



Corporate Liability Commercial Card Agreement

Table with 4 columns: Company, State of Organization, Attention, Street Address, City, State, Zip Code. Contains information for City of Fort Lauderdale, FL, Kirk Buffington, 100 North Andrews Avenue, Fort Lauderdale, FL, 33301.

I. Initial Term: Five 5 Years from the Effective Date.

II. Card Network.

- MasterCard, Visa (both checked)

III. Commercial Card Program(s):

- Purchasing Card, Corporate Card, Executive Corporate Card, Central Travel Account (all unchecked)

IV. Enterprise Spend Platform ("ESP").

The Company acknowledges that, as between the Company and the Bank, the Bank and its third party licensors retain all right title and interest in the Enterprise Spend Platform ("ESP").

ESP Payables module.

- Yes (checked), No (unchecked)

If the Company has chosen the ESP Payables Module (described in the ESP Materials), then the Company also acknowledges and agrees that it will provide the Bank with a list of its suppliers and related contact information.

V. ESP Buyer Initiated Payments Option ("BIP").

- Yes (checked), No (unchecked)

The BIP option is used for payables and purchasing card and is described in the ESP Materials. Please note that, as a condition of using BIP, the COMPANY AGREES TO IRREVOCABLY WAIVE ANY AND ALL CHARGEBACK RIGHTS IT MAY HAVE ON ANY PAYMENT MADE TO A SUPPLIER USING THE BIP PAYMENT OPTION.

VI. Cash Advances using a PIN.

- Shall be permitted (unchecked), Shall not be permitted (checked)

VII. Invoicing. Unless otherwise specified on Schedule B, company fees shall be invoiced via:

- Card Statement (checked), Account Analysis: Company payments processed via the Company's Deposit Account @ SunTrust - DDA# (unchecked)

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

VIII. Cardholder Information Requirement.

The Company 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

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

The Company at:

Attention			
<b>Barry Sageman</b>			
Street Address	City	State	Zip Code
<b>100 N. Andrews Ave</b>	<b>Fort Lauderdale</b>	<b>FL</b>	<b>33301</b>

Each Individual Cardholder

**X. Program Administrators.** The Company designates the following individuals as authorized Program Administrator(s):

Name	Title		
<b>Stephanie Gordan</b>	Purchasing Assistant		
Email Address		Telephone	
<a href="mailto:sgordan@fortlauderdale.gov">sgordan@fortlauderdale.gov</a>		954-828-5933	
Street Address	City	State	Zip Code
<b>100 N. Andrews Ave</b>	<b>Fort Lauderdale</b>	<b>FL</b>	<b>33301</b>
Name	Title		
<b>Lura Rogers</b>	Administrative Aide		
Email Address		Telephone	
<a href="mailto:lr Rogers@fortlauderdale.gov">lr Rogers@fortlauderdale.gov</a>		954-828-5165	
Street Address	City	State	Zip Code
<b>100 N. Andrews Ave</b>	<b>Fort Lauderdale</b>	<b>FL</b>	<b>33301</b>
Name	Title		
<b>Maureen Lewis</b>	Secretary 1		
Email Address		Telephone	
<a href="mailto:mlewis@fortlauderdale.gov">mlewis@fortlauderdale.gov</a>		954-828-5239	
Street Address	City	State	Zip Code
<b>100 N. Andrews Ave</b>	<b>Fort Lauderdale</b>	<b>FL</b>	<b>33301</b>

The Company may change or add designated Program Administrator(s) by written notice to the Bank.

**XI. Account Controls.**

(A) Card Accounts (not applicable for Card Accounts managed under the Enterprise Spend Platform program): Specific controls regarding Card Accounts are established during the implementation process and may be amended from time to time by the Company or the Bank. Card Account controls may be amended from time to time by the Bank and may be amended by the Company only upon prior written approval of 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 Company understands and acknowledges that Network Emergency Replacement Cards are not controlled by the Company'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 Company's account controls.

**XII. Affiliates.** The following Affiliates are designated by Company to receive services under this Agreement (additional Affiliates can be added via an additional form signed by both the Company and the Bank):

Affiliate Name:	Relationship to Company:



## Commercial Card Agreement—Fee Schedules

Company: City of Fort Lauderdale

Date:

<b>Card Fees</b>	
<b>Item</b>	<b>Cost</b>
Annual Card Fee	\$Waived
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/\$30 maximum)
Late Fee Central Bill	Waived
Late Fee Individual Bill (Corporate Card Only)	\$15
Foreign Transaction Fee	Pass through from Network (currently 1%)
Non-Sufficient Fund Fee	\$29 each
Copy of Sales Slips & Statements	\$3 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
Supplier Maintenance Fee (Payables Manager Only)	Waived

<b>Company Fees</b>	
<b>Item</b>	<b>Cost</b>
<b>One Time Fees</b>	
Card Design: Logo	waived
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	\$2,500
Data Extract: Auto-Generate Set-up Fee	\$1,500
Data Extract: Auto-Delivery Set-up Fee	\$1,500
ESP Module: Statement Manager Set-up Fee	Included
ESP Module: Expense Manager Set-up Fee	\$5,000
ESP Module: Payables Manager Set-up Fee	Waived
ESP Module: Requisition Manager Set-up Fee	\$5,000
ESP Module: Transaction Manager Set-up Fee (Single Level Approval)	Waived
ESP Module: Transaction Manager Set-up Fee (Multi Level Approval)	Waived
FTP Set-up Fee	\$2,500
File Translation Set-up Fee and Maintenance Fee per file	\$2,500
Imaging Set-up Fee	\$1,000
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 lead, web-based for Program Administrators (s)	Included
Training: On site	\$2,500 per day
<b>Monthly Fees</b>	
Expense Report Fee	\$2.00 per expense report
Imaging Fee	\$0.35 per image (\$100 minimum per month)
Statement Manager: 3 <sup>rd</sup> Party Statement Fee	\$2.00 per statement
<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 Company 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 your financial condition).

**Net-Spend Rebate Program**

In accordance with the table, below, at the end of each rebate period, the Company 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" ("Cash Transactions" mean transactions from financial institutions such as cash advances, convenience checks, travelers' checks, gift cards, etc.) less "Large Ticket Transactions" ("Large Ticket Transactions" mean transactions that qualify for reduced interchange rates or transactions from merchants that have negotiated reduced interchange rates.). 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 mean all amounts that remain unpaid by the Company or Cardholder for a period of 180 days, including personal charges made by the Cardholder or Authorized User.

Rebate periods are yearly (on a 12-month cycle, beginning October and ending in September) commencing the month of the Effective Date and shall continue for consecutive yearly periods during the term of the Agreement. Rebate payments shall be paid to the Company by ACH within sixty (60) days after the end of each rebate period.

PURCHASING CARD Annual Spend	REBATE RATE		
	Monthly Bill 18 day Payment	2x Monthly Bill 10 day Payment	Weekly Bill 5 day Payment
<\$ 500,000	0.00%	0.00%	0.00%
\$500,000 to \$3,500,000	1.15%	1.20%	1.30%
\$3,500,000 to \$10,000,000	1.45%	1.50%	1.60%
>\$10,000,000	1.60%	1.65%	1.75%

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

**Large Ticket Rebate Program**

At the end of each rebate period, the Company shall receive a revenue share of its Large Ticket Transactions based upon the following calculation. The Large Ticket Rebate shall be the sum of the Large Ticket Transactions for the rebate period multiplied by 0.35%. The rebate periods are yearly (on a 12-month cycle, beginning October ending in September) commencing the month of the Effective Date and shall continue for consecutive yearly periods during the term of the Agreement. Rebate payments shall be aggregated with the Net-Spend Rebate Program and paid to the Company by ACH within sixty (60) days after the end of the rebate period.

**Piggyback Rebate Program**

At the end of each rebate period, the Company shall receive a revenue share of the Net Spend generated by the Company and all participating Participants, based upon the following calculation. The Piggyback Rebate shall be the sum of the Net Spend of the Company and all Participants for the rebate period multiplied by 0.05%. The rebate periods are yearly (on a 12-month cycle, beginning October and ending in September) commencing the month of the Effective Date and shall continue for consecutive yearly periods during the term of the Agreement. Rebate payments shall be aggregated with the Net-Spend Rebate Program and paid to the Company by ACH within sixty (60) days after the end of the rebate period.

**For purposes of clarity, Participants are not eligible for and shall receive no portion of the Piggyback Rebate incentive.**

**Rebate Payments**

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

This Authorization will remain in effect until the Company 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 Company'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 \_\_\_\_\_ ("Company 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. Company also agrees to be bound by the NACHA Operating Rules.

## TERMS AND CONDITIONS

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

### Recitals

**A. Following a competitively bid procurement process**, 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 above and below.

### 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.

**(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 each 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 Travel Insurance programs.

**(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 obtained by an Authorized User on a Card Account.

**(k) “Company”** means the Company described above and the named Affiliates designated in Section XII 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 that is confidential pursuant to Florida law.

**(o) “Fees”** mean the fees described on the attached **Schedule B**.

**(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) “Participant”** means a county, city, municipality, town, authority, public school or public hospital in the State of Florida that (i) is authorized by the Bank to receive services pursuant to this agreement, and (ii) has executed a Participation Agreement in the form set forth in **Exhibit 1** attached hereto.

**(r) “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.

**(s) “Program Administrator”** means the person(s) the Company designates on **Schedule A**, in connection with the day-to-day operation and administration of the Program as described in Section 4(b).

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

**(u) “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, or the use of a Card by an Authorized User, and from which the Company, 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 in accordance with this Agreement, and 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. If Company exceeds the Company Credit Line, certain Fees may apply. **The Bank may modify the Company Credit Line and/or the Card Credit Limits at any time in its reasonable discretion. The Bank shall notify the Company of any such modification.**

**(c) Establishment of Participants.** The Company may refer proposed Participants to the Bank or the Bank may notify the Company of participating Participants. Other than the Piggyback Rebate Program, described above, the Company will not charge or receive compensation for any Participant that is added to this Agreement. Services to Participants will be administered in accordance with this Agreement and the Participation Agreement. The Bank, in its sole discretion, shall determine whether or not a proposed Participant is financially qualified to participate in this Agreement. If the proposed Participant is accepted by the Bank, such Participant shall execute a Participation Agreement in the form set forth in **Exhibit 1** attached hereto, together with any other documentation reasonably deemed necessary by the Bank in conjunction with its provision of services under the Agreement. The Bank and Company agree that Company shall be responsible only for transactions, fees, charges and other amounts due under the Commercial Card Agreement related to the use of Company’s Card Accounts, and Company shall not be liable for any transactions, fees, charges and other amounts related to any Participant’s Card Accounts, nor shall Company seek to impose responsibility or liability on any Participant for Company’s transactions, fees, charges and other amounts due under the Commercial Card Agreement related to the use of Company’s Card Accounts.

3. **Charges and Fees.** The Company shall pay to the Bank all Charges and Fees incurred in accordance with the terms of this Agreement.

**(a) Use of Cards.** Authorized Users may use the Cards for business purposes only to (i) purchase goods or services; and (ii) if permitted by the Company, 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, when 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 Florida law, federal law, the law of any jurisdiction where the card may be used, 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.

**(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 VIII 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) the 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 1-800-836-8562).** 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 Disputes and Chargebacks procedures set forth in Section 15, the Company will not be liable for Unauthorized Use of any Card unless a.) the Unauthorized Use occurs in a situation where Bank and card network security is running and has not been compromised but the Company has failed to employ reasonable security precautions and controls regarding the Cards or b.) 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, or breaches any representation or warranty, 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, except as applied to the Company's payroll; or

(iv) the Company defaults on any other credit facility or obligation it has with the Bank; 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 accrued interest. . All such sums will be promptly due and payable by the Company;

(iii) [Reserved.]; and

(iv) the non-prevailing party in litigation after any and all appeals will pay any and all reasonable costs, reasonable expenses, and reasonable attorneys' fees incurred by the prevailing party regarding 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, except where required or permitted to be retained under Florida law, will be destroyed or surrendered to the Bank upon demand. Where retained pursuant to Florida law, any card so retained will be properly safekept and used only for the purposes contemplated by such law. 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, the Company will be liable for all 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 by providing a written Request to the Bank. The Company will be liable for all Charges and Fees to the Card Account made prior to the time the Bank receives the Request.

**(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. (The provisions of this Section 11 shall be operative if and only if Company requests issuance of PINs in writing.)

**(a) Cardholders PINs for ATM Usage.** At the Company's Request as indicated in Section VI above, the Bank may issue a Cardholder a personal identification number ("PIN") enabling the Cardholder to use the Card at accessible ATMs to obtain Cash Advances. The Company will instruct each Cardholder not to disclose the Cardholder's PIN to any other person. 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.

**(b) Liability for Unauthorized Use of a PIN.** 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 represents and warrants that:

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

**(b)** it is a government entity, and its execution and performance of its obligations under this Agreement and its receipt of services and benefits under it does not and will not violate any law, regulation, decree, judgment or order applicable to Company, and

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

Company's failure to fulfill the above representations and warranties will be deemed a material breach and Bank 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 during the term, 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 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 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 from time-to-time be supplied directly to Company by third-parties who are not Affiliates of the Bank. The Bank is not responsible or liable for anything in connection with products or services provided by such third-parties directly to the Company.

**(e) Company Obligation.** Except as limited by the Florida Constitution and Section 768.28, Florida Statutes (2014), as amended or revised, Company shall reimburse the Bank for any and all judgments in tort, including any award of reasonable attorneys' fees and any award of reasonable expenses, (collectively "Claims") entered 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 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, 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) [Reserved.]

(v) [Reserved.]

For purposes of this section, if any such claims are not torts under Florida law, then Bank may immediately terminate this Agreement if it becomes apparent, in the opinion of its counsel, that Bank will face unreimbursed exposure to any of the foregoing claims. In such case, the Bank reserves the right to pursue any other remedy available to it at 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 Bank shall not be responsible or liable for any such uses and that Bank may also immediately terminate this Agreement if it becomes apparent, in the opinion of its counsel, that Bank 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 Bank, any actions the Bank takes or any actions the Bank 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 the Bank for such actions, and that Bank may immediately terminate this Agreement if it becomes apparent, in the opinion of its counsel, that Bank will face unreimbursed exposure to any such claims made by Company or any other person.

**14. Unassigned Cards.** The Bank will not issue to the Company and the Company will not request of the Bank "Unassigned Cards," which are Cards issued in the name of the Company only without designating a specific Cardholder as authorized to use the Card.

**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 cannot be altered, amended or modified without the express written agreement of both the Company and the Bank. 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 provide the Company not less than thirty (30) days prior written notice of any such alteration or amendment, 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.

**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 federal and Florida law and, except as otherwise provided by Florida law, 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 refused 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) 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 or except as provided by and in compliance with Florida law; and

(iii) upon the termination of this Agreement or at any time either party may request, the receiving party will, except as otherwise provided by Florida law, deliver to the disclosing party, or, at the disclosing party's option, will, except as otherwise provided by Florida law, 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. Any such Confidential Information that is not delivered to the disclosing party or destroyed shall be kept in a manner that is in compliance with Florida law.

**(b) 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 parties 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, each party will notify the other party in writing in advance of such disclosure) 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 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) [Reserved.]

(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.

## (c) [Reserved.]

**20. 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. Venue for any lawsuit by either party against the other or otherwise arising out of this agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida. If any portion of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction 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.

**21. 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.

**22. 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 by a court of competent jurisdiction 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 respective Affiliates and its respective employees and authorized agents.

**23. 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.

**24. 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.

**25. 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.

**26. 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.

**27. 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 and its Affiliates. The failure of the Company to supply such information shall give the Bank the right to immediately terminate this Agreement.

**28. 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 amend this Agreement, including changes to Company Program Administrator(s) and Company Affiliates; and (c) notices of termination. All other notices may also be delivered by electronic mail and will be deemed given upon personal electronic reply acknowledging receipt. 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 addresses provided above.

**29. SCRUTINIZED COMPANIES.** Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed sub nom Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013):

The Bank certifies that it is not on the scrutinized companies with activities in Sudan list or the scrutinized companies with activities in the Iran petroleum energy sector list and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The Company may terminate this contract at the Company's option if the Bank is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2014), as may be amended or revised, or been placed on the scrutinized companies with activities in Sudan list or the scrutinized companies with activities in the Iran petroleum energy sector list or has been engaged in business operations in Cuba or Syria, as defined in section 287.135, Florida Statutes (2014), as may be amended or revised.

**30. PUBLIC RECORDS.** Pursuant to Section 119.0701, Florida Statutes (2014), as may be amended or revised, the Bank shall:

- (a) keep and maintain public records that ordinarily and necessarily would be required by the Company in order to perform the service.
- (b) provide the public with access to public records on the same terms and conditions that the Company would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida Statutes (2014), as may be amended or revised, or as otherwise provided by law.
- (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) meet all requirements for retaining public records and transfer, at no cost, to the city, all public records in possession of the Bank upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Pursuant to Section 119.0701, Florida Statutes (2014), as may be amended or revised, all public records stored electronically must be provided to the Company in a format that is compatible with the information technology systems of the Company.

IN WITNESS WHEREOF, the Bank and the Company execute this Agreement as follows:

ATTEST:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
Jonda K. Joseph, City Clerk

\_\_\_\_\_  
John P. "Jack" Seiler, Mayor

\_\_\_\_\_  
Lee R. Feldman, City Manager

Approved as to form:

\_\_\_\_\_  
Senior Assistant City Attorney

WITNESSES:

SUNTRUST BANK

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

By: \_\_\_\_\_  
William Rogers, Chief Executive Officer

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

(Corporate Seal)

ATTEST:

By: \_\_\_\_\_  
Raymond Fortin, Secretary

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by William Rogers as chief executive officer for SunTrust Bank, a Georgia corporation authorized to transact business in the State of Florida.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name  
of Notary Public)

Personally Known \_\_\_\_ OR produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_