “A”; and

**WHEREAS**, the Town Commission finds that the Agreement is in the best interest and welfare of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:**

**Section 1. Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Approval and Authorization.** The Agreement, substantially in the form attached hereto as Exhibit “A” is approved, subject to such changes as may be acceptable to the Town Manager and the Town Attorney as to form and legality. The Town Commission authorizes the Town Manager to execute the Agreement on behalf of the Town.

**Section 3. Implementation.** The Town Manager and/or designee are authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

**Section 4. Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** on this 14<sup>th</sup> day of May, 2019.

Moved By: Commissioner Karukin  
Second By: Commissioner Paul

**FINAL VOTE ON ADOPTION**

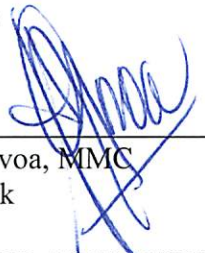
Commissioner Barry Cohen	<u>yes</u>
Commissioner Michael Karukin	<u>yes</u>
Commissioner Tina Paul	<u>yes</u>
Vice Mayor Daniel Gielchinsky	<u>Absent</u>
Mayor Daniel Dietch	<u>yes</u>



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Daniel Dietch  
Mayor

**ATTEST:**



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Sandra Novoa, MMC  
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



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Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney



## Governmental Entity Commercial Card Agreement

Full Name of Governmental Entity Town of Surfside			
Attention			
Street Address 9293 Harding Avenue	City Surfside	State FL	Zip Code 33154
Authorized Signature:		Signature Date:	
Name of Governmental Entity's Authorized Signatory:			
Title:			
Accepted by SunTrust Bank (signature):		Effective Date: (To be Completed by SunTrust)	
Name & Title:			
By signing above, both SunTrust and the Governmental Entity agree to the attached <b><u>TERMS AND CONDITIONS</u></b> .			

I. Initial Term (check one):  Three (3) Years or  Five (5) Years

II. Card Network.

MasterCard  Visa

III. Commercial Card Program(s):

Purchasing Card  Employee Expense Card  Executive Corporate Card  Central Travel Account

IV. Enterprise Spend Platform.

Enterprise Spend Platform ("ESP"), an online card management solution with an integrated suite of application modules for managing travel and entertainment, procurement, and payables, is one of the Technology Solutions referenced in Section 20 below. **ESP Payables Module.**

Yes  No

The ESP Payables Module is an optional feature within ESP. If the Governmental Entity has chosen the ESP Payables Module then the Governmental Entity also acknowledges and agrees that it will provide the Bank with a list of its suppliers and related contact information. The Governmental Entity shall be responsible for obtaining any consents required from its Suppliers to enable the Governmental Entity and/or the Bank to disclose and use its Suppliers' information for use with ESP and the Program.

ESP Buyer Initiated Payments Option.

Yes  No

The ESP Buyer Initiated Payments ("BIP") option is an optional feature used for payables and purchasing card and is described in the ESP Materials. Please note that, as a condition of using BIP, the GOVERNMENTAL ENTITY AGREES TO IRREVOCABLY WAIVE ANY AND ALL CHARGEBACK RIGHTS IT MAY HAVE ON ANY PAYMENT MADE TO A SUPPLIER USING THE BIP PAYMENT OPTION.

V. Cash Advances using a PIN.

Shall be permitted  
 Shall not be permitted

VI. Invoicing. Charges and Fees shall be invoiced via:

Card Statement  
 Account Analysis: Governmental Entity payments processed via the Governmental Entity's Deposit Account @ SunTrust – DDA#

"Account Analysis" means the Bank's billing system used to manage billing for certain products/services. If the Governmental Entity elects to use Account Analysis for billing and payment of fees due the Bank, the Governmental Entity, by listing its Deposit Account number above authorizes the Bank to direct debit such fees to the Governmental Entity Deposit Account.

**VII. Cardholder Information Requirement.**

The Governmental Entity shall provide the following Cardholder information: Name, business address, billing address, telephone number, and the last four digits of the Cardholder's social security number.

**VIII. Card Delivery.** The Card(s) shall be delivered to:

The Governmental Entity at:

Attention			
Street Address	City	State	Zip Code
9293 Harding Avenue	Surfside	FL	33154

Each Individual Cardholder

**IX. Program Administrators.** The Governmental Entity designates the following individuals as authorized Program Administrator(s). The Governmental Entity may change or add designated Program Administrator(s) by written notice to the Bank.

Name	Title		
Email Address		Telephone	
Street Address		City	State
9293 Harding Avenue		Surfside	FL
		State	Zip Code
		FL	33154

Name	Title		
Email Address		Telephone	
Street Address		City	State
		State	Zip Code

Name	Title		
Email Address		Telephone	
Street Address		City	State
		State	Zip Code

**X. Account Controls.**

(A) Card Accounts: Controls regarding Card Accounts are established during the implementation process and may be amended from time to time by the Governmental Entity or the Bank.

(B) Emergency Replacement Cards: In the event any Card is lost, stolen, or damaged and a replacement Card is required during weekends, holidays, or Bank closing hours, the Cardholder may call the Network to obtain a temporary Emergency Replacement Card. The Governmental Entity understands and acknowledges that Network Emergency Replacement Cards are not controlled by the Governmental Entity's account controls set forth on the Implementation Form but, rather, are controlled in accordance with the standard Network operating procedures in effect at the time of replacement. The Network Emergency Replacement Cards are valid for a limited period of time and the Cardholder must immediately contact the Bank for a permanent Card which shall be issued with the Governmental Entity's account controls.



**Governmental Entity Commercial Card  
Exhibit A: Fee Schedule**

Governmental Entity:  
Date:

<b>Card Fees</b>	
<b>Item</b>	<b>Cost</b>
Annual Card Fee	\$0
Annual Executive Card Fee (Corporate Card Only)	\$100 per card
Central Travel Account (CTA) Annual Fee	\$150 per account
Annual Rewards Fee (Corporate Card Only)	\$75 per enrolled card
Cash Advance Fee	3% (\$3 minimum)
Late Fee Central Bill	1.5% of outstanding balance
Late Fee Individual Bill (Corporate Card Only)	\$30
Foreign Transaction Fee	Pass through from Network (currently 1%)
Non-Sufficient Fund Fee	\$29 each
Copy of Sales Slips & Statements	\$5 each
Card Replacement Fee	None
"Rush" Delivery Fee for Card Replacement	\$25
Program Administration Annual Maintenance Fee	\$3,500. Paid in arrears if prior year's Annual Spend does not exceed \$500,000 <b>WAIVED</b>
Supplier Maintenance Fee (Payables Manager Only)	\$25 per supplier. Paid in arrears for each supplier with zero dollar spend after 12 months of enrollment <b>WAIVED</b>

<b>Governmental Entity Fees</b>	
<b>Item</b>	<b>Cost</b>
<b>One Time Fees</b>	
Card Design: Logo	\$1,000 <b>WAIVED</b>
Card Design: Custom Plastic	Priced upon request
Data Extract: File Set-up Fee (Standard)	Included
Data Extract: File Set-up and Maintenance Fee (Custom) per file	Priced upon request
Data Extract: Auto-Generate Set-up Fee	\$1,500 <b>WAIVED</b>
Data Extract: Auto-Delivery Set-up Fee	\$1,500 <b>WAIVED</b>
ESP Module: Statement Manager Set-up Fee	Included
ESP Module: Expense Manager Set-up Fee	\$5,000 <b>WAIVED</b>
ESP Module: Payables Manager Set-up Fee	\$5,000 <b>WAIVED</b>
ESP Module: Requisition Manager Set-up Fee	\$5,000 <b>WAIVED</b>
ESP Module: Transaction Manager Set-up Fee (Single Level Approval)	\$1,000 <b>WAIVED</b>
ESP Module: Transaction Manager Set-up Fee (Multi Level Approval)	\$5,000 <b>WAIVED</b>
FTP Set-up Fee	\$2,500 <b>WAIVED</b>
File Translation Set-up Fee and Maintenance Fee per file	\$2,500 <b>WAIVED</b>
Imaging Set-up Fee	\$1,000 <b>WAIVED</b>
Online Form Set-up Fee (Standard Forms)	Included
Online Form Set-up Fee (Custom Forms)	Up to \$1,000 per form
Third Party Data Import Set-up Fee	\$5,000 per 3 <sup>rd</sup> Party
Training: Instructor led, web-based for Program Administrator(s)	Included
Training: On site	\$2,500 per day <b>WAIVED</b>
<b>Monthly Fees</b>	
Expense Report Fee	\$2.00 per expense report <b>WAIVED</b>
Imaging Fee	\$0.35 per image (\$100 minimum per month) <b>WAIVED</b>
Statement Manager: 3 <sup>rd</sup> Party Statement Fee	\$2.00 per statement <b>WAIVED</b>
<b>Miscellaneous Fees</b>	
Professional Services	\$250 per hour

**NOTE:** Notwithstanding anything to the contrary in the Agreement or this Fee Schedule, all fees, charges and rebates are subject to change by the Bank upon 60 days prior written notice to the Governmental Entity if an event external to the Bank materially increases the Bank's cost of providing the Program or decreases the revenue the Bank receives from the Program during the term of this Agreement (for example:

changes in Network rules; decreases in interchange revenue paid to the Bank by a Network; changes in federal or state laws, rules or regulations; increases in funding costs due to interest rate changes or deterioration in Governmental Entity's financial condition).



**Governmental Entity Commercial Card  
Exhibit B: Rebate Program**

**Net Spend Rebate Program**

In accordance with the table below, at the end of each rebate period, the Governmental Entity shall receive a revenue share of its Net Spend\* based upon the following calculation. The Annual Spend amount shall determine the Rebate Rate. The Net Spend shall be the Annual Spend less Cash Transactions less Large Ticket Transactions less Negotiated Interchange Transactions. "Cash Transactions" means transactions from financial institutions such as cash advances, convenience checks, travelers' checks, gift cards, etc. "Large Ticket Transactions" means transactions that qualify for reduced interchange rates. "Negotiated Interchange Transactions" means transactions from merchants that have negotiated reduced interchange rates and transactions that carry network payment gateway transactions. At the end of each rebate period, the Net Spend Rebate\* shall be the Net Spend for the rebate period, multiplied by the Rebate Rate described below and reduced by charge-offs (which may carry over to subsequent rebate periods). "Charge-offs" means all amounts that remain unpaid by the Governmental Entity or Cardholder for a period of 180 days, including personal charges made by the Cardholder or Authorized User.

Rebate periods are measured on an annual 12-month cycle commencing the month of the Activation Date and shall continue for consecutive annual periods during the term of the Agreement. If the Agreement terminates during any such rebate period for any reason, other than a termination by Bank pursuant to Section 9(c), the Governmental Entity shall receive a rebate based on such rebate period's to-date spend. Rebate payments shall be paid to the Governmental Entity by ACH within sixty (60) days after the end of each rebate period, or, if applicable, after the effective date of termination of the Agreement.

Purchasing Card Annual Spend \$	Rebate Rate		
	Monthly Bill 18 days payment	2x Monthly Bill 10 days payment	Weekly Bill 5 days payment
<\$1MM	0.00%	0.00%	0.00%
\$1MM to \$25MM	1.10%	1.20%	1.30%
\$25MM to \$50MM	1.25%	1.35%	1.45%
>\$50MM	1.35%	1.45%	1.55%
<b>LTI Rebate Rate</b>		0.35%	
<b>Negotiated Rebate Rate</b>		0.35%	

\* Net Spend Rebate = [Net Spend x Rebate Rate] - [Charge-offs]  
 Net Spend = [Annual Spend] - [Cash Transactions] - [Large Ticket Transactions] - [Negotiated Interchange Transactions]  
 Annual Spend = [Purchases] + [Cash Transactions] - [Credits] - [Fees]

Corporate Card Annual Spend \$	Rebate Rate Monthly Bill 25 days payment
<\$1MM	0.00%
\$1MM to \$25MM	0.80%
\$25MM to \$50MM	0.95%
>\$50MM	1.05%

LTI Rebate Rate	0.35%
Negotiated Rebate Rate	0.35%

- Net Spend Rebate = [Net Spend x Rebate Rate] – [Charge-offs]  
Net Spend = [Annual Spend] - [Cash Transactions] – [Large Ticket Transactions] – [Negotiated Interchange Transactions]  
Annual Spend = [Purchases] + [Cash Transactions] – [Credits] – [Fees]

**Large Ticket and Negotiated Interchange Transactions Rebate Program**

At the end of each rebate period, the Governmental Entity shall receive a revenue share of its Large Ticket Transactions and Negotiated Interchange Transactions based upon the following calculation. The Large Ticket Rebate shall be the total of the Large Ticket Transactions for the rebate period multiplied by the LTI Rate set forth in the applicable table above. The Negotiated Interchange Transactions Rebate rate shall be the total of the Negotiated Interchange Transactions for the rebate period multiplied by the Negotiated Rate set forth in the applicable table above. The rebate periods are measured on an annual 12-month cycle commencing the month of the Activation Date and shall continue for consecutive annual periods during the term of the Agreement. Rebate payments shall be aggregated with the Net-Spend Rebate Program and paid to the Governmental Entity by ACH within sixty (60) days after the end of the rebate period.

**Rebate Payments Authorization**

The Bank will initiate the rebate to the Governmental Entity by ACH credit entry to the depository account noted below within sixty (60) days following the established rebate payment time. Governmental Entity also authorizes Bank to initiate ACH debits to the Governmental Entity's depository account as necessary to correct errors in Rebate payments.

This Authorization will remain in effect until the Governmental Entity notifies Bank in writing (in accordance with the notice provisions of the Agreement) to revoke this Authorization and the Bank has a reasonable time to implement the revocation.

The Bank is authorized to terminate the Authorization at any time by written notice mailed to Governmental Entity's last known address.

The Bank is authorized to send the Commercial Card Rebate ACH payment to Depository Bank Name \_\_\_\_\_ Transit and Routing Number \_\_\_\_\_ Account Number \_\_\_\_\_ in the name of \_\_\_\_\_ ("Governmental Entity Depository Account").

This Authorization is subject to the terms and conditions of this Agreement, any other account agreements, and applicable State and Federal law and regulations in effect from time to time. The Governmental Entity also agrees to be bound by the NACHA Operating Rules.

*[Remainder of Page Intentionally Left Blank]*



## Corporate Liability Commercial Card Agreement

### TERMS AND CONDITIONS

This Commercial Card Agreement (“**Agreement**”), effective as of the date set forth above (the “**Effective Date**”) between SunTrust Bank (the “**Bank**”) and the above-named **Company** is governed by the following Terms and Conditions:

#### Recitals

A. The Company has applied to the Bank for commercial card account services and associated technology solutions (the “**Program**”) to be established in the name of the Company.

B. The Bank agrees to provide the Program to the Company under the terms and conditions stated herein.

#### Terms and Conditions

##### 1. Definitions.

(a) “**Activation Date**” means the first date upon which a Card is used by an Authorized User.

(b) “**Affiliate**” means any legal entity which controls, is controlled by, or is under common control with a party to this Agreement. For purposes of this definition, “control” means direct or indirect ownership of more than 50% of the voting, economic or equity interest in an entity.

(c) “**Authorized User**” means a Cardholder or any person whom the Company or any Cardholder authorizes to use a Card.

(d) “**Card**” or “**Cards**” means any physical card and/or Card Account issued by the Bank to the Company (or its Affiliates) for its Cardholders pursuant to this Agreement. A physical card may contain a magnetic stripe and/or embedded chip technology. A card with embedded chip technology is referred to herein as a “**Chip Technology Card**”.

(e) “**Card Account**” means the account number established for each Card under the Company Account for posting Card transactions and other account activities.

(f) “**Card Credit Limit**” means the amount of Charges and Fees to which a Card Account can be limited by the Bank.

(g) “**Cardholder**” means the individual in whose name a Card Account is issued or who is designated by the Company as being expressly authorized to use such Card Account on behalf of the Company. The Company acknowledges that this definition of a Cardholder is for the purpose of this Agreement only and may not apply with respect to other commercial card services or features including the Network Corporate Liability Waiver or any travel insurance program that may be offered by the Bank.

(h) “**Cardholder Agreement**” means the agreement between the Bank and a Cardholder governing the use of a Card, as the same may be amended by the Bank from time to time.

(i) “**Cash Advances**” means use of a Card Account to obtain cash or its equivalent (including money orders, traveler’s checks or similar cash-like transactions).

(j) “**Charge**” means a purchase or Cash Advance charged to a Card Account.

(k) “**Company**” means the corporate entity named on page 1 of this Agreement and the Affiliates designated in Section XI above, if any. The Company will have the right to (i) delete one or more of its Affiliates upon written notice to the Bank, and (ii) add Affiliates upon the prior written approval of the Bank, which approval shall not be unreasonably withheld.

(l) “**Company Account**” means the corporate liability account to be established by the Bank in the name of the Company. The Company Account includes one or more Card Accounts each with a specified account number.

(m) “**Company Credit Line**” means the aggregate maximum amount to which the Bank can collectively limit Charges and Fees on all Card Accounts.

(n) “**Confidential Information**” means all non-public information regarding the parties and Personally Identifiable Information and will include all Trade Secrets and Confidential Business Information of each Party and any third party information that the Bank or Company is obligated to hold in confidence, including, but not limited to, Trade Secrets and Confidential Business Information of any such third party, including Suppliers. As used herein, “**Trade Secrets**” means, without limitation and without regard to form, technical or non-technical data, formulas, patterns, compilations, programs, software programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, non-public forecasts, studies, projections, analyses, all customer data of any kind, or lists of actual or potential customers or Suppliers, business and contractual relationships, or any information similar to the foregoing which: (a) derives economic value, either actual or potential, from not being generally known and not being readily ascertainable by proper means to other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. As used herein, “**Confidential Business Information**” means any valuable, non-public business information, other than Trade Secrets, that is reasonably identified as confidential at the time of the disclosure. All software the Bank provides to Company, whether owned by the Bank or any third party provider, will be considered “**Confidential Information**” pursuant to this Agreement. “**Confidential Information**” does not include information that (i) is or becomes generally known to the public not as a result of a disclosure by either party, (ii) is rightfully in the possession of the receiving party prior to disclosure by the disclosing party without the obligation of confidentiality, (iii) is received by the receiving party in good faith and without restriction from a third party, not under a confidentiality obligation to the disclosing party and having the right to make such disclosure, (iv) is independently developed by the receiving party without use of or access to the disclosing party’s Confidential Information, or (v) is disclosed with the prior written approval of the disclosing party.

(o) “**Fees**” mean the fees described in the above Fee Schedule.

(p) “**Network**” means the applicable Card network (MasterCard or Visa) as identified above, that operates the payment system through which Card transactions are processed at the point of sale or use.

(q) “**Personally Identifiable Information**” means Cardholder information obtained by the Bank by virtue of the Bank’s provision of the services requested by the Company under this Agreement including Cardholder names, addresses, telephone numbers, email addresses, Card information, Card numbers, Credit Limits, account information and other information which may be used to identify a specific individual.

(r) “**Program Administrator**” means the person(s) the Company designates above in connection with the day-to-day operation and administration of the Program as described in Section 4(c).



(s) "Supplier" or "Merchant" means the individual or entity from whom an Authorized User procures goods and/or services utilizing a Card Account as payment.

(t) "Unauthorized Use" means the use of a Card by a person other than an Authorized User who does not have actual, implied, or apparent authority for such use, and from which the Company, Cardholder and/or an Authorized User received no benefit, directly or indirectly.

## 2. Card Accounts and Credit Limits.

(a) **Issuance of Cards.** The Bank will issue Card Accounts to the Company and Cardholders and establish the Program in accordance with this Agreement. The Bank will manage the operation, content and features of each Card Account pursuant to the rules established by the applicable Network.

(b) **Lending to Company; Credit Line/Credit Card Limits and Modification of Limits.** The Bank will lend money to the Company via Charges and applicable Fees incurred by a Card Account. The Bank has the right to limit all Charges and Fees owed by Company to the Company Credit Line and by a Cardholder to such Cardholder's Card Credit Limit. If the Company Credit Line or a Card Credit Limit is exceeded, certain Fees may apply. The Bank may modify the Company Credit Line or a Card Credit Limit at any time in its sole discretion. The Bank shall use reasonable efforts to notify the Company of any such modification.

## 3. Charges and Fees.

(a) **Use of Cards.** Authorized Users may use the Cards and incur Charges for business purposes only to (i) purchase goods or services; and (ii) if permitted, receive Cash Advances. Any use by an Authorized User of a Card, whether or not the Card was presented in person or used when the card is not present (such as Internet, mail or telephone order purchases) and whether or not the Cardholder's signature was obtained, may result in a Charge to a Card Account. For Cash Advances, the Bank adds an additional Fee. A Cash Advance may also include a surcharge imposed by the Merchant or ATM operator.

(b) **Foreign Exchange.** The Bank and the Network convert any Charge made in a foreign currency into U.S. dollars using the conversion rate in effect on the day the transaction is posted to a Card Account. The Network conversion charge and the Bank's current conversion charge (the "Foreign Exchange Fee") are added to the transaction amount. The currency conversion rate may not be the same as existed on the day the Authorized User actually initiated the transaction. Please note that, if a credit is subsequently given for the transaction, the currency conversion rate at the time the credit is issued shall be applied. Therefore, the credit currency conversion rate may differ from the rate applied to the original charge, and as a result, the amount of the credit may be different from the amount that was originally charged for the transaction. The amount of the transaction after conversion (including Foreign Exchange Fee) is shown on the statement.

(c) **Late Payment Fees.** If the amount due in the periodic statement is not paid in full on or before the stated payment due date, the unpaid portion of the outstanding balance will be shown in subsequent periodic statements as a "past due amount." If the past due amount is greater than Twenty-Five dollars (\$25.00), the Bank may assess a fixed dollar amount or percentage of the past due amount as described in the Fee Schedule ("Late Payment Fee"). The Bank may assess the Late Payment Fee in each subsequent periodic statement until the past due amount is paid in full.

## 4. Company Responsibilities.

(a) **Use of Cards for Business Purposes only in Accordance with Agreement.** By signing this Agreement, the Company is bound by all of the terms and conditions and any subsequent amendments. The Company agrees (and agrees to notify its Cardholders) that the Card may be used for business purposes only and will not be used for

personal, family or household purposes, or for any transaction illegal under state or federal law, or under applicable Network rules. The Company is responsible for any use of a Card by an Authorized User, including any illegal or other prohibited use. The Company shall establish and monitor internal procedures and guidelines for use of the Cards. The Bank will have no obligation to inquire or verify whether use of a Card by an Authorized User complies with such procedures or guidelines.

(b) **Affiliates of Company.** Any act or omission of any Affiliate of the Company shall be deemed an act or omission of the Company for which Company and such Affiliate shall be jointly and severally liable, including liability for any fees and charges incurred by such Affiliate.

(c) **Appointment and Duties of Program Administrators.** The Company authorizes its designated Program Administrator(s) to complete documentation and otherwise act on behalf of the Company in connection with the day-to-day operation and administration of the Company Account. The Bank may deal with any person who reasonably identifies himself/herself as a Program Administrator in all matters relating to the operation and administration of the Company Account and is entitled to rely on any communication signed by a Program Administrator and on any instructions, authorization or information received from a Program Administrator. The Bank is not responsible for any Program Administrator that exceeds the limits of their authority. The Company may change the person(s) designated as a Program Administrator by written notice to the Bank and any such change will be effective upon receipt by the Bank of such notice, after the Bank has a reasonable opportunity to act.

(d) **Unencrypted Email.** The Company recognizes that unencrypted email is inherently insecure and that such communications and transfers occur openly and can be monitored, intercepted, rerouted, copied and read by others. If the Company chooses to communicate with the Bank using unencrypted email, the Company assumes the entire risk for such use.

(e) **Cardholder Identification Information.** The Company will provide to the Bank the identification information regarding each Cardholder as described in Section VII above and update this information from time to time during the term of this Agreement. The Company is responsible for notifying each Cardholder that such identification information is being provided to the Bank for the purpose of establishing a Card Account.

5. **Card Issuance to Cardholders.** The Company will send a request for a Card to be issued to a Cardholder with the Cardholder identification information and Card Credit Limit (subject to the Bank's approval) for each designated Cardholder. Upon the Bank's approval, a Card will be issued and delivered together with a copy of the Bank's then current Cardholder Agreement. The Bank may issue renewal, replacement or temporary replacement cards for any Card from time to time.

## 6. Company and Cardholder Liability; Payment Procedure.

(a) **Company Liability for All Charges and Fees.** Subject to Section 7, the Company will be liable for all Charges and Fees incurred by use of a Card even if (i) a Card Credit Line is exceeded, or (ii) the aggregate of all outstanding Charges and Fees exceeds the Company Credit Line, or (iii) an Authorized User or Cardholder exceeds his or her authority. The Bank will send the Company and each Cardholder periodic statements in a manner agreed upon by the parties detailing the Charges and Fees which must be paid in full by the Company on or before the payment due date stated in the periodic statement.

(b) **Payments.** All payments will be made in U.S. dollars which are drawn on a U.S. financial institution. Payments will be made by mail at the address shown on the periodic statements or by electronic means agreed upon by the parties. Card Accounts will be credited as of the date a payment is received. If the Bank receives a payment in an amount less than the outstanding balance shown on the periodic statement, the Bank may apply such partial payments to the balance as the Bank elects.

7. **Liability for Unauthorized Use.** The Company agrees to promptly notify the Bank of any lost or stolen Card, Unauthorized Use of a Card, and/or termination of the employment of any Cardholder (call toll free at 1-800-838-8562). The Company is liable for all extensions of credit obtained through the use of the Company Account; provided, however, that so long as the Company follows the procedures set forth in Section 15, and subject to Network rules relating to disputes and chargebacks, the Company may not be liable for Unauthorized Use of any Card unless the Unauthorized Use occurs as a result of the Company's lack of reasonable security precautions and controls regarding the Cards or the Unauthorized Use results in a benefit, directly or indirectly, to the Company. Written notification can be sent to SunTrust Bank at P.O. Box 598202, Orlando, Florida 32859-8202.

8. **Network Corporate Waiver Protection Program.** The Company may be eligible for reimbursement for employee fraud under a Network Corporate Waiver Protection Program ("Network Waiver Program"). The type and amount of Charges which qualify for reimbursement will be determined by the applicable Network and the Network may change the terms of the Network Waiver Program at any time. The Bank will provide a copy of the terms and conditions associated with such Network Waiver Program upon request.

9. **Termination.**

(a) **Initial Term of Agreement.** The initial term of this Agreement will be for the period stated in Section I above. Thereafter, this Agreement shall automatically renew for consecutive one (1) year terms.

(b) **Termination of Agreement by Either Party.** Notwithstanding Section 9(a), a party may terminate this Agreement:

(i) at any time by providing the other party no less than sixty (60) days prior written notice; or

(ii) if the other party fails to make any payment required under this Agreement when due and such failure continues for thirty (30) days thereafter; or

(iii) if the other party fails to perform any material term or condition of this Agreement and such failure is not cured within thirty (30) days following receipt of written notice thereof; or

(iv) if the other party experiences a liquidation, dissolution, insolvency or the filing of bankruptcy proceedings against it.

(c) **Termination of Agreement by Bank.** The Bank may terminate this Agreement, or any product or service, effective immediately if:

(i) the Company supplies any credit information that is false or misleading; or

(ii) the Company is sold, merged, or acquired by another entity; or

(iii) garnishment or attachment proceedings are initiated against the Company or its property; or

(iv) the Company defaults on any other credit facility or obligation it has with the Bank or any of Bank's present or future Affiliates or any of their successors or assigns; or

(v) the Bank, using its reasonable and customary credit underwriting criteria, determines that the Company's financial position has deteriorated to the extent that the Company has become an unacceptable credit risk.

(d) **Obligations upon Termination of Agreement.** Upon termination of this Agreement:

(i) all outstanding Cards will be cancelled and all rights or benefits of the Company or any Cardholder with respect to the Cards will be terminated;

(ii) the Company will immediately be liable for the aggregate of all Charges and Fees properly due hereunder (regardless of when posted to the Company Account or any Card Account), accrued Fees, and interest accrued or to accrue. All such sums will be promptly due and payable by the Company;

(iii) the Bank has the right to set-off any of the Company's accounts with the Bank or any of the Bank's present or future Affiliates or any of their successors or assigns in order to pay sums due under this Agreement; and

(iv) the Company will pay any and all costs, expenses, and reasonable attorneys' fees incurred by Bank for the collection of sums due and owing under this Agreement.

10. **Cards and Cancellation of Cards.**

(a) **Ownership of Cards.** All Cards remain at all times the property of the Bank, cannot be transferred and will be destroyed or surrendered to the Bank upon demand. Notwithstanding any other provision in this Agreement, the Bank may cancel or suspend the right to use any Card without prior notice, if, in the Bank's reasonable opinion, such cancellation or suspension is necessary to (i) prevent fraud or unauthorized use of a Card, (ii) comply with the Bank's credit risk policies, or (iii) comply with applicable Network rules.

(b) **Notification to Terminate Cardholder/Authorized User Usage Rights.** In the event a Cardholder's or Authorized User's employment or other relationship with the Company is terminated, the Company will promptly notify the Bank and request cancellation of such Cardholder's or Authorized User's Card. Until the Company's cancellation notice is received by the Bank and the Bank has had a reasonable opportunity to act, the Company will be liable for all Charges (including non-business Charges) and Fees to the Card Account made after such Cardholder's or Authorized User's termination.

(c) **Company Cancellation of Cards and Continued Liability for Charges and Fees.** The Company may direct the Bank to cancel any Card at any time for any reason. The Company will be liable for all Charges and Fees incurred to such Card Account made prior to the time the Bank receives such direction and has had a reasonable opportunity to act.

(d) **Liability for Pre-authorized Payments.** The Company will be liable for any pre-authorized payments charged to a Card Account, even after the Card is cancelled, unless such charges are reversed subject to the Company's chargeback rights.

11. **Issuance of PINs/Liability.**

(a) **Cardholder PINs for Chip Technology Cards.** For Chip Technology Cards, the Bank will require that each Cardholder establish a personal identification number (PIN) enabling the Cardholder to use the Card at terminals enabled to use the chip card technology standard for Card and Cardholder identity authentication.

(b) **Cardholder PINs for ATM Usage.** At the Company's request as indicated in Section V above, the Bank may enable a Cardholder to use the Card at accessible ATMs to obtain Cash Advances. Cash Advance access is an optional Program configuration. The issuance of a PIN for a Chip Technology Card, as described in subsection (a) above, does not by itself enable the Cardholder to obtain Cash Advances. However, if the card is a Chip Technology Card and the Company has selected the Cash Advance option, the same PIN issued for the Chip Technology Card will be used for both chip card technology transactions and Cash Advance access. If a Chip Technology Card has not been issued to a Cardholder and the Company selects the Cash Advance option, the Bank may issue the Cardholder a PIN to be used solely for Cash Advance access. Transaction records issued by an ATM are solely for the Company's convenience, and in the event of any dispute as to the accuracy of such records, the Bank's internal records will be conclusive.

(c) **Liability for Unauthorized Use of a PIN.** The Company will instruct each Cardholder that: (1) any PIN should be kept secure at all times, (2) the Cardholder should not disclose the PIN to any other

person, and (3) the PIN and Card should be stored separately. The Company will also instruct each Cardholder that, in the event the Cardholder suspects the confidentiality of the PIN may have been compromised in any way, the Cardholder should immediately change the PIN by calling Client Services toll-free at 1-800-836-8582. The Company will be liable for all charges incurred through the Unauthorized Use of a PIN in the event such Unauthorized Use is the result of the failure of the Company or a Cardholder to (i) maintain the security or confidentiality of the PIN, or (ii) keep the PIN and the Card separate.

**12. Representations and Warranties.** The Company and the Bank each represent and warrant that:

(a) it has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

(b) it is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which such authority is required to fulfill its obligations hereunder, and

(c) its execution of this Agreement will not violate any other agreement between it and any third party.

Either party's failure to fulfill the above representations and warranties will be deemed a material breach and the non-breaching party will, upon written notice, have the right to immediately terminate this Agreement.

**13. 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. Notwithstanding anything to the contrary in this Agreement, in no event shall the Bank be liable to the Company for losses or damages of any kind whatsoever incurred in relation to the Agreement, including by way of breach or indemnity, in an amount greater than one-half of one percent (0.5%) of the annual Net Spend as calculated above; provided, however, that losses or damages caused by the Bank's gross negligence or willful misconduct shall not be subject to this limitation amount.

(b) **No Guaranty of Uninterrupted/Error-Free Program.** The Bank always attempts to ensure that Cards will be operational. However, the Bank cannot warrant that the Program will be uninterrupted or error-free, due to limitations of the Bank'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 or circumstances outside of the Bank's reasonable control. The Company therefore waives any and all claims that it may have against the Bank arising out of the use and performance of the Program, except for claims for damages referred to in Section 13(a).

(c) **Disclaimer of Bank Liability for Defective/Poor-Quality Merchandise or Services Acquired via Card.** The Bank 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 the Bank 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 be supplied by third-parties who are not Affiliates of the Bank, and the Bank is not responsible or liable for anything in connection with those products or services provided by such third-parties.

(e) **Company Obligation.** The Company shall reimburse the Bank for any and all damages, judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses, including, without limitation, reasonable attorneys' fees and expenses, (collectively "Claims") imposed in any manner upon or accruing against the Bank that arise out of or relate to any and all:

(i) Company's or any Cardholder's/Authorized User's/Program Administrator's 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 negligence, willful misconduct or fraud;

(iii) payments, compensation, damages, or other amounts, however characterized or determined, to a third party (including, without limitation, SunTrust'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 the Bank 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) disputes between (A) the Company and any Cardholder/Authorized User; (B) the Company and any of its Affiliates (including Claims arising out of actions taken by the Company on an Affiliate's behalf under this Agreement) unless such Claim is solely the result of Bank's negligence or willful misconduct; and (C) the Company (including its Authorized Users, employees, agents and representatives) and any Supplier or Merchant; and

(v) actions or inactions that the Bank takes or omits based upon the direction or instructions of the Company, any Cardholder, any Program Administrator or any Authorized User.

**14. Unassigned Cards.** Upon the Company's request, the Bank, in its sole discretion, may issue one or more "Unassigned Cards." "Unassigned Cards" are Cards issued in the name of the Company only without designating a specific Cardholder as authorized to use the Card. By requesting an Unassigned Card, the Company acknowledges that the Bank has strongly advised against the use of Unassigned Cards under any circumstances and the Company confirms its understanding of the associated risks and acceptance of liability as described in this Section 14. Any person using the Card from time to time will be the "Cardholder" of the Card. The Bank is not liable for any refusal to honor the Unassigned Card by any other bank or any seller or lessor of goods or services based upon the absence of the Cardholder's name and signature/ID of an individual Cardholder. The Bank will provide Card Account statements for each Unassigned Card to the Company. Notwithstanding anything stated herein to the contrary, the Company hereby acknowledges that the issuance and/or use of Unassigned Cards poses substantially increased security and fraud risks and Company agrees to assume full liability for all Charges and Fees made with an Unassigned Card, whether or not the Charges were authorized or unauthorized by the Company or any Cardholder, and whether or not any Charge was accomplished through use of a PIN or otherwise.

**15. Periodic Statements and Chargebacks.**

(a) **Periodic Statements.** The Bank will send the Company and each Cardholder periodic statements detailing the Charges and Fees to the Card Accounts. If the Company (or Cardholder) does not notify the Bank of a dispute with regard to any Charge or Fee within sixty (60) days after such Charge or Fee appears on the periodic statement, the Company agrees that the periodic statement will be deemed conclusively to be correct.

(b) **Chargebacks.** Under certain circumstances, the Company may have the right to reverse a disputed transaction via the Network's chargeback procedure. The Company acknowledges that, in order to initiate a chargeback, it must comply with the Network's rules and

procedures, including providing the Bank with written notice of its intent to initiate a chargeback within sixty (60) days of the date the disputed transaction appears on the Company's periodic statement. Such written notice shall contain a statement specifically describing the transaction and giving a valid reason for the chargeback. If a valid reason is provided, the Bank will attempt to charge the transaction back to the Merchant in accordance with the Network rules and any chargeback accepted by the Network will be credited to the Company's next periodic statement. All communications regarding disputed charges must be sent to the designated address indicated on the periodic statement.

(c) **Bank Decline of Payments Marked "Payment in Full."** The Bank will not accept checks, money orders, or any other items for payment marked "payment in full" (or other similar language) if such payment is less than the full amount due.

16. **Amendment.** Except as otherwise provided by the terms, provisions and conditions of this Agreement and/or any Schedules, Exhibits or Addendums thereto, the terms and conditions of this Agreement and the Company's right to use the Card may be altered or amended by the Bank upon written notice to the Company not less than thirty (30) days prior to the effective date of the amendment. Use of the Card after the effective date stated in the notice of amendment constitutes acceptance of the alteration or amendment. Notwithstanding the foregoing, the Bank may alter or amend the Cardholder Agreement at any time if, in the Bank's reasonable opinion, such alteration or amendment is required by applicable law or the Network Rules. The Bank shall endeavor to provide the Company at least thirty (30) days prior written notice of any such alteration or amendment of the Cardholder Agreement, unless a shorter time is required by applicable law or the Network Rules. Use of a Card after the effective date of the amendment constitutes acceptance of such alteration or amendment of the Cardholder Agreement.

17. **Assignment/Telephone Monitoring/Credit Information.**

(a) **Assignments.** The Bank may assign all rights under this Agreement to another bank, company, or an Affiliate of the Bank without prior notice. The Company may not assign or transfer this Agreement or any Card without the Bank's prior written consent. The merger or consolidation of the Company will be deemed to be an assignment of this Agreement. The Bank has the right to immediately terminate the Agreement if it is transferred or assigned without the Bank's prior written consent.

(b) **Telephone Call Monitoring.** The Bank has the right to monitor telephone calls for the purpose of measuring its performance under this Agreement. Such monitoring will be conducted by the Bank's employees or agents in accordance with law and all information will remain confidential.

(c) **Credit Inquiries.** The Bank is authorized to make whatever credit inquiries regarding the Company it deems appropriate and to share information regarding the Company Account with the Bank's Affiliates.

18. **Periodic Review/Financial Information.** The Company understands and acknowledges that the Bank has entered into this Agreement on the basis of the Company's financial condition on the Effective Date. From time to time upon the Bank's reasonable request, the Company agrees to submit to the Bank updated financial information. If the Company fails or refuses to produce financial information within ten (10) business days after the Bank's request, the Bank may immediately terminate this Agreement.

19. **Confidentiality/Privacy.**

(a) **Definitions.** For purposes of this Section 19:

(i) a "Disclosing Party" shall be the party to this Agreement who owns the Confidential Information, and whose rights are being protected pursuant to this Section 19; and

(ii) the "Receiving Party" shall be the party to this Agreement with whom the Disclosing Party's Confidential Information is being shared.

(b) **Restrictions.** The parties understand and agree that they may be provided or otherwise may obtain the Confidential Information of the other party or third parties of such party, such as, for instance, Suppliers of the Company or third-party providers of the Bank. The parties agree, unless otherwise stated herein, that

(i) they will keep all Confidential Information in strict confidence, using such degree of care as appropriate to avoid unauthorized use or disclosure;

(ii) they will not, directly or indirectly, disclose any Confidential Information to any third party other than permitted parties (such as third-party providers of the Bank), except with the other party's prior written consent; and

(iii) upon written request, upon the termination of this Agreement or at any time either party may request, the Receiving Party will deliver to the Disclosing Party, or, at the Disclosing Party's option, will destroy all Confidential Information that the Receiving Party possesses or has under its control; provided, however, the Bank has the right to retain a reasonable number of copies of Confidential Information as may be required by applicable law.

(c) **Permitted Disclosures and Use of Confidential Information.** Notwithstanding anything stated herein to the contrary, the parties are permitted to use and/or disclose the Confidential Information as follows:

(i) the parties may disclose to their personnel, state and federal regulators, and agents (such as third-party providers of the Bank) having a need to know such Confidential Information in connection with the implementation and operation of the Program in accordance with this Agreement. The parties will instruct all their respective personnel and agents as to their obligations to be bound by the terms and conditions of this Agreement prior to their being given access to the Confidential Information.

(ii) the Receiving Party may disclose the Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental or law enforcement body having jurisdiction over the Receiving Party (provided, however, if permitted by applicable law, the Receiving Party will, to the extent permitted, notify the Disclosing Party in writing in advance of such disclosure so that the Disclosing Party may take appropriate action to protect the Confidential Information) or on a confidential basis to the Receiving Party's legal, financial, or security advisors.

(iii) the Bank (and its third party providers/agents) may use and disclose Personally Identifiable Information as follows, provided that at all times the Bank complies with all applicable laws and regulations: (aa) to process Card transactions and receive, store and transmit associated data, including Confidential Information, as necessary to provide services pursuant to this Agreement; (bb) to communicate with the Company and Affiliates regarding issues relating to the Program; (cc) for internal business planning purposes; and (dd) to obtain services from third parties, provided that such third parties are bound by obligations prohibiting non-permitted use and disclosure of such Personally Identifiable Information. Notwithstanding the above, the Bank will not use or sell Personally Identifiable Information for the purpose of soliciting Cardholders for services not related to this Agreement; provided, however, the Bank may solicit any Cardholder whose name is obtained through a source other than the Company.

(iv) the Company grants the Bank the right and license to use the Company's name, trademarks, service marks, copyrights and logos and other textual information solely in connection with the provision of Program services.

(v) all data and information that relates to Card usage or any services provided pursuant to this Agreement, other than the Company's Confidential Information and the Company's trademarks or service marks, shall be the property of the Bank and/or its licensors. Nothing herein shall prohibit the Bank from disclosing or using data or information in its aggregate form, so long as Personally Identifiable Information is not disclosed in the process.

(d) Remedies. The parties acknowledge that the unauthorized disclosure of Confidential Information may cause irreparable injury and damages, which damages may be difficult to ascertain. Therefore, upon a disclosure or threatened disclosure of any Confidential Information, the Disclosing Party will be entitled to injunctive relief (without being required to post bond), including, but not limited to, a preliminary injunction and the Receiving Party will not object to the entry of an injunction or other equitable relief against it on the basis of an adequate remedy at law, lack of irreparable harm or any other reason. Without limiting the foregoing, each party will advise the other party promptly in the event that it learns or has reason to believe that any person or entity that has had access to Confidential Information, directly or indirectly, through the parties, has violated or intends to violate the terms of this Agreement. This provision will not in any way limit such other remedies as may be available to the parties at law or equity.

## 20. Technology Solutions.

(a) General. From time to time, the Bank may offer various technology solutions, features, and services associated with the Program to the Company (each a "Technology Solution"). The method by which the Company elects to use any such Technology Solution shall be determined by the Bank. The Bank will have sole discretion over the operation, content and features of such Technology Solutions, and may from time to time modify or terminate any aspect of the Technology Solutions, including but not limited to enhancing, adding to, and/or removing functionality of any Technology Solution. The Company agrees to use any Technology Solution it elects solely in accordance with any user manuals, reference guides, training materials, or other materials provided by the Bank which describe the features, functionality, and/or requirements of the Technology Solution (the "Technology Solution Materials"). If the Company elects to use any Technology Solution, the Bank shall provide the Company with a license (if applicable) to access the Technology Solution, and the Company acknowledges that, as between the Company and the Bank, the Bank and its third party licensors (if any) retain all right, title and interest in the Technology Solution.

(b) Security Requirements. If passwords are required to access a Technology Solution, the Bank will provide passwords to those individuals designated by the Company as users ("Users") of the Technology Solution. The Company and the Users are solely responsible for their use of the Technology Solution and for maintaining the confidentiality of passwords, account numbers and other information relating to the use of the Technology Solution. The Company or a User will immediately notify the Bank in the event a password or account number has been compromised. The Company has sole responsibility for any transactions that occur prior to the Bank's receipt of such notice and thereafter for the period of time it takes the Bank to reasonably act upon the notice. Passwords may be changed by the Bank upon the Company's or User's request or as otherwise described in the relevant Technology Solution Materials. The Company agrees that the Bank may give the new password to anyone the Bank believes in good faith is the Company's User. The Company agrees that these security procedures are commercially reasonable.

(c) Implementation. A Technology Solution shall be implemented using the Company's Requirements as communicated to the Bank, according to the Bank's records. "Company's Requirements" include, but are not limited to, the Company's specific approval processes, purchasing rules, spending limits, approval routing requirements, and other specifications, options or features relating to the specific Technology Solution used by the Company.

(d) Disclaimer. To the maximum extent permitted by law, the Bank disclaims all representations and warranties of any kind, whether express or implied, with respect to any Technology Solution, any equipment or software that the Company uses in connection with a Technology Solution or related functionality and any Technology Solution Materials, including the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.

21. **Enforcement of Rights and Governing Law.** This Agreement is binding upon the assigns and successors of the Company. Except to the extent federal law is applicable, the interpretation, effect, and validity of this Agreement will be governed by the laws of the State of Florida. If any portion of this Agreement is declared invalid or unenforceable for any reason, such portion is deemed severed and the remainder of this Agreement will remain fully valid and enforceable. The Bank can delay enforcing its rights under this Agreement without waiving those rights. A waiver of rights in one instance will not be a waiver in other instances.
22. **Survival.** Any provision of this Agreement which may reasonably be interpreted or construed as surviving the termination of this Agreement shall survive such termination and be enforceable thereafter unless barred by an applicable statute of limitations.
23. **Miscellaneous.** The non-performance of a party will be excused for the period of any delay caused by any force majeure event, including act of God, war, terrorism, or any other cause beyond the party's reasonable control. If any provision of this Agreement is held to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable. Each party to this Agreement is responsible for compliance with the Agreement by its Affiliates and their respective employees and authorized agents.
24. **Jury Trial Waiver.** THE PARTIES SPECIFICALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY COURT WITH RESPECT TO ANY CONTRACTUAL, TORTIOUS, OR STATUTORY CLAIM, COUNTERCLAIM, OR CROSS-CLAIM AGAINST THE OTHER ARISING OUT OF OR CONNECTED IN ANY WAY TO THIS AGREEMENT, BECAUSE THE PARTIES HERETO, BOTH OF WHOM ARE REPRESENTED BY COUNSEL, BELIEVE THAT THE COMPLEX COMMERCIAL AND PROFESSIONAL ASPECTS OF THEIR DEALINGS WITH ONE ANOTHER MAKE A JURY DETERMINATION NEITHER DESIRABLE NOR APPROPRIATE.
25. **Counterpart.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.
26. **Facsimile and Email Delivery.** A duplicate or copy of this signed Agreement delivered by facsimile or email attachment will be as effective and enforceable as an original manually signed Agreement. A digital, electronic or photo static image of this signed Agreement maintained in the Bank's record retention system will be as effective and enforceable as an original manually signed Agreement.
27. **Entire Agreement.** This Agreement and the incorporated Schedules, Addendums and Exhibits constitute the entire Agreement between the parties. There are no understandings or agreements related hereto other than those which are expressed herein, and all prior negotiations, agreements, and understandings, whether oral or written, are superseded by this Agreement.

**28. Bank Secrecy Act Requirements.** In order to comply with the reporting requirements of the Bank Secrecy Act and the USA PATRIOT Act, the Bank is required to obtain, verify and record certain information regarding the Company and its Affiliates: legal entity name, street address, taxpayer identification number and other information that allows the Bank to identify the Company, its officers, its Affiliates, and its beneficial owners. The failure of the Company to supply such information shall give the Bank the right to immediately terminate this Agreement.

**29. Notices.** Notices permitted or required under this Agreement related to the following matters, must be in writing and delivered by personal delivery, by certified mail or by overnight carrier mail, return receipt requested: (a) notices of default; (b) notices intended to materially amend this Agreement, including changes to the Company's Program Administrator(s) and Company Affiliates; and (c) notices of termination of this Agreement or any part thereof. All other notices may also be delivered by electronic mail to your email address in our records and will be deemed effective when sent. Written notices can be sent to SunTrust Bank at, Mail Code 1044, 200 S. Orange Ave, Orlando, FL 32801, Attn: Commercial Card Services, and to the Company at the address provided above.

## END OF TERMS AND CONDITIONS

**ADDENDUM TO GOVERNMENTAL ENTITY COMMERCIAL CARD AGREEMENT  
BETWEEN THE TOWN OF SURFSIDE, FLORIDA AND  
SUNTRUST BANK**

**THIS ADDENDUM TO GOVERNMENTAL ENTITY COMMERCIAL CARD AGREEMENT** (“Addendum”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2019, by and between **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation (hereinafter referred to as “Town”) and **SUNTRUST BANK**, a Georgia Corporation (hereinafter referred to as “Bank”).

**WHEREAS**, the Town and Bank wish to enter into a Governmental Entity Commercial Card Agreement (hereinafter, the “Agreement”); and

**WHEREAS**, the Town and Bank desire to add to and amend certain provisions of the Agreement as hereinafter provided.

**NOW, THEREFORE**, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Town and Bank desiring to be legally bound, do hereby agree and covenant, notwithstanding the terms and conditions of the Agreement, as follows:

1. **Addendum Controls**. In the event of any conflict between this Addendum and the Agreement, the terms of this Addendum shall prevail and govern.
2. **Defined Terms**. All initial capitalized terms used in this Addendum shall have the same meaning as set forth in the Agreement unless otherwise provided.
3. **Recitals**. The recitals set forth above are incorporated herein and made a part of this Addendum.
4. **Ownership and Access to Records; Public Records**. The Town is a public agency subject to Florida’s Public Records Law (Chapter 119, Florida Statutes). To the extent Bank is considered a “Bank” as that term is defined in Section 119.0701, Florida Statutes, and is “acting on behalf of” the Town, as that phrase is used in Section 119.0701, Florida Statutes, Bank shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by Bank in conjunction with the Agreement. Bank will comply with Florida’s Public Records Law (Chapter 119, Florida Statutes) and agrees as follows:
  - 4.1. All records, books, documents, maps, data, deliverables, papers and financial information (the “Records”) that result from the Agreement shall be the property of the Town.
  - 4.2. Bank agrees to keep and maintain public records in Bank’s possession or control in connection with Bank’s performance under the Agreement. Bank additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Bank shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of

the Agreement, and following completion of the Agreement until the records are transferred to the Town.

- 4.3. Upon request from the Town custodian of public records, Bank shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 4.4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 4.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Bank shall be delivered by the Bank to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Bank shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Bank shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 4.6. Any compensation due to Bank shall be withheld until all records are received as provided herein.
- 4.7. Bank's failure or refusal to comply with the provisions of this section shall result in the immediate termination of the Agreement by the Town.

**Section 119.0701(2)(a), Florida Statutes**

**IF THE BANK HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BANK'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

<b>Custodian of Records:</b>	<b>SANDRA NOVOA, MMC, TOWN CLERK</b>
<b>Mailing address:</b>	<b>9293 Harding Avenue Surfside, Florida 33154</b>
<b>Telephone number:</b>	<b>305-887-9541</b>
<b>Email:</b>	<b><a href="mailto:snova@townofsurfsidefl.gov">snova@townofsurfsidefl.gov</a></b>



5. **Venue; Litigation; Dispute Resolution.** Notwithstanding anything in the Agreement to the contrary, the venue of any dispute will be in Miami-Dade County, Florida. Litigation between the parties arising out of the Agreement must be in Miami-Dade County in a court of competent jurisdiction. The laws of Florida will control any dispute between the parties arising out of or related to the Agreement, the performance thereof, or any products or services delivered pursuant to such Agreement. There shall be no arbitration with respect to any dispute between the parties arising out of the Agreement. Dispute resolution shall be conducted through voluntary and non-binding mediation, negotiation, or litigation in a court of competent jurisdiction in Miami-Dade County, Florida, with the parties bearing the cost of their own legal fees with respect to any dispute resolution, including litigation at all levels (i.e., trial and appeals).

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Addendum on the dates set forth below their respective signatures.

**TOWN:**

**TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Town Clerk

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY:**

\_\_\_\_\_  
Town Attorney

**BANK:**

**SUNTRUST BANK**, a Georgia corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Commercial Credit Card Authorization and Attestation of Incumbency (CCCAI) for use with Commercial Credit Card Accounts

I, Guillermo Olmedillo am the Town Manager and custodian of the records of Town of Surfside (legal name of corporation) a corporation duly organized and existing under the laws of FL ;

I hereby certify that the following are the names and specimen signatures of the officer(s) who are designated in resolutions or other governance documents of the corporation with the absolute authority to enter into and bind the corporation to a commercial credit card account ("Card Account") relationship with any bank, and that any officer of this corporation listed below is authorized to bind the corporation and enter into, execute and deliver in the name of and on behalf of the corporation the agreements, documents, or other instruments deemed reasonable or necessary to establish and administer the Card Account as such agreements, documents or instruments may be amended from time to time.

The Bank may rely upon the authority of the individuals identified herein until written notice of the rescission or modification of the authority of any of them to act has been received by the Bank, and the Bank has had reasonable time to act on such notice. The corporation shall furnish to the Bank the names and specimen signatures of any officer(s) who shall replace any officer named herein, and such replacement shall be deemed to have the authority herein described.

Table with 3 columns: Name, Title, Signature. Row 1: Guillermo Olmedillo, Town Manager, [Signature Line].

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said corporation this \_\_\_ day of \_\_\_, 20\_\_

Signature

Guillermo Olmedillo

Town Manager

Title