

# TD COMMERCIAL PLUS CARD

## Master Agreement

This TD Bank Commercial Plus Card Master Agreement (the “**Agreement**”) is entered into as of \_\_\_\_\_, 2016, between **INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS**(the “**Company**”), a Florida corporation, with its main office in Vero Beach, Florida and **TD BANK, N.A.** (“**TD**”), a national banking association, with its main office in Wilmington, Delaware.

### RECITALS

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

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

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

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

### SECTION 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

“**Unauthorized Transaction**” means any Transaction by a person, other than the Cardholder to whom the relevant Card, if any, was issued, who was not authorized to use such Card or Account by either such Cardholder or the

Company and from which Transaction neither the Cardholder nor the Company receives any direct or indirect benefit.

## SECTION 2 CARD ISSUANCE

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

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

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

### **2.4 CREDIT LIMITS; CHANGES AT THE DISCRETION OF TD.**

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

of the Company, in connection with the issuance of Cards, maintenance of Accounts, and establishment of credit limits, or as otherwise provided in this Agreement.

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

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

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

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

(c) Where emergency issuance of a Card is requested, TD may fulfill such request at an additional charge as determined by TD from time to time. The current charge in effect as of the date of this Agreement is set forth in a separate rebate schedule provided to Company by TD (the "**Rebate Schedule**"). If affected through Visa, the Company shall pay

any fees charged by Visa for emergency card issuance or replacement. The billing for such charge shall occur in the next billing statement for the relevant Account. Unless TD receives contrary written instructions from the Company, and subject to TD's rights hereunder, TD shall replace each expiring Card with a replacement Card at least 30 days prior to the Card's expiration date.

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

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

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

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

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

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

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

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

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

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

(c) In order to use TD Commercial Plus Card Online and/or the Virtual Card and Straight Through Processing systems made available by TD, the Company agrees to be bound by and to adhere to such processing procedures, terms, and conditions (the "**Processing**

Procedures) as TD shall establish from time to time upon notice to the Company.

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

### SECTION 3 CARD AND ACCOUNT USE

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

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

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

### 3.3 ADDITIONAL DUTIES OF THE COMPANY. The Company shall:

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

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

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

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

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

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

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

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

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

#### SECTION 4 LIABILITY FOR USE

##### 4.1 PROMISE TO PAY.

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

(b) Regardless of any Account Credit Limits or the Aggregate Credit Limit, the Company agrees to pay and

perform when due all of its obligations under this Agreement ("**Obligations**"), including without limitation:

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

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

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

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

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

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

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

#### 4.2 DISPUTED AMOUNTS.

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

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

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

**receipt of its next billing statement. Fees and finance charges will not accrue with respect to the disputed amount pending resolution of the dispute.**

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

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

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

#### 5.1 FEES AND PERIODIC FINANCE CHARGES.

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

(b) **Periodic Finance Charges:** The Company agrees to pay to TD Periodic Finance Charges as described in

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

**5.2 TERM.** This Agreement shall have an initial term (the "**Initial Term**") of three years commencing on the date hereof and shall be renewed automatically for successive two-year terms (each a "**Renewal Term**") unless written notice of termination is given by either party at least 30 days prior to the end of the Initial Term or any Renewal Term. In addition, either party may terminate this Agreement at any time upon 30 days' prior written notice to the other party. Upon the expiration or termination of this Agreement for any reason, the Company agrees to retrieve all Cards and related Program materials from Cardholders, cut such Cards in half, return the Cards and related Program materials to TD, and/or provide a Card Cancellation Confirmation with respect to such Cards and related Program materials.

**5.3 DEFAULT.** As used in this Agreement, the term "Default" shall mean: (i) failure of the Company to remit payment to TD in accordance with the terms hereof; (ii) the failure of either party to comply with any other term of this Agreement or any other agreement between the parties, provided such failure is not remedied within 15 days of the defaulting party's receipt of written notice from the other party specifying the breach; (iii) the representation by the Company of any facts, either in this Agreement or in its financial information provided to TD in connection with this Agreement, that prove to have been materially incorrect or misleading when such representation was made; (iv) the filing by or against either party of any petition in bankruptcy, insolvency, receivership, or reorganization or pursuant to any other debtor relief law or the entry of any order appointing a receiver, custodian, trustee, liquidator, or any other person

with similar authority with respect to the assets of either party; (v) the insolvency, dissolution, reorganization, assignment for the benefit of creditors or any other material adverse change in the financial condition of either party; (vi) the entry of any adverse judgment, order, or award against the Company that has a material adverse impact on the financial condition of the Company; (vii) any change in control or material change of ownership of the Company or any event having a material adverse financial impact on the Company or a detrimental effect on the Company's ability to perform the Obligations, including, without limitation, the taking of any action by the Company to consolidate or merge or sell any substantial part of its assets; (viii) any default by the Company under the terms of any material indebtedness owed by the Company to TD, or any third party or other TD related entity; (ix) excessive fraudulent or other unauthorized use of Cards or Accounts or credit losses with respect thereto as determined by TD, in its sole discretion; or (x) failure of the Company to satisfy the requirements of TD under Section 2.4 (b). In addition, if this Agreement is secured, even as a result of cross collateralization, the term "Default" includes any event not listed above that is a default under the applicable security agreement.

#### **5.4 REMEDIES FOR DEFAULT; DAMAGES.**

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

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

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

such damages, and each party hereby releases and waives any claims against the other party for such damages.

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

(e) TD's liability to the Company hereunder shall be limited to direct damages arising from TD's gross negligence or willful misconduct. Regardless of the form of action, in no event shall TD be liable for any indirect, consequential, punitive, exemplary or special damages, even if TD is advised as to the possibility of such damages. Except for liability which the Company may otherwise incur under this Agreement, the Company's liability to TD hereunder shall be limited to direct damages arising from the Company's negligence or willful misconduct. Regardless of the form of the action, in no event shall the Company be liable for any indirect, consequential or special damages, even if the Company is advised as to the possibility of such damages. Without limiting the generality of anything contained in this section, TD shall not be liable for any damages of any kind, no matter what the cause, that arise, occur or result from: (i) the Company using the TD Commercial Plus Card Online system, (ii) the Company's opening ports on its firewalls, or (iii) problems with or defects in equipment, software or services not provided by TD.

## SECTION 6 MISCELLANEOUS

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

**6.2 NOTICES.** Except as otherwise provided herein, any notice or other communication required to be

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

**6.3 CHANGES.** During the term of this Agreement, as described in Section 5.2, TD may not amend the Fees described in Section 5.1 as detailed in the Rebate Schedule. Notwithstanding the forgoing, TD may change Fees associated with new or additional services or features that Company may request that are not included in Rebate Schedule.

With respect to other changes to the Agreement, not including Fees as described in Section 5.1, TD may, at any time, amend this Agreement, any Cardholder Agreement, and/or the Program in its sole discretion. Except as expressly provided otherwise elsewhere in this Agreement or as required by applicable law, changes to this Agreement and/or the Program generally will be effective immediately upon notice to Company. Changes to any Cardholder Agreement shall be effective immediately upon receipt by the Cardholder of notice of such changes unless otherwise required by applicable law. Company will be deemed to accept any such changes if Company or any Cardholder utilizes the Program after the date on which the change becomes effective. Company will remain obligated under this Agreement, including without limitation, being obligated to pay all amounts owing hereunder, even if TD amends this Agreement. Notwithstanding anything to the contrary in this Agreement, if TD believes immediate action is required for security purposes, TD may immediately initiate changes to any security procedures and provide prompt subsequent notice thereof to Company.

**6.4 FINANCIAL STATEMENTS; NOTICE OF BOND RATING CHANGE.** The Company agrees to furnish TD copies of its financial statements, in a form acceptable to TD, as soon as available, but not later than 150 days following the end of each fiscal year of the Company. All such financial statements shall include an income statement for the applicable fiscal year and a balance sheet, shall have been prepared in accordance with generally accepted accounting principles, consistently applied, and shall be in accordance



with the books and records of the Company. In addition, the Company shall provide, in a timely manner, procurement or purchase-related transaction and spending data and such other current financial information concerning the Company and the use of the Cards and Accounts as TD may request. If applicable, the Company will notify TD within five business days of any change in the Company's bond rating.

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

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

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

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

waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of either party on any future occasion.

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

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

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

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

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

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

**6.15 PATRIOT ACT; ANTI-TERRORISM LAWS.** (a) Neither the Company nor any affiliate of the Company is in violation of any statute, treaty, law (including common law), ordinance, regulation, rule, order, opinion, release, injunction, writ, decree or award of any governmental authority relating to terrorism or money laundering, including Executive Order No. 13224 and the USA Patriot Act (collectively, "Anti-Terrorism Law") or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. (b) Neither the Company nor any affiliate of the Company, or to the Company's knowledge, any Cardholder, is any of the following (each a "Blocked Person"): (i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (iii) a person with which TD is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224; (v) a person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or (vi) a person who is affiliated with a person listed above.

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

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

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

**6.19 INDEMNIFICATION.** The Company, on behalf of itself and its owners, directors, officers, employees, agents, and representatives (collectively, the "**Company Group**"), hereby releases and agrees to indemnify, defend and hold harmless TD, its affiliates, and their respective directors, officers, employees, agents, and attorneys (collectively, the "**TD Group**") from and against any loss, claim, damages,

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

This provision shall be only to the extent allowed by and within the limits of liability provided by section 768.28, Florida Statutes, and shall not otherwise be deemed a waiver of Customers sovereign immunity.

**6.20 OTHER WAIVERS BY COMPANY.** To the extent otherwise applicable, the Company waives notice of intent to accelerate, notice of acceleration, and all other notices, consents to any renewals or extensions of time of payment, and generally waives all suretyship defenses and defenses in the nature thereof.

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

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

COMPANY: INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS

Attest: Jeffrey R. Smith, Clerk of Circuit Court and Comptroller

By: *Leona Allen*  
Deputy Clerk



By: *Joseph E. Flescher*  
Name: Joseph E. Flescher  
Title: Chairman

TD Bank, N.A

By: *Robert Wilkins*  
Name: Robert Wilkins  
Title: Vice President

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY *Dylan Reingold*  
DYLAN REINGOLD  
COUNTY ATTORNEY