

EXHIBIT "A"

TD Bank, N.A.
"Piggy-Back" Authorization
Agreement



Bank

America's Most Convenient Bank®

TD Bank, N.A.
5900 North Andrews Avenue
2nd Floor
Fort Lauderdale, FL 33309
T: 888-751-9000
www.tdbank.com

**AGREEMENT TO PIGGYBACK A CONTRACT FOR SERVICES
BID BY ANOTHER GOVERNMENTAL ENTITY**

WHEREAS, TD Bank, N.A. (the “Bank”), a national banking association with offices located in the State of Florida, entered into an agreement(s) dated July 14th, 2014, with the City of Sunny Isles Beach, a political subdivision of the State of Florida, for certain banking / cash management services procured pursuant to F.S. §287.057, a copy of which is attached hereto and further described below (collectively, the “Contract”);

WHEREAS, pursuant to Chapter 287, Florida Statutes, e.g., Sections 287.056 and 287.057, a municipality may utilize a competitive bid or request for proposal solicited by another governmental entity, and neither the City of Sunny Isles Beach Procurement Code nor the terms of the Request for Proposal associated with the Contract otherwise prohibit or restrict any municipality or other government agency from participating in the Contract under the same prices, terms and conditions;

WHEREAS, the Town of Cutler Bay, a Florida municipal corporation (the “Town”) has the legal authority under, e.g., Code of Ordinances, No. 06-22, Part IV, “Purchases From Competitively Bid Contracts of Other Governmental Entities,” adopted by the Town of Cutler Bay, to award contracts without separate competitive bidding by the Town that are based on and result from (or “piggyback” on) purchases made under contracts of other municipal or governmental entities that were awarded pursuant to competitive bids based on clearly defined specifications, including a contract awarded pursuant to F.S. §287.042; and

WHEREAS, the Town desires to “piggyback” onto the above-referenced Contract between the Bank and the City of Sunny Isles Beach for utilization of all or some of the same services for the Town of Cutler Bay (the “Work”), and the Bank consents to the aforesaid “piggybacking.”

NOW, THEREFORE, the Town having found it to be in the public interest, the parties agree as follows, effective as of the date each party has executed this agreement below (the “Effective Date”):

ARTICLE 1 – RECITALS

The recitals are true and correct and are hereby incorporated into and made a part of this agreement.

ARTICLE 2 – CONTRACT DOCUMENTS

2.1 The following documents associated with the Contract (and collectively referred to as the “Contract Documents”) are incorporated and made part of this agreement, subject to any adjustments specifically described in this agreement:

2.1.1 City of Sunny Isles Beach Agreement with TD Bank for Banking Services Contract No. 14-04-02, attached hereto;



2.1.2 the Bank Forms of Agreement (including the Cash Management Master Agreement, the Business Deposit Account Agreement and the ACH Block & Filter Agreement), attached hereto;

2.1.3 City of Sunny Isles Beach Request for Proposals No. 14-04-02 (the “RFP”), attached hereto; and

2.1.4 TD Bank’s “Solutions Prepared for City of Sunny Isles Beach” dated May 15, 2014 in response to the RFP, attached hereto.

ARTICLE 3 – TERM AND TERMINATION

3.1 Subject to authorized adjustments, the Initial Term of this agreement shall be five (5) years from the date of this agreement.

3.2 Following the Initial Term, the parties may extend the term of this agreement for an additional five (5) year term, by mutual written consent of the Town and the Bank.

3.3 Notwithstanding the terms of the Contract, the parties agree that the Town may, for its convenience and without cause, terminate the Services and this agreement by giving Bank thirty (30) days advance written notice.

ARTICLE 4 – SCOPE OF SERVICES

The Bank is willing to provide to the Town the same banking / cash management services reflected in and in accordance with the terms and conditions specified in the Contract Documents and otherwise pursuant to this agreement.

ARTICLE 5 – RATIFICATION & AGREEMENT

5.1 The Bank affirms and ratifies the terms and conditions of the above-referenced Contract with the City of Sunny Isles Beach and agrees to perform the services set forth therein for the Town in accordance with the terms of said Contract and this agreement beginning on the Effective Date of this agreement.

5.2 The Town agrees to utilize the services of the Bank in a manner and upon the terms and conditions as set forth in the Contract with the City of Sunny Isles Beach in accordance with the terms of said Contract and this agreement beginning on the Effective Date of this agreement.

ARTICLE 6 – NOTICES

All notices and other communications required or permitted to be given under this agreement by either party to the other shall be sent (except as otherwise provided herein) in accordance with the Bank Forms of Agreement, as applicable. Notice given under the Bank Forms of Agreement may be addressed to such party as follows:

If to the Town:

With a copy to:

If to the Bank: Pamela Ramkalawan
Vice President
Government Banking
5900 N. Andrews Ave
Second Floor
Ft. Lauderdale, FL 33309

With a copy to: Indroneel Ghosh
Vice President
Treasury Management Services
6000 Atrium Way
Mt. Laurel, NJ 08054

TD BANK, N.A.

TOWN OF CUTLER BAY, FLORIDA

By: Pamela Ramkalawan

By:

Its: Vice President

ATTEST:

Town Clerk

Date

Date

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: _____

Town Attorney

City of Sunny Isles Beach
Request for Proposals
No. 14-04-02
Banking Services Agreement
with TD Bank, N.A.



CITY OF SUNNY ISLES BEACH AGREEMENT
WITH TD BANK FOR BANKING SERVICES
CONTRACT NO.

THIS CONTRACTUAL AGREEMENT (hereinafter referred to as the "Agreement") is made in duplicate, this 14th day of July, 2014, by and between the CITY OF SUNNY ISLES BEACH, Florida, (hereinafter referred to as "City"), and TD BANK, N.A. a corporation authorized to do business in the State of Florida (hereinafter referred to as "Bank") whose Federal I.D. # is 01-0137770.

RECITALS

WHEREAS, the City issued Request for Proposals No. 14-04-02 ("RFP") for banking services to handle operating cash including, but not limited to, deposits, check payments, payroll checks, ACH processing and wire transfers ("Services"); and

WHEREAS, the Bank responded to the RFP by submitting a proposal and "Supplemental Certification" in response thereto (together, the "Proposal"), including but not limited to the Bank's Cash Management Master Agreement ("CMMA") and associated service appendices, (together, the "Bank Forms of Agreement"); and

WHEREAS, the Bank was selected by the City as the lowest responsible and responsive bidder in response to the RFP; and

WHEREAS, the Bank shall provide the Services to the City as set forth and delineated in the RFP, the Bank's Proposal and the Bank Forms of Agreement copies of which are attached hereto as Exhibits and incorporated herein by reference.

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Bank hereby covenant and agree as follows:

1. **RECITALS.** The Recitals set forth above are hereby incorporated into this Agreement and made a part hereof for reference.
2. **SERVICES.** The Services performed by Bank shall consist of the following:
 - (a) Each of the specific requirements, terms and conditions set forth in the RFP (attached hereto as Exhibit C), which is hereby incorporated by reference in its entirety;
 - (b) Each of the services, terms and conditions set forth in the Proposal (attached hereto as Exhibit B) as well as the Bank Forms of Agreement (attached hereto as Exhibit C) and hereby incorporated by reference in their entirety; and
 - (c) Unless the context requires otherwise, all references to "this Agreement" and use of the terms "herein", "hereby", "hereto", "hereunder" and the like shall be deemed to include this Agreement, the Proposal, the Bank Forms of Agreement, the RFP and any other related documents (collectively, the "Contract Documents"); and
 - (d) Any inconsistency between any of the Contract Documents shall be resolved in the following descending order of priority:

1. First, this Agreement;
2. Second, the Bank Forms of Agreement (including the CMMA, the Business Deposit Account Agreement and the ACH Block & Filter Agreement, all attached hereto as **Exhibit A**);
3. Third, the Proposal (attached hereto as **Exhibit B**);
4. Fourth, the RFP (attached hereto as **Exhibit C**); and
5. Fifth, any other relevant documents.

3. **TERM.** The term of this Agreement shall have an initial term of five (5) years with an effective start date of July 1, 2014. Thereafter, the parties may extend the term of this Agreement for an additional five (5) year renewal term, by mutual written consent at any time prior to the expiration of the initial term of this Agreement. In the event the services are scheduled to end because of the expiration of the existing initial term or renewal term, the Bank shall continue to provide the services to the City, upon the City's request, for an extended period not to exceed ninety (90) days. The Bank shall be compensated for services during this extension period at the rate(s) in effect when the City invokes this extension clause.

4. **TERMINATION AND REMEDIES FOR BREACH.**

- A. If, through any cause within reasonable control, the Bank shall fail to fulfill in a timely manner or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the RFP, or the Proposal, as well as the Bank Forms of Agreement, City shall have the right to terminate the Services then remaining to be performed. Prior to the exercise of its option to terminate for cause, the City shall notify the Bank of its violation of the particular terms or conditions alleged to have been violated and grant Bank ten (10) days to cure such default. If the default remains uncured after ten (10) days the City may terminate this Agreement.
- (i.) In the event of termination for cause, (a) all finished and unfinished documents, data and other work product prepared by Bank shall be delivered to the City, subject to the Bank's right to retain copies of documents, data and other work product in accordance with Bank record retention policies and procedures as well as applicable laws and regulations relating to the retention of records, (b) and the City shall compensate the Bank for all Services satisfactorily performed prior to the date of termination.
- B. **Termination for Convenience of City.** The City may, for its convenience and without cause terminate the Services then remaining to be performed at any time by giving Bank ten (10) days written notice. The terms of subparagraph A(i) above shall be applicable hereunder.
- C. **Termination for Insolvency.** The City also reserves the right to terminate the remaining Services to be performed in the event of the Bank's failure and appointment of the FDIC as receiver under federal receivership law.

5. **COMPENSATION.** For the Services authorized in the RFP and the Proposal, the City agrees to maintain monies on deposit with the Bank in a special cash management compensation account, in an amount which will be at least enough to cover all of the appropriate charges for the Services, per the Proposal's pricing section. In accordance with the Bank's Proposal, as set forth in Exhibit B, attached hereto and incorporated herein by reference, Bank will provide the City with an account analysis statement and will automatically credit the designated account monthly with any interest earned, or debit the designated account monthly for any fees incurred.

6. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

(a) Bank hereby represents and warrants to the City that it has full power and authority to enter into this Agreement and fully perform its obligations hereunder without the need for any further corporate or governmental consents or approvals, and that the persons executing this Agreement are authorized to execute and deliver it. Assuming the due authorization, execution, delivery, legality and enforceability hereby by or against the City when executed and delivered by the parties, this Agreement will constitute a valid and binding agreement of the Bank, enforceable against it in accordance with its terms, subject only to the application of general principles of equity and limitations arising from bankruptcy, insolvency, moratorium and other similar laws affecting the rights of creditors generally. Bank shall at all times during the term of this Agreement and during the term of any renewal or extension of this Agreement be a member of the Federal Deposit Insurance Corporation and authorized by the Office of the Comptroller of the Currency to operate as a national banking association.

(b) The Bank has not employed or retained any person employed by the City to solicit or secure this Agreement and it has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

(c) The Bank is aware of the conflict of interest laws of the Ordinances and regulations of the City of Sunny Isles Beach, Miami-Dade County, and the State of Florida, and covenants that the Bank will fully comply in all material respects with the terms of said laws.

(d) At the request of the Bank, the City agrees to cause its designated officials or their designees to execute such signature cards and other signature and identification verification documents as the Bank deems reasonably necessary for purposes of establishing appropriate security measures in connection with the Services to be provided hereunder.

7. **ASSIGNMENT AND PERFORMANCE.** Neither this Agreement nor any right or interest herein shall be assigned, transferred or encumbered without the written consent of the other party. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Bank of this Agreement or any right or interest herein without City's written consent. Notwithstanding the foregoing, for purposes of this Agreement, the City acknowledges and agrees that the acquisition of all or substantially all of Bank's assets by another institution shall not be deemed an assignment, nor shall the transfer of this Agreement or any of Bank's rights or obligations hereunder to an affiliate be considered an assignment. Additionally, for any subcontracting or assignment for

which Bank must otherwise obtain the City's consent, such consent shall not be unreasonably withheld.

8. **INSPECTION RIGHTS AND RETENTION OF RECORDS.** City shall have the right, at reasonable times and upon reasonable request, during the term of this Agreement and for three (3) years thereafter, to inspect the books, records, and accounts of Bank that pertain to the Services performed under this Agreement. Bank shall keep such book, records and accounts as may be necessary in order to record complete and correct entries related to Services performed under this Agreement, as required by applicable law. All books, records, and accounts of Bank related to this Agreement shall be kept in written or electronic form, or in a form capable of conversion into written form within a reasonable time, and upon reasonable request to do so, Bank, as applicable, shall make same available at no cost to City in written or electronic form. Review and inspection of Bank records by the City may be made available subject to Bank policy and to applicable federal laws and regulations, and those of the City of Sunny Isles Beach and the State of Florida that may otherwise restrict or prohibit access to Bank's financial and banking records by third parties.

Bank shall preserve and make available, at reasonable times for examination and inspection by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a period of seven (7) years from the date of the banking transaction, or as otherwise required by Bank's policies and applicable federal, City of Sunny Isles Beach and State of Florida laws and regulations related to the retention of such records. If the Florida Public Records Act is applicable to Bank's records, Bank shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

9. **INSURANCE.** Bank shall, at its sole cost and expense, during the period of Services performed under this Agreement, procure the insurance coverage amounts required by the RFP and as otherwise required by applicable banking rules and regulations under applicable federal and state law.

10. **INDEMNIFICATION.** Bank shall indemnify and hold harmless the City, its agents and employees from or on account of any losses, costs and damages incurred by third parties, including reasonable attorney's fees and the actual costs of defense resulting from any act or omission of gross negligence, willful misconduct or bad faith by the Bank or its subcontractors, agents, servants or employees.

Subject to the limitations of Section 768.28 of the Florida Statutes, as applicable and as may be amended from time to time, the City shall indemnify and hold harmless the Bank, its directors, officers, employees, and agents from or on account of any losses, costs and damages incurred by third parties, including reasonable attorney's fees and the costs of defense, resulting from any actions or omission of the Bank taken or omitted to be taken at the request of the City, its employees or agents, or otherwise arising out of any negligent act or omission or failure to exercise reasonable care by the City, its employees or agents. Subject to the aforesaid limitation,

the City further agrees to indemnify and hold harmless the Bank, its agents or employees against any claims or liability arising from or based upon the violation of any federal, state, county, or city laws, by-laws, ordinances, or regulations by the City, its agents, servants or employees.

11. **LIMITATION OF LIABILITY.** Notwithstanding any other terms or provisions of this Agreement, including the preceding Section 10, neither the City nor the Bank shall in any event be liable to the other for any amount in excess of actual losses plus costs and reasonable attorney's fees sustained by the injured party, and in no event shall either the City or the Bank ever be liable hereunder or in any action in tort arising out of the Services or relationships to be provided or established hereunder for any indirect, special, incidental, punitive or consequential loss or damage of any kind, including lost profits or opportunities or damage to reputation, arising therefrom whether or not advised of the possibility hereof.

12. **NOTICES.** All notices and other communications required or permitted to be given under this Agreement by either party to the other shall be sent (except as otherwise provided herein) in accordance with the Bank Forms of Agreement, as applicable. Notice given under the Bank Forms of Agreement may be addressed to such party as follows:

| | | |
|------------------------|--|---|
| If to the City: | Christopher J. Russo City Manager City of Sunny Isles Beach 18070 Collins Avenue Fourth Floor Sunny Isles Beach, Florida 33160 Tel: (305) 792-1701 | With a copy to: Hans Ottinot City Attorney City of Sunny Isles Beach 18070 Collins Avenue Fourth Floor Sunny Isles Beach, Florida 33160 Tel: (305) 792-1702 |
| If to the Bank: | Pamela Ramkalawan Vice President Government Banking 5900 N. Andrews Ave. Second Floor Fort Lauderdale, FL 33309 Tel: (954) 233-2064 | With a copy to: Einar Anderson Senior Vice President & Senior Counsel P.O. Box 9540 Portland, ME 04112-9540 Tel: (207) 535-3801 |

13. **CHANGES/AMENDMENTS.**

- (a) The City may, from time to time, request changes in the scope of services of the Bank to be performed hereunder. Such changes, which are mutually agreed upon by and between the City and the Bank, may be incorporated into this Agreement via written amendments to this Agreement.
- (b) The fees and charges set forth for the Services to be provided to the City will begin on the effective date of this Agreement, and shall not be increased for a period of five (5) years

after commencement of the term of this Agreement. For any renewal term beyond the initial five (5) year period, fees and charges may be renegotiated between the parties.

- (c) The Bank may amend the Bank Forms of Agreement where such amendments apply to all or substantially all of the Bank's Cash Management Services customers, except to the extent that any such amendments contravene any provisions of this Agreement or the provisions of the Bank Forms of Agreement that the parties previously amended, customized or otherwise specially-negotiated. Bank may provide notice to the City of such amendments in accordance with the provisions of the Bank Forms of Agreement. The City may terminate this Agreement or the Bank Forms of Agreement, including any associated Appendix(es), immediately upon its receipt of notice of an amendment that is not acceptable to the City.

14. **EQUAL EMPLOYMENT OPPORTUNITY; NON-DISCRIMINATION.**

The Bank will not discriminate against any employee or an applicant for employment because of race, color, religion, sex, national origin, marital status, or handicap. The Bank shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment without regard to race, color, religion, sex, national origin, marital status, or handicap.

Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfers, recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training including apprenticeship; and participation in recreational and educational activities.

The Bank shall keep such records and submit such reports concerning racial and ethnic origin of applicants for employment and employees as the Secretary of Labor of the United States requires. The Bank agrees to comply with such rules, regulations and guidelines as the Secretary may issue to implement these requirements. Each party respectively shall comply with all applicable laws, ordinances and codes of Federal, State and local governments applicable to that Party.

15. **MATERIALITY AND WAIVER OF BREACH.** City and Bank agree that each requirement, duty and obligation set forth herein was bargained for at arms-length, is agreed to by the parties, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof. City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

16. **SEVERANCE.** In the event any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provisions had been severed and deleted.

City of Sunny Isles Beach

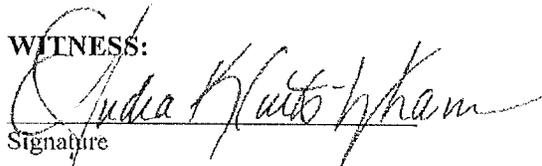
18070 Collins Avenue, Sunny Isles Beach, Florida 33160
(305) 947-0606 phone (305) 949-3113 Fax

17. **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with federal law and, to the extent not preempted or inconsistent therewith, by the laws of the State of Florida.

18. **JURISDICTION.** The Parties hereto agree that the state or federal courts located in the State of Florida shall have the exclusive jurisdiction over the parties and the subject matter of any litigation between the parties arising hereunder. Venue for any lawsuit brought by one party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding except as otherwise required by law, shall be in Miami-Dade County, Florida, and, in the event of federal jurisdiction, in the Southern District of Florida. The Bank and City each agree that neither the Bank nor the City shall: (a) seek a jury trial in any lawsuit, proceeding, counterclaim, or any other action based upon, or arising out of, the Agreement or any account or the dealings between the Bank and City, or (b) seek to consolidate any such action with another in which a jury trial cannot be or has not been waived.

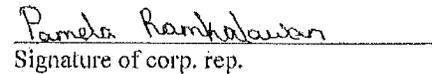
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate on the day and year first written above.

WITNESS:


Signature

AUDRA K. CURTS-WHANN
Print Name

T.D. BANK, N.A.

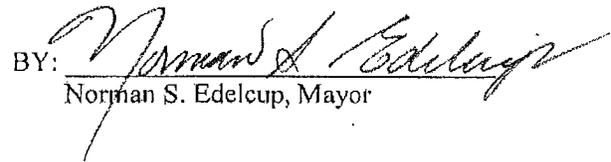

Signature of corp. rep.

Pamela Rankakawan Vice President
Print name and title of corp. rep.

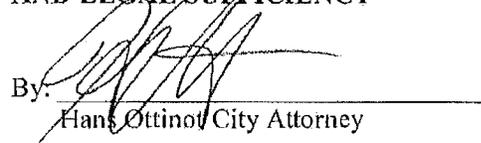
ATTEST:

CITY OF SUNNY ISLES BEACH

BY: 
Jane A. Hines, MMC, City Clerk

BY: 
Norman S. Edelcup, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Hans Ottino, City Attorney

City of Sunny Isles Beach
REquest for Proposals

No. 14-04-02

Banking Services Agreement with TD
Bank, N.A.

Exhibit "A"

(Cash Management Master Agreement)

EXHIBIT A:



CASH MANAGEMENT MASTER AGREEMENT

Customer: CITY OF SUNNY ISLES BEACH

Date of Agreement:

TD Bank, N.A. ("Bank") provides a broad range of non-consumer cash management products and services to its customers. The customer identified above ("Customer") wishes to obtain from Bank, and Bank desires to provide to Customer, those services that have been checked below:

- 1. TD eTreasury Services (Appendix I)
- 2. TD ACH Origination Services (Appendix II)
- 3. TD Wire Transfer Services (Appendix III)
- 4. TD Sweep Services (Appendix IV)
- 5. TD Positive Pay Services (Appendix V)

**AFTER REVIEW OF SECTION 10 HEREIN,
CUSTOMER DECLINES POSITIVE PAY SERVICES**

***** [Customer must accept or decline the Positive Pay Services]**

- 6. TD Controlled Disbursement Services (Appendix VI)
- 7. TD Lockbox Services (Appendix VII)
- 8. TD Digital Express Services (Appendix VIII)
- 9. TD Account Reconciliation Services - Full (Appendix IX)
- 10. TD Account Reconciliation Services - Partial (Appendix X)
- 11. TD Deposit Reconciliation Services (Appendix XI)
- 12. TD Check Imaging Services (Appendix XII)
- 13. TD Zero Balance Account Services (Appendix XIII)
- 14. TD Currency Services (Appendix XIV)
- 15. TD EscrowDirect Services (Appendix XV)
- 16. TD BAI2 File Transmission Services (Appendix XVI)
- 17. TD Data Exchange Services (Appendix XVII)

- 18. TD ACH Third Party Sender Services (Appendix XVIII).....
- 19. TD Image Cash Letter Services (Appendix XIX)
- 20. TD Healthcare Remittance Management Services (Appendix XX)
- 21. TD Data Transmission Services (Appendix XXI).....
- 22. TD ACH Positive Pay Services (Appendix XXII)
- 23. TD Currency Services for Smartsafe (Appendix XXIII).....
- 24. *Reserved* (Appendix XXIV)
- 25. *Reserved* (Appendix XXV).....

The "Cash Management Service(s)" or "Service(s)" shall hereafter mean the cash management service(s) identified above and provided by Bank (and/or Bank's third-party service providers) to Customer pursuant to this Agreement, the Appendices, including Amended Appendices, as defined below, exhibits, Setup Form(s), and any service guides or manuals made available to Customer by Bank.

Agreement

This Cash Management Master Agreement (this "Agreement") is by and between Bank and Customer. This Agreement is incorporated by reference into that certain "Contract" between the parties, the terms of which include: (1) City of Sunny Isles Beach Agreement With TD Bank for Banking Services ("City's Form of Agreement") dated on or about the date of this Agreement; (2) Customer's Request for Proposals No. 14-04-02 (the "RFP"); and (3) Bank's response to the RFP, Solutions Prepared for City of Sunny Isles Beach, dated May 15, 2014 (the "Proposal", hereinafter, collectively, the "Contract"). The parties agree that any ambiguity, conflict or inconsistency in the foregoing documents that together constitute the Contract shall be resolved in the order of precedence provided in Section 2(d) of the City's Form of Agreement.

Bank agrees to provide to Customer and Customer agrees to use certain Cash Management Services (as defined above) offered by Bank. Bank and Customer agree that the Cash Management Services will be governed by the terms of the Contract, as well as this Agreement, which include the rules and procedures applicable to each of the Services (collectively, the "Rules"), which are contained in the Appendices to this Agreement, and are hereby incorporated in and made a part of this Agreement. This Agreement shall be effective when signed by both parties.

The following terms and conditions are applicable to all Cash Management Services provided to Customer hereunder.

I. Definitions. Capitalized terms used in this Agreement and in any Appendix, unless otherwise defined herein or therein, shall have the meanings set forth below:

"Access Devices" means collectively all security, identification and authentication mechanisms, including, without limitation, security codes or tokens, PINs, electronic identities or signatures, encryption keys and/or individual passwords associated with or necessary for Customer's access to and use of any Cash Management Services.

"Account" means an Account, as such term is defined in the Account Agreement, used in connection with any Cash Management Services.

"Account Agreement" means the Business Deposit Account Agreement issued by Bank and governing Customer's deposit relationship with Bank, as the same may be amended from time to time.

"Affiliate(s)" means, with respect to any party, any company controlled by, under the control of, or under common control with such party.

"Amended Appendix" means an amendment to an Appendix that supplements or revises, but does not revoke in its entirety, a prior Appendix for a particular Service.

"Appendix" means a description of the rules and procedures applicable to a particular Service to be provided by Bank to Customer. Each such Appendix, including any Amended Appendix, is incorporated herein by reference and made a part hereof. If there is any conflict between the provisions of this Agreement and any Appendix or Amended Appendix, the Appendix or Amended Appendix shall govern, but only to the extent reasonably necessary to resolve such conflict.

"Authorized Representative" means a person designated by Customer as an individual authorized to act on behalf of Customer and/or authorized to access and use

the Services, as evidenced by certified copies of resolutions from Customer's board of directors or other governing body, if any, or other certificate or evidence of authority satisfactory to Bank, including, without limitation, any Customer enrollment or Setup Form(s) completed by Customer.

"*Bank Internet System*" means Bank's Internet-based electronic information delivery and transaction initiation system, as may be offered by Bank from time to time, including but not limited to Bank's e-treasury Services.

"*Bank Internet System Appendix*" means the agreement issued by Bank and governing Customer's use of the Bank Internet System.

"*Business Day*" has the meaning given to it in the Account Agreement.

"*Calendar Day*" has the meaning given to it in the Account Agreement.

"*Primary Account*" means the Account designated by Customer to which any direct Service fees due Bank may be charged in accordance with this Agreement. Unless otherwise agreed upon in writing by Bank, the address for Customer associated with the Primary Account shall be the address to which all notices and other communications concerning the Services may be sent by Bank.

"*Substitute Check*" has the meaning given to it in Section 3(16) of the *Check Clearing for the 21st Century Act* ("Check 21"), P.L. 108-100, 12 U.S.C. § 5002(16).

2. The Services.

2.1 Bank shall provide to Customer, subject to this Agreement and the applicable Appendix, all Cash Management Services that Customer may request from time to time. Bank shall not be required to provide any Services specified in an Appendix unless Customer also provides all information reasonably required by Bank to provide to Customer the Service(s) specified therein.

2.2 Customer, through its Authorized Representative, may use the Services solely in accordance with the terms and conditions of this Agreement and the related Appendices.

2.3 With the exception of scheduled off-peak downtime periods, Bank shall make all reasonable efforts to make the Services available to Customer each Business Day.

2.4 Access to on-line Services will be denied if invalid Access Devices are used or if the user exceeds the number of invalid attempts allowed by Bank.

2.5 Customer is authorized to use the Services only for the purposes and in the manner contemplated by this Agreement.

2.6 Customer agrees to cooperate with Bank, as Bank may reasonably request, in conjunction with the performance of the Services.

2.7 Customer agrees to comply with the Rules, as they may be amended from time to time by Bank.

2.8 A number of Bank's Services are subject to processing cut-off times on a Business Day. Customer can obtain information on Bank's current cut-off time(s) for Service(s) by reviewing the relevant Service's Setup Form(s), as applicable, or by calling Cash Management Customer Care at 1-866-475-7262, or by contacting Customer's Cash Management Sales Representative. Instructions received after a cut-off time or on a day other than a Business Day may be deemed received as of the next Business Day.

2.9 Except for the Service Fees (as further defined in Section 4.2 of this Agreement) and scope of included-Services applicable to the Initial Term of the Contract as further described in Section 14 of this Agreement, Bank may make changes to this Agreement and any Appendix at any time, where such amendments apply to all or substantially all of the Bank's Cash Management Services customers, by providing notice to Customer in accordance with the terms of this Agreement or as may be required by applicable law. Notwithstanding anything to the contrary herein, any Appendix that provides for an alternative form and method for making changes to such Appendix and for providing notice of the same shall govern for that Service. Further, notwithstanding anything to the contrary in the Contract, if Bank believes immediate action is required for security of Bank or Customer funds, Bank may immediately initiate changes to any procedures and provide prompt subsequent notice thereof to Customer.

2.10 In connection with this Agreement and the Services, Customer agrees that it shall present, and Bank shall have a duty to process, only Substitute Checks that are created by financial institutions; provided, however, that this limitation shall not apply to Substitute Checks created with data from Customer pursuant to any Appendix for Services involving the creation of electronic check images using check conversion technology.

3. Covenants, Representations and Warranties.

3.1 Customer represents and warrants that the individual(s) executing this Agreement has/have been authorized by all necessary Customer action to sign such agreements and to issue such instructions as may be necessary to carry out the purposes and intent of this Agreement and to enable Customer to receive each selected Service. Each Authorized Representative whom Customer permits to access and use the Services is duly authorized by all necessary action on the part of Customer to (i) access the Account(s) and use the Services; (ii) access any

information related to any Account(s) to which the Authorized Representative has access and (iii) engage in any transaction relating to any Account(s) to which the Authorized Representative has access.

3.2 Bank may unconditionally rely on the validity and accuracy of any communication or transaction made, or purported to be made, by an Authorized Representative.

3.3 Customer shall take all reasonable measures and exercise all reasonable precautions to prevent the unauthorized disclosure or use of all Access Devices associated with or necessary for Customer's use of the Services.

3.4 Customer is not a "consumer" as such term is defined in the regulations promulgated pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., nor a legal representative of a "consumer."

3.5 Customer shall use the Services only for its own lawful business and government purposes. Customer shall not use the Services for or on behalf of any third party. Customer shall take all reasonable measures and exercise reasonable precautions to ensure that Customer officers, employees and Authorized Representatives do not use the Services for personal, family or household purposes, or any other purpose not contemplated by this Agreement.

3.6 Customer and Bank shall comply with (i) all applicable laws, regulations, rules and orders; (ii) the Account Agreement; (iii) all applicable National Automated Clearing House Association ("NACHA") rules, regulations, and policies; (iv) the Uniform Commercial Code; (v) Office of Foreign Asset Control ("OFAC") sanctions; and (vi) all applicable laws, regulations and orders administered by FinCEN (collectively (i) through (vi), "Compliance Laws").

4. Account Agreement; Service Fees.

4.1 Bank and Customer agree that any Account established by Customer in connection with Services offered by Bank shall be governed by the Account Agreement, including one or more fee schedules issued by Bank for the Account. If there is any conflict between the terms and provisions of this Agreement and the Account Agreement, the terms and provisions of this Agreement shall govern, but only to the extent reasonably necessary to resolve such conflict.

4.2 During the Initial Term of this Agreement, as described in Section 14, Customer agrees to compensate Bank for all Accounts and Services that Bank provides pursuant to this Agreement, any Appendices and the Contract, in accordance with the pricing pro forma provided in Bank's Proposal ("the Pricing Pro Forma"), incorporated by reference in the Contract, that applies to the Services (the "Service Fees"). Any fees and charges associated with Accounts or Services that are not specified

in the Contract or which are assessed after the conclusion of the Initial Term, as described in Section 14, shall be governed by Bank's standard schedule of fees and charges applicable to Accounts or Services generally, unless the parties otherwise mutually agree in writing. By signing below, Customer acknowledges receipt of the Account Agreement and acceptance of the Service Fees, and agrees to be bound by their terms, as those terms may be amended from time to time.

4.3 Customer authorizes Bank to charge the Primary Account for all applicable charges and fees to the extent that such charges and fees are not offset by earnings credits or other allowances for Customer's Account(s). If the balance of available funds in the Primary Account is not sufficient to cover such fees, Bank may charge such fees to any other deposit Account maintained by Customer with Bank. Bank may charge a service charge for Account research requested by Customer in accordance with the Pricing Pro Forma or as otherwise set forth in Bank's published schedule of charges for such research.

4.4 During the Initial Term of this Agreement, as described in Section 14, Bank may not amend Service Fee(s) associated with those Services provided by Bank in accordance with the Contract, unless by mutual written agreement of the parties. Bank acknowledges and agrees that the fees indicated in the Pricing Pro Forma shall control and be in effect for the Initial Term of the Agreement. Notwithstanding the foregoing, Bank may charge or amend Service Fee(s) associated with new or additional Services that Customer may request that are not included-Services under the Contract.

5. **Customer Identification Program.** Customer agrees to provide to Bank, before Bank begins providing any Services to Customer, any and all information required to comply with applicable law and Bank's policies and procedures relating to customer identification. Such information may include, without limitation, official certificates of customer existence, copies of Customer formation agreements, business resolutions or equivalent documents, in a form acceptable to Bank authorizing Customer to enter into this Agreement and to receive Services from Bank pursuant hereto, and designating certain individuals as Customer's Authorized Representatives.

6. Software.

6.1 Bank may supply Customer with certain software owned by or licensed to Bank to be used by Customer in connection with the Services. Customer agrees that all such software is and shall remain the sole property of Bank and/or the vendor of such software. Customer agrees to comply with all of the terms and conditions of all such license agreements and other documents to which Customer agrees to be bound. Unless otherwise agreed in writing between Bank and Customer, Customer shall be responsible for the payment of all costs

of software, installation of any software provided to Customer in connection with the Services, as well as for selection, installation, maintenance and repair of all hardware required on Customer's premises for the successful operation of the software.

6.2 Subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, Customer shall indemnify, defend and hold harmless Bank, its successors and assigns, from and against any loss, damage or other claim or liability attributable to Customer's unauthorized distribution or disclosure of any software provided with the Services or any other breach by Customer of any software license. The provisions of this paragraph shall survive termination of this Agreement.

6.3 Any breach or threatened breach of this Section will cause immediate irreparable injury to Bank, and Customer agrees that injunctive relief, including preliminary injunctive relief and specific performance, should be awarded as appropriate to remedy such breach, without limiting Bank's right to other remedies available in the case of such a breach. Bank may apply to a court for preliminary injunctive relief, permanent injunctive relief and specific performance, but such application shall not abrogate Bank's right to proceed with an action in a court of competent jurisdiction in order to resolve the underlying dispute.

7. **Computer Requirements.** For certain Cash Management Services, Customer will need to provide at Customer's own expense, a computer, all software and necessary telephone lines, Internet or other connections and equipment as needed to access the Services (collectively, the "Computer"). Customer's Internet or other web browser software must support a minimum 128-bit SSL encryption or other security measures as Bank may specify from time to time. Customer's browser must be one that is certified and supported by Bank for optimal performance. Customer is responsible for the installation, maintenance and operation of the Computer and all related charges. Customer is responsible for installing and maintaining appropriate virus protection software on Customer's Computer. Bank is not responsible for any errors or failures caused by any malfunction of the Computer or any Computer virus or related problems that may be associated with access to or use of the Services or the Computer. Bank also is not responsible for any losses or delays in transmission of information Customer provides to Bank or otherwise arising out of or incurred in connection with the use of any Internet or other service provider providing Customer's connection to the Internet or any browser software.

8. **Bank Third Parties.**

8.1 Customer acknowledges that certain third parties, agents or independent service providers (hereinafter "Third Parties") may, from time to time, provide services ("Third Party Services") to Bank in connection with Bank's provision of the Services to

Customer and that accordingly, Bank's ability to provide the Services hereunder may be contingent upon the continuing availability of certain services from such Third Parties. Third Party Services may involve the processing and/or transmission of Customer's data, instructions (oral or written) and funds. In addition, Customer agrees that Bank may disclose Customer's financial information to such Third Parties (i) where it is necessary to provide the Services requested; (ii) in order to comply with laws, government agency rules or orders, court orders, subpoenas or other legal process or in order to give information to any government agency or official having legal authority to request such information; or (iii) when Customer gives its written permission.

8.2 Bank will be responsible for the acts and omissions of its Third Parties in the same manner as if Bank had performed that portion of the Services itself, and no claim may be brought by Customer against such Third Parties. Notwithstanding the foregoing, any claims against Bank (with respect to the acts or omissions of its Third Parties) or its Third Parties shall be subject to the limitations of liability set forth herein to the same extent as if Bank had performed that portion of the Services itself. However, Bank will not be deemed to be the agent of, or responsible for, the acts or omissions of any person (other than its Third Parties), and no such person shall be deemed Bank's agent.

9. **Customer Information; Security Procedures.**

9.1 In providing the Services, Bank shall be entitled to rely upon the accuracy of all information and authorizations received from Customer or an Authorized Representative and the authenticity of any signatures purporting to be of Customer or an Authorized Representative. Customer agrees promptly to notify Bank of any changes to any information or authorizations provided to Bank in connection with the Services, and further agrees to promptly execute any new or additional documentation Bank reasonably deems necessary from time to time in order to continue to provide the Services to Customer.

9.2 Customer agrees that it shall be solely responsible for ensuring compliance with any security procedures established by Bank in connection with the Services, as such may be amended from time to time, and that Bank shall have no liability for any losses sustained by Customer as a result of a breach of security procedures if Bank has substantially complied with the security procedures.

9.3 Bank shall be entitled to rely on any written list of Authorized Representatives provided to Bank by Customer until revoked or modified by Customer in writing. Customer agrees that Bank may refuse to comply with requests from any individual until Bank receives documentation reasonably satisfactory to it confirming the individual's authority. Bank shall be entitled to rely on any notice or other writing believed by it in good faith to be genuine and correct and to have been signed by the

individual purporting to have signed such notice or other writing. Bank may also accept verbal instructions from persons identifying themselves as an Authorized Representative, and Bank's only obligation to verify the identity of such person as an Authorized Representative shall be to call back such person at a telephone number(s) provided to Bank by Customer. Bank may, but shall have no obligation to, call back an Authorized Representative other than the Authorized Representative from whom Bank purportedly received an instruction. Bank may, but shall have no obligation to, request additional confirmation, written or verbal, of an instruction received via telephone at any time or for any reason whatsoever prior to executing the instruction. Bank may also in its discretion require the use of security codes for Authorized Representatives and/or for receiving instructions or items from Customer. Customer understands and agrees, and Customer shall advise each Authorized Representative that, Bank may, at Bank's option, record telephone conversations regarding instructions received from an Authorized Representative.

9.4 Any security procedures maintained by Bank are not intended to detect errors in the content of an instruction received from Customer or Customer's agent or vendor. Any errors in an instruction from Customer, Customer's Authorized Representative, agent or vendor shall be Customer's sole responsibility. Customer agrees that all security procedures described in this Agreement and applicable Appendix are commercially reasonable and that Bank may charge Customer's Account for any instruction that Bank executed in good faith and in conformity with the security procedures, whether or not the transfer is in fact authorized.

9.5 Customer agrees to adopt and implement commercially reasonable policies, procedures and systems to provide security to information being transmitted and to receive, store, transmit and destroy data or information in a secure manner to prevent loss, theft or unauthorized access to data or information ("Data Breaches"). Customer also agrees that it will promptly investigate any suspected Data Breaches and monitor its systems regularly for unauthorized intrusions. Customer will provide timely and accurate notification to Bank of any Data Breaches when known or reasonably suspected by Customer and will take all reasonable measures, including, without limitation, retaining competent forensic experts, to determine the scope of and data or transactions affected by any Data Breaches, and immediately providing all such information to Bank.

9.6 BANK'S SECURITY PROCEDURES ARE STRICTLY CONFIDENTIAL AND SHOULD BE DISCLOSED ONLY TO THOSE INDIVIDUALS WHO ARE REQUIRED TO KNOW THEM. IF A SECURITY PROCEDURE INVOLVES THE USE OF ACCESS DEVICES, THE CUSTOMER SHALL BE RESPONSIBLE TO SAFEGUARD THESE ACCESS DEVICES AND MAKE THEM AVAILABLE ONLY TO DESIGNATED INDIVIDUALS. CUSTOMER HAS THE SOLE RESPONSIBILITY TO INSTRUCT THOSE INDIVIDUALS THAT THEY MUST NOT DISCLOSE

OR OTHERWISE MAKE AVAILABLE TO UNAUTHORIZED PERSONS THE SECURITY PROCEDURE OR ACCESS DEVICES TO ANYONE. CUSTOMER HAS THE SOLE RESPONSIBILITY TO ESTABLISH AND MAINTAIN PROCEDURES TO ASSURE THE CONFIDENTIALITY OF ANY PROTECTED ACCESS TO THE SECURITY PROCEDURE.

10. **Fraud Detection / Deterrence; Positive Pay.** Bank offers certain products and services such as Positive Pay (with or without payee validation), ACH Positive Pay, and Account blocks and filters that are designed to detect and/or deter check, automated clearing house ("ACH") or other payment system fraud. While no product or service will be completely effective, Bank believes that the products and services it offers will reduce the likelihood that certain types of fraudulent items or transactions will be paid against Customer's Account. Failure to use such products or services could substantially increase the likelihood of fraud. **Customer agrees that if, after being informed by Bank or after Bank otherwise makes information about such products or services available to Customer consistent with Section 27 of this Agreement, Customer declines or fails to implement and use any of these products or services, or fails to follow these and other precautions reasonable for Customer's particular circumstances, Customer will be precluded from asserting any claims against Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service, or precaution was designed to detect or deter, and Bank will not be required to re-credit Customer's Account or otherwise have any liability for paying such items.**

11. **Duty to Inspect.** Customer is responsible for monitoring all Services provided by Bank, including each individual transaction processed by Bank, and notifying Bank of any errors or other problems within ten (10) Calendar Days (or such longer period as may be required by applicable law) after Bank has made available to Customer any report, statement or other material containing or reflecting the error, including an Account analysis statement or on-line Account access. Except to the extent required by law, failure to notify Bank of an error or problem within such time will relieve Bank of any and all liability for interest upon correction of the error or problem (and for any loss from any subsequent transaction involving the same error or problem). In the event Customer fails to report such error or problem within thirty (30) Calendar Days after Bank made available such report, statement or on-line Account access, the transaction shall be deemed to have been properly authorized and executed, and Bank shall have no liability with respect to any error or problem. Customer agrees that its sole remedy in the event of an error in implementing any selection with the Services shall be to have Bank correct the error within a reasonable period of time after discovering or receiving notice of the error from Customer.

12. Overdrafts; Set-off. Bank may, but shall not be obligated to, complete any transaction in connection with providing the Services if there are insufficient available funds in Customer's Account(s) to complete the transaction. In the event any actions by Customer result in an overdraft in any of Customer's Accounts, including but not limited to Customer's failure to maintain sufficient balances in any of Customer's Accounts, Customer shall be responsible for repaying the overdraft immediately, without notice or demand. Bank has the right, in addition to all other rights and remedies available to it, to set off the unpaid balance of any amount owed it in connection with the Services against any debt owing to Customer by Bank, including, without limitation, any obligation under a repurchase agreement or any funds held at any time by Bank, whether collected or in the process of collection, or in any other Account maintained by Customer at, or evidenced by any certificate of deposit issued by, Bank. If any of Customer's Accounts become overdrawn, underfunded or for any reason contain a negative balance, then Bank shall have the right of set-off against all of Customer's Accounts and other property or deposit Accounts maintained at Bank, and Bank shall have the right to enforce its interests in collateral held by it to secure debts of Customer to Bank arising from notes or other indebtedness now or hereafter owing or existing under this Agreement, whether or not matured or liquidated.

13. Transaction Limits.

13.1 In the event that providing the Services to Customer results in unacceptable credit exposure or other risk to Bank, or will cause Bank to violate any law, regulation, rule or order to which it is subject, Bank may, in Bank's sole and exclusive discretion, without prior notice, limit Customer's transaction volume or dollar amount and refuse to execute transactions that exceed any such limit, or Bank may terminate any Service then being provided to Customer.

13.2 Customer shall, upon request by Bank from time to time, provide Bank with such financial information and statements and such other documentation as Bank reasonably determines to be necessary or appropriate showing Customer's financial condition, assets, liabilities, stockholder's equity, current income and surplus, and such other information regarding the financial condition of Customer as Bank may reasonably request to enable Bank to evaluate its exposure or risk. Any limits established by Bank hereunder shall be made in Bank's sole discretion and shall be communicated promptly to Customer.

14. Term and Termination.

14.1 This Agreement shall be effective when (i) signed by an Authorized Representative of Customer and accepted by Bank, and (ii) Customer delivers to Bank all documents and information, including any Setup Form(s) and electronic data, reasonably required by Bank prior to commencing to provide the Services, or otherwise in accordance with the Contract, and shall terminate five

(5) years thereafter ("the Initial Term"). The parties may renew this Agreement by mutual written agreement for an additional five (5) year term (the "Extended Term"). Bank will determine the adequacy of such documentation and information in its sole discretion and may refuse to provide the Services to Customer until adequate documentation and information are provided.

14.2 This Agreement shall continue in effect as described in Section 14.1 unless and until terminated by either party with ten (10) Calendar Days' prior written notice to the other, provided that Customer may terminate this Agreement or any Appendix immediately upon its receipt of notice from Bank of a change in or amendment of the provisions of this Agreement, the Services or any Appendix that is not acceptable to Customer, in accordance with Section 21 of this Agreement. Either party may terminate an Appendix in accordance with the provisions of this Section without terminating either this Agreement or any other Appendix. Upon termination of this Agreement or any Appendix, Customer shall, at its expense, return to Bank, in the same condition as when delivered to Customer, normal wear and tear excepted, all property belonging to Bank and all proprietary material delivered to Customer in connection with the terminated Service(s). Upon notification of termination prior to the end of the Initial Term or an Extended Term, Bank will continue to provide access to the Service(s) that are subject to termination for a period not to exceed ninety (90) Calendar Days to enable Customer to transition to another financial institution. During the 90-day transition period, the Service Fees in effect at the time of notice of termination will remain unchanged.

14.3 If an Appendix is terminated in accordance with this Agreement, Customer must contact Cash Management Customer Care for instructions regarding the cancellation of all future dated payments and transfers. Bank may continue to make payments and transfers and to perform other Services that Customer has previously authorized or may subsequently authorize; however, Bank is not under any obligation to do so. Bank will not be liable if it chooses to make any payment or transfer or to perform any other Services that Customer has previously authorized or subsequently authorizes after an Appendix had terminated.

14.4 Notwithstanding the foregoing or otherwise contained in the Contract, Bank may, without prior notice, terminate this Agreement and terminate or suspend any Service(s) provided to Customer pursuant hereto (i) if Customer or Bank closes any Account established in connection with the Service, (ii) if Bank determines that Customer has failed to maintain a financial condition deemed reasonably satisfactory to Bank to minimize any credit or other risks to Bank in providing Services to Customer, including the commencement of a voluntary or involuntary proceeding under the United States Bankruptcy Code or other statute or regulation relating to bankruptcy or relief of debtors, (iii) in the event of a material breach, default in the performance or observance of any term, or breach of any representation or

warranty by Customer; (iv) in the event of default by Customer in the payment of any sum owed by Customer to Bank hereunder or under any note or other agreement, (v) if there has been a seizure, attachment, or garnishment of Customer's Accounts, assets or properties, (vi) if Bank believes immediate action is required for the security of Bank or Customer funds or (vii) if Bank reasonably believes that the continued provision of Services in accordance with the terms of this Agreement or any Appendix would violate federal, state or local laws or regulations, or would subject Bank to unacceptable risk of loss. In the event of any termination hereunder, all fees due Bank under this Agreement as of the time of termination shall become immediately due and payable. Notwithstanding any termination, this Agreement shall remain in full force and effect with respect to all transactions initiated prior to such termination.

14.5 Notwithstanding any provision to the contrary, the City may terminate this Agreement with or without cause upon ten (10) days written notice to Bank. In the event of such termination, the City will only be responsible for payment of services satisfactorily performed up to the effective date of termination. In the event of termination the City shall not be responsible for payment of the then remaining unexpired term.

15. Limitation of Liability; Disclaimer of Warranties.

15.1 Unless expressly prohibited or otherwise restricted by applicable law, the liability of Bank in connection with the Services will be limited to actual damages sustained by Customer and only to the extent such damages are a direct result of Bank's gross negligence, willful misconduct, or bad faith. In no event shall Bank be liable for any consequential, special, incidental, indirect, punitive or similar loss or damage that Customer may suffer or incur in connection with the Services, including, without limitation, attorneys' fees, lost earnings or profits and loss or damage from subsequent wrongful dishonor resulting from Bank's acts, regardless of whether the likelihood of such loss or damage was known by Bank and regardless of the basis, theory or nature of the action on which a claim is asserted. Unless expressly prohibited by or otherwise restricted by applicable law, and without limiting the foregoing, Bank's aggregate liability to Customer for all losses, damages, and expenses incurred in connection with any single claim shall not exceed an amount equal to the monthly billing paid by, charged to or otherwise assessed against Customer for Services over the three (3) month-period immediately preceding the date on which the damage or injury giving rise to such claim is alleged to have occurred or such fewer number of preceding months as this Agreement has been in effect. Notwithstanding any of the foregoing, for transactions which are subject to Article 4A of the UCC, Bank shall be liable for such damages as may be required or provided under Article 4A or the Fedwire Regulations, as applicable, except as otherwise agreed in this Agreement. This Agreement is only between Bank and Customer, and Bank shall have no liability hereunder to any third party.

15.2 Except as otherwise expressly provided in Section 8 of this Agreement, Bank shall not be liable for any loss, damage or injury caused by any act or omission of any third party; for any charges imposed by any third party; or for any loss, damage or injury caused by any failure of the hardware or software utilized by a third party to provide Services to Customer.

15.3 Bank shall not be liable or responsible for damages incurred as a result of data supplied by Customer that is inaccurate, incomplete, not current, or lost in transmission. It is understood that Bank assumes no liability or responsibility for the inaccuracy, incompleteness or incorrectness of data as a result of such data having been supplied to Customer through data transmission.

15.4 Bank is not liable for failing to act sooner than required by any Appendix or applicable law. Bank also has no liability for failing to take action if Bank had discretion not to act.

15.5 Bank shall not be responsible for Customer's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or due authorization of any entry, funds transfer order, or other instruction received from Customer) or the acts or omissions of any other person, including, without limitation, any Automated Clearing House processor, any Federal Reserve Bank, any financial institution or bank, any transmission or communication facility, any receiver or receiving depository financial institution, including, without limitation, the return of an entry or rejection of a funds transfer order by such receiver or receiving depository financial institutions, and no such person shall be deemed Bank's agent. Bank shall be excused from failing to transmit or delay in transmitting an entry or funds transfer order if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to Federal Reserve guidelines or otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. In no event shall Bank be liable for any damages resulting from Bank's action or inaction which is consistent with regulations issued by the Board of Governors of the Federal Reserve System, operating circulars issued by a Federal Reserve Bank or general banking customs and usage. To the extent required by applicable laws, Bank will compensate Customer for loss of interest on funds as a direct result of Bank's failure to comply with such laws in executing electronic transfers of funds, if such failure was within Bank's control. Bank shall not be liable for Customer's attorney's fees in connection with any such claim.

15.6 EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK, AND THE SERVICE IS PROVIDED "AS IS," AND BANK AND ITS SERVICE PROVIDERS AND AGENTS DO NOT

MAKE, AND EXPRESSLY DISCLAIM ANY, WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, WITHOUT BREACHES OF SECURITY OR WITHOUT DELAYS. IN THOSE STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE LIABILITY OF BANK AND ITS SERVICE PROVIDERS AND AGENTS IS LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY LAW.

15.7 The provisions of this Section 15 shall survive termination of this Agreement.

16. Indemnification.

16.1 In addition to but no in lieu of any indemnification provision otherwise contained in the Contract, subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, and except as otherwise expressly prohibited or limited by law, Customer shall indemnify and hold Bank harmless from any and all liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceedings, whether or not Bank shall be designated a party thereto) which may be incurred by due to any claim or action by any person, entity or other third-party against Bank to the extent such claim or action relates to or arises out of:

(a) any claim of any person that Bank is responsible for any act or omission of Customer or (b) a Customer payment order contravenes or compromises the rights, title or interest of any third party, or contravenes any law, rule, regulation, ordinance, court order or other mandate or prohibition with the force or effect of law;

(ii) any failure by Customer to observe and perform properly all of its obligations hereunder or any wrongful act of Customer or any of its Affiliates;

(iii) any breach by Customer of any of its warranties, representations or agreements;

(iv) any action taken by Bank in reasonable reliance upon information provided to Bank by Customer or any Affiliate or subsidiary of Customer; and

(v) any legal action that Bank responds to (other than an action initiated by Customer directly against Bank) or initiates under this Agreement, including any interpleader action Bank commences,

involving Customer or Customer's Account(s), including without limitation, any state or federal legal process, writ of attachment, execution, garnishment, tax levy or subpoena.

Nothing in this paragraph is, or shall be deemed to be, a waiver of sovereign immunity by Customer.

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

16.3 The provisions of this Section 16 shall survive termination of this Agreement.

17. **Lawyer Trust Accounts.** This Section 17 applies to law firms that have established lawyer trust accounts, including but not limited to JOLTA, IOTA and IOLA Accounts (collectively, "Lawyer Trust Accounts"), in the State of New Jersey and as may be applicable under other States' laws. In the event that Customer is a law firm in the State of New Jersey or such other State(s) as may be applicable, and Customer's clients' funds are held in Lawyer Trust Account(s), Customer agrees and shall ensure that only lawyers that are Authorized Representatives of Customer may initiate debits from such Lawyer Trust Account(s). Such debit transfers may include, but are not limited to, wire, ACH and book transfers through the Bank Internet System or through such other Services as may be made available by Bank from time to time.

18. **Force Majeure.** Neither party shall bear responsibility for non-performance of this Agreement to the extent that such non-performance is caused by an event beyond that party's control, including, but not necessarily limited to, fire, casualty, breakdown in equipment or failure of telecommunications or data processing services, lockout, strike, unavoidable accident, act of God, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency that prevents Bank or Customer from operating normally.

19. **Documentation.** The parties acknowledge and agree that all documents evidencing, relating to or arising from the parties' relationship may be scanned or otherwise imaged and electronically stored and the originals (including manually signed originals) destroyed. The parties agree to treat such imaged documents as original documents and further agree that such reproductions and copies may be used and introduced as evidence at any legal proceedings including, without limitation, trials and arbitrations, relating to or arising under this Agreement.

20. **Entire Agreement.** Bank and Customer acknowledge and agree that the Contract and any amendments hereto, and all other documents incorporated by reference therein, constitute the complete and exclusive

statement of the agreement between them with respect to the Services, and supersede any prior oral or written understandings, representations, and agreements between the parties relating to the Services.

21. Amendments. Bank may, at any time, amend this Agreement, the Services or Appendices in its sole discretion and from time to time where such amendments apply to all or substantially all of the Bank's Cash Management Services customers, except to the extent that any such amendments contravene any provisions of this Agreement or the provisions of the Contract that the parties previously amended, customized or otherwise specially-negotiated. Bank may provide notice to Customer of such amendments in accordance with the provisions of the Contract. Customer may terminate this Agreement, including any associated Appendix(ices), immediately upon its receipt of notice of an amendment that is not acceptable to Customer. Except as expressly provided otherwise in this Agreement, any such changes generally will be effective immediately upon notice to Customer as described below. Customer will be deemed to accept any such changes if Customer accesses or uses any of the Services after the date on which the change becomes effective. Customer will remain obligated under this Agreement and any Appendices, including without limitation, being obligated to pay all amounts owing thereunder, even if Bank amends this Agreement or any Appendices. Notwithstanding anything to the contrary in the Contract, this Agreement or in any Appendix, if Bank believes immediate action is required for security of Bank or Customer funds, Bank may immediately initiate changes to any security procedures and provide prompt subsequent notice thereof to Customer.

22. Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable as written, that provision shall be interpreted so as to achieve, to the extent permitted by applicable law, the purposes intended by the original provision, and the remaining provisions of this Agreement shall continue intact. In the event that any statute, regulation or government policy to which Bank is subject and that governs or affects the transactions contemplated by this Agreement, would invalidate or modify any portion of this Agreement, then this Agreement or any part thereof shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Customer as a result of Bank's compliance with such statute, regulation or policy.

23. Assignment and Delegation. Bank may not assign any of its rights or delegate any of its responsibilities in whole or in part without notice to or consent from Customer. Notwithstanding the foregoing, for the purposes of this Agreement, Customer acknowledges and agrees that the acquisition of all or substantially all of Bank's assets by another institution shall not be deemed an assignment, nor shall the transfer of this Agreement or any of Bank's rights or obligations hereunder to an affiliate be considered an assignment. Additionally, for any subcontracting or assignment for which Bank must otherwise obtain the

Customer's consent, such consent shall not be unreasonably withheld. Customer may not assign, delegate or otherwise transfer its rights or responsibilities under this Agreement without Bank's prior written consent, which consent Bank may grant or withhold in its sole discretion.

24. Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

25. Non-Waiver. No deviation from any of the terms and conditions set forth or incorporated in this Agreement shall constitute a waiver of any right or duty of either party, and the failure of either party to exercise any of its rights hereunder on any occasion shall not be deemed to be a waiver of such rights on any future occasion.

26. INTENTIONALLY OMITTED

27. Notices.

27.1 Except as otherwise expressly provided in this Agreement, all notices that are required or permitted to be given by Customer (including all documents incorporated herein by reference) shall be sent by first class mail, postage prepaid, and addressed to Bank at the address provided to Customer in writing for that purpose. All such notices shall be effective upon receipt.

27.2 Customer authorizes Bank to, and Customer agrees that Bank may, send any notice or communication that Bank is required or permitted to give to Customer under this Agreement, including but not limited to notice of any change to the Services, this Agreement or any Appendix, to Customer's business mailing address or Customer's business e-mail address as it appears on Bank's records, or electronically by posting the notice on Bank's website, on an Account statement or via facsimile, and that any such notice or communication will be effective and deemed delivered when provided to Customer in such a manner. Customer agrees to notify Bank promptly about any change in Customer's business mailing or Customer's business e-mail address and acknowledges and agrees that no such change will be effective until Bank has had a reasonable opportunity to act upon such notice. Customer agrees that Bank may consider any such notice or communication as being given to all Account owners when such notice or communication is given to any one Account owner.

28. Jury Trial Waiver. BANK AND CUSTOMER EACH AGREE THAT NEITHER BANK NOR CUSTOMER SHALL (I) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER ACTION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY ACCOUNT OR THE DEALINGS OF THE RELATIONSHIP BETWEEN BANK AND CUSTOMER, OR (II) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANOTHER IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO NO

EXCEPTIONS. NEITHER BANK NOR CUSTOMER HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. BANK AND CUSTOMER EACH ACKNOWLEDGE THAT THIS WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE. The provisions of this Section 28 shall survive termination of this Agreement.

29. **Beneficiaries.** This Agreement is for the benefit only of the undersigned parties hereto and is not intended to and shall not be construed as granting any rights to or otherwise benefiting any other person.

30. **Recording of Communications.** Customer and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be recorded and retained by either party by use of any reasonable means.

31. **Facsimile Signature.** The parties acknowledge and agree that this Agreement and any Appendix or Amended Appendices may be executed and delivered by facsimile, and that a facsimile signature shall be treated as and have the same force and effect as an original signature. Notwithstanding the foregoing, Bank may, in its sole and exclusive discretion, also require Customer to deliver this Agreement and any Appendix or Amended Appendices with an original signature for its records.

32. **Relationship.** Customer and Bank are not, and Customer and Bank's licensors are not, partners, joint venturers or agents of each other as a result of this Agreement.

33. **Section Headings.** The section headings used in this Agreement are only meant to organize this Agreement, and do not in any way limit or define Customer's or Bank's rights or obligations.

IN WITNESS WHEREOF, Customer and Bank have duly caused this Agreement, including all applicable Appendices, to be executed by an Authorized Representative.

CITY OF SUNNY ISLES BEACH
(Customer)

18070 Collins Avenue
Sunny Isles Beach, Florida 33160
(Address)

By: Christopher J. Russo
(Signature of Authorized Representative)

Print Name: CHRISTOPHER J. RUSSO

Title: CITY MANAGER

TD BANK, N.A.

By: Pamela Rankalawan
(Signature)

Print Name: Pamela Rankalawan

Title: Vice President



EXHIBIT TO CASH MANAGEMENT MASTER AGREEMENT:
GOVERNMENTAL ENTITY SERVICES

This Exhibit is incorporated by reference into the parties' Cash Management Master Agreement (the "Agreement") and applies to all Cash Management Services made available by Bank to Customer, as a governmental entity. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Bank and Customer agree that, notwithstanding anything to the contrary contained in the Agreement, the following terms and provisions shall apply to the Agreement:

TERMS AND CONDITIONS

1. Section 26, "Governing Law," of the Agreement is hereby deleted in its entirety and replaced with the following:

26. Governing Law. Any claim, controversy or dispute arising under or related to this Agreement shall be governed by and interpreted in accordance with the laws of the jurisdiction pursuant to which Customer was incorporated or otherwise organized, except where applicable federal law is controlling. In the event of a conflict between the provisions of this Agreement and any applicable law or regulation, this Agreement shall be deemed modified to the extent necessary to comply with such law or regulation.

2. The following new Section 34 is hereby added immediately after Section 33:

34. Additional Representations and Warranties. For purposes of this Section, "Governmental Unit" means (A) any town, city, school district or school administrative unit of any nature, water district, sewer district, sanitary district, housing authority, hospital district, municipal electric district, county or other political subdivision, government agency, bureau, department or other instrumentality, or quasi-governmental corporation or entity defined by applicable law, and (B) any state government or any agency, department, bureau, office or other instrumentality thereof.

(a) If Customer is a Governmental Unit of the type included in (A) above, Customer and the individual signing below represent, warrant and agree: (i) that this Agreement has been duly executed by the Treasurer, Finance Director, or other financial officer authorized by law to make disbursements of governmental funds and enter into banking agreements; (ii) that this Agreement has been

duly authorized by a vote of the governing body of Customer that was duly called and noticed, at which the necessary majority voted to authorize this Agreement, as evidenced by the certification of the Secretary of the governing body and provided with this Agreement; (iii) that only persons authorized to disburse municipal funds from any Account will be enrolled as Authorized Users having access to wire transfer, ACH or Account transfer functions; (iv) that if this Agreement remains in effect for more than one budget year, upon request of Bank, Customer will ratify and provide evidence of the renewal of this Agreement in subsequent years; and (v) that this Agreement is the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

(b) If Customer is a Governmental Unit of the type included in (B) above, Customer and the individual signing below represent, warrant and agree: (i) that this Agreement has been duly executed by a financial officer authorized by law to make disbursements of governmental funds and enter into banking agreements on behalf of Customer; (ii) that this Agreement has been duly authorized by a senior officer of Customer; (iii) that Customer has complied with all state laws and regulations, including any regulations or policies adopted by Customer with respect to electronic commerce in entering into and performing this Agreement and any related ACH or wire transfer agreement; (iv) that only persons authorized to disburse Customer funds from any Account will be enrolled as Authorized Users having access to wire transfer, ACH or Account transfer functions; and (v) that this Agreement is the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

(c) For a Customer of the type included in either (A) or (B) above, Customer and the individual signing below further represent, warrant and agree: (i) that upon Bank's request, Customer shall provide

evidence of those persons authorized to disburse Customer funds as described in (a)(iii) and (b)(iv) above; (ii) that upon Bank's request, Customer will certify its compliance with (a) or (b), as applicable, on an annual basis; and (iii) that Customer will provide notice to Bank if any person authorized to disburse Customer funds as described in (a)(iii) and (b)(iv) is no longer so authorized or his/her position of such authority is terminated for any reason.

3. **Effectiveness.** Customer agrees to all the terms and conditions of this Exhibit. The liability of Bank under this Exhibit shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Exhibit shall remain in full force and effect until such time as a different or amended Exhibit is accepted in writing by Bank or the Cash Management Master Agreement or Contract is terminated.

Remainder of page intentionally left blank.



APPENDIX I

TD eTREASURY SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and governs Customer's use of the Bank Internet System (or "eTreasury"). All capitalized terms used herein without definition shall have the meanings given to them in the parties' Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. Definitions.

"Account(s)" means a checking, regular statement savings, money market deposit, certificate of deposit, investment or commercial loan or line of credit account(s) Customer maintains with Bank for business or non-consumer purposes that is designated by Customer for use with the Services, as described below.

"Account Agreement" means any and all agreements between Customer and Bank which govern Customer Accounts (as defined above) and which were provided to Customer when Customer opened its Account(s), or any other documents governing Customer's Account(s), each as may be amended from time to time.

"Administrator" or "Account Administrator" means Customer's employee(s) or other person(s) that Customer (or any Administrator designated by Customer) designates on the Services' Setup Form(s) (or by on-line changes to such designations as described below) as being its Authorized Representative, or as authorized to act on Customer's behalf, with respect to the Services.

"Appendix" means this eTreasury Services Appendix, including all procedures, Setup Form(s), exhibits, schedules, documents and agreements referenced herein, each as may be amended from time to time.

"Authorized User" means any person Customer's Administrator designates as being authorized to access or use any of the Services on Customer's behalf.

"Login ID" means the electronic identification, in letters and numerals, assigned to Customer by Bank or to any additional Authorized Users designated by Customer's Account Administrator.

"Payment" means a transfer of funds to or from Account(s).

2. Services.

2.1 This Appendix describes the terms and conditions under which Bank will provide Customer with access to and use of any of the electronic information delivery and transaction initiation services that Bank makes available using the Bank Internet System.

2.2 By accessing the Services with the Access Devices, Customer may perform any or all of the Services described in this Appendix and selected for use in the Services' Setup Form(s) and that Bank has approved for Customer's use. Bank reserves the right to reject Customer's Services' Setup Form(s), schedules and other required documents and to refuse Customer access to or use of the Services for any reason and in Bank's sole discretion. Bank may, in its sole and exclusive discretion, introduce new features of the Services from time to time but is not required to notify Customer of the availability of any such new features.

2.3 By subscribing to the Services, Customer will have access to the Services' basic features, which include but may not be limited to, in Bank's sole and exclusive discretion, the following:

2.3.1 Previous-Day Balance Reporting. Previous-Day Balance Reporting allows Customer to review the balances and transaction history in Customer's checking, savings, money market deposit and loan Account(s) for such period of time as described in the Services' Setup Form(s). Customer may also view images of deposit tickets, deposit items, paid checks, return deposited items and expired stopped items through this feature. This information may be viewed upon implementation of the Services, and the scope of the time periods for which transactional history and check images may be viewed (including pre-implementation periods) may vary and depend upon various factors such as when Account(s) were opened and when the Services were first implemented and set-up.

2.3.2 Real-Time Balance Reporting. Real-Time Balance Reporting allows Customer to review current Account balance(s) and transaction activity in real-time.

2.3.3 Book Transfers. Book Transfers allows Customer to make intra-bank fund transfers between Customer's checking, savings and loan Accounts. Transfers may be made as one-time or recurring, same-day or in the future. Book Transfers may also be initiated from (i) one-Account-to-one-Account, (ii) one-Account-to-many-Accounts, or (iii) from many-Accounts-to-one-Account. Recurring transfers may utilize one of several repeating frequency options (weekly, monthly, etc.), as set forth in the Services. Book Transfer templates may be created and saved for frequently executed transfers. Pending transfers and templates may be edited or deleted (cancelled) through the Services by Authorized Users at any time prior to the Business Day on which the associated transfer is scheduled to occur. Transfer amounts and the order in which such transfers occur are limited to the available balance in the Account(s) on the effective date of the transfer. For same-day transactions, Customer will need to have sufficient available funds in the Account from which funds are to be transferred to cover the amount of the transfer. For future or recurring transactions, Customer will need to have sufficient available funds on the day the transaction is to occur. The number of transfers from interest bearing checking and savings Accounts are subject to the terms of the Account Agreement and federal regulations. Transfers that Customer transmits by Bank's cut-off time as set forth on the Services' designated website or the Services' Setup Form(s) on a Business Day will be posted to the Account as of that Business Day; however, a request (whether a same-day funds transfer or a future-dated transfer) may not result in an immediate transfer of funds or immediate availability because of the time required to process the transaction. Customer is solely responsible for the review of the previous day's transaction report and the status of the transfer request within the Services to ensure that the transaction was processed. Only Book Transfers initiated through the Services will be displayed on the Services' Transfer reports tab. All transfers are subject to the Account Agreement.

2.3.3.1 Future-Dated Book Transfer. In conjunction with Book Transfers, a request to transfer funds between Customer's Accounts may be initiated and approved for a future date. The future transfer date may be scheduled for such date in advance as may be permitted from time to time by Bank and as set forth within the Bank Internet System. Future-dated transfers may be scheduled as a one-time request or a recurring request in a pre-determined amount, based on the instructions entered by Customer with the request. Future-dated transfers will be initiated on the Business Day requested by Customer, not on the date Customer entered the transaction using the Services.

2.3.4 Stop Payment. Stop payments of checks drawn on Customer's Account(s) are subject to the terms and conditions of the Account Agreement. Notwithstanding anything in the Account Agreement to the contrary, Customer may use the Services to initiate stop payment orders for an individual check or a range of checks. Bank shall have no responsibility for losses resulting from any delay in Bank's receipt of stop

payment orders transmitted by means of the Bank Internet System or for Customer not taking additional actions when a response message from the Bank Internet System indicates a response other than a successful confirmation. Customer must provide Bank with the **EXACT CHECK NUMBER OR RANGE OF CHECK NUMBERS**. When known, Customer should also provide the **EXACT AMOUNT OF THE CHECK**. If the check number is incorrect in any way or the amount of the check is inaccurate by one cent or more in the stop payment order, payment will not be stopped and Bank will not be responsible for resulting losses. All other information must be reasonably accurate. Requests entered on the current day may not be effective until one (1) Business Day after receipt, and after Bank has had a reasonable time to act on the request. Requests made on a non-Business Day or on Saturday, Sunday or federal holidays are entered on the next Business Day but may not be effective until the second (2nd) Business Day after receipt. Stop payments using the Bank Internet System are effective for three hundred sixty-five (365) Calendar Days unless renewed before the end of the 365-day period. Customer is solely responsible for confirming the status of a stop payment order. Except as otherwise provided by Compliance Laws, Customer shall not have the right to stop payment on or recall any payment order or transfer request given hereunder after it has been transmitted to Bank. Only stop payment orders initiated or recalled through the Bank Internet System will be displayed on the Bank Internet System's Stop Payments screen. Stop payment orders that are not initiated through the Bank Internet System may also be cancelled through the Bank Internet System.

2.3.5 E-Learning. E-Learning is a self-paced, interactive educational tool available via the Services that Customer may use to learn more about the various features or modules related to the Services, as well as how to use them.

2.3.6 Customizable Dashboard. Using this feature, Customer can configure and save Account balance views, as well as command one-click access to detailed information, balance and payment reports, and high-use transaction initiation features. It is Customer's responsibility to view the "Dashboard" for Bank notices when designating another section of the Bank Internet System as the desired landing page.

2.4 In addition to the Services as described in this Appendix and/or in the Services' Setup Form(s), additional features or modules related to the Services may be offered from time to time by Bank, in its sole and exclusive discretion, including but not limited to the following:

2.4.1 Wire Transfers. Wire transfers and wire drawdowns are subject to the terms and conditions of the Wire Transfer Services Appendix. Once approved by Bank for use by Customer, this Service allows Customer to transfer funds electronically, typically from Customer's Account(s) to other account(s) with Bank or to account(s) at other banks. Except for future-dated transfers, domestic or foreign wire transfers entered through the

Services will be processed on the Business Day they are received, and at currency exchange rates disclosed within the Services, as applicable, provided that they are received in accordance with Bank's cut-off time(s) for foreign wires and for domestic wires, as set forth in the Wire Transfer Services Appendix.

2.4.2 ACH Originations. ACH originations are subject to the terms and conditions of the Automated Clearing House (ACH) Origination Appendix, the Third-Party Sender Services Appendix or the ACH Third Party Service Provider Agreement, as applicable. Once approved by Bank for use by Customer, this Service allows Customer to initiate and approve ACH transactions that Customer desires Bank to enter into the ACH network on Customer's behalf. Except for future-dated transactions, ACH transactions entered through the Services will be processed (but not settled) on the Business Day they are received, provided that they are received in accordance with Bank's cut-off time, as set forth in the Automated Clearing House (ACH) Origination Appendix or the Third-Party Sender Services Appendix, as applicable.

2.4.3 File Transfers. File transfers is a method for Customer and Bank to send and receive reports and files (including, but not limited to, ACH, Reconciliation, Lockbox, and BAI files) to each other through the Internet and are subject to the terms and conditions of applicable Appendices. Such reports and files may also be auto-generated and auto-delivered.

3. Hours of Access. Customer generally may access the Services 24 hours a day, seven (7) days a week. Customer may not be able to access the Services, however, during any special or other scheduled maintenance periods or interruption or delay due to causes beyond Bank's control. These hours of access are subject to change without notice.

4. Account Designation.

4.1 Customer may designate any of Customer's Accounts maintained with Bank for business or non-consumer purposes for use with the Services. Generally, the taxpayer identification number for each Account must be the same, and each Account is subject to the other conditions set forth in this Appendix, except as Bank, in its sole discretion, may otherwise permit. Bank reserves the right to deny any Account designation for use with the Services in its sole discretion.

4.2 Customer may at any time add or delete any Account that Customer has designated for use with any of the Services, or change the Services associated with any Account, by notifying Bank in writing.

5. Administrator(s) and Authorized Users.

5.1 Customer shall designate Administrator(s) with Bank as set forth in the Services' Setup Form(s). Customer is solely responsible for designating its Administrator(s).

5.2 The Administrator(s) may designate other Administrators and/or Authorized Users. Customer accepts as its sole responsibility the Administrator's designation of other Administrators and Authorized Users. Customer understands that the Administrator(s) will control, and Customer authorizes the Administrator(s) to control, access by other Administrators and Authorized Users of the Services through the issuance of Access Devices. The Administrator(s) may add, change or terminate Customer's Authorized User(s) from time to time and in his/her sole discretion. Bank does not control access by any of Customer's Authorized Users to any of the Services. Bank recommends that Customer manage its use of the Services and its Administrators by requiring dual control to set up new Authorized Users. Bank also recommends that Customer review and assign limits for Authorized Users that create and/or approve wire transfers and ACH transactions, as established on the Services' Setup Form(s). In the event that Bank, in its sole and exclusive discretion, assists Customer in any way with the establishment, addition or general set-up of Authorized Users, Customer understands and agrees that the Administrator(s) shall remain responsible for verifying the accuracy thereof and shall otherwise control access by any of Customer's Authorized Users to any of the Services.

5.3 Customer will require each Administrator and each Authorized User to comply with all provisions of this Appendix and all other applicable agreements. Customer acknowledges and agrees that it is fully responsible for the failure of any Administrator or any Authorized User to so comply. Customer is responsible for any Payment, transfer and other Services and charges incurred by any Administrator and any Authorized User, even if such Administrator or Authorized User exceeds his/her authorization. Bank recommends that Customer require its Administrator(s) to review all entitlement reports available through the Services with respect to Customer's Authorized User(s).

5.4 Whenever any Authorized User leaves Customer's employ or Customer otherwise revokes the authority of any Authorized User to access or use the Services, the Administrator(s) are solely responsible for deactivating such Authorized User's Access Devices. Customer shall notify Bank in writing whenever a sole Customer Administrator leaves Customer's employ or Customer otherwise revokes a sole Administrator's authority to access or use the Services.

6. Access Devices; Security Procedures.

6.1 Upon successful enrollment, Customer can access the Services from Bank's designated website by using Customer's Computer or, as may be permitted by Bank from time to time in its sole discretion and in accordance with Bank's terms and conditions for such access, using mobile or other Internet-enabled system(s) or device(s), along with the Services' security procedures as described from time to time. A company ID assigned to Customer by Bank, a unique Login ID and an individual password will be used for log-in by Customer's Administrator(s) and Authorized User(s). Bank will

provide the Administrator(s) initially designated by Customer with an initial individual password to gain access to the Services. The Administrator(s) and Authorized User(s) must change his or her individual password from time to time for security purposes, as prompted by the Bank Internet System or more frequently.

6.2 Customer acknowledges that the Administrator(s) will, and Customer authorizes the Administrator(s) to, select other Administrators and Authorized Users by issuing to any person a unique Login ID and password. Customer further acknowledges that the Administrator(s) may, and Customer authorizes the Administrator(s) to, change or de-activate the unique Login ID and/or password from time to time and in his or her sole discretion.

6.3 Customer acknowledges that, in addition to the above individual passwords, access to the Services includes, as part of the Access Devices, a risk-based authentication security procedure at log-in for Customer, including Customer's Administrator and Authorized Users. This additional security procedure involves an additional credential for each user that is in addition to Login IDs and individual password security (hereinafter "Enhanced Log-in Security"). With Enhanced Log-in Security, additional information regarding each Authorized User's computer and method of website access will be collected and validated automatically with the set-up process. An electronic access identity will be created for each Authorized User by combining a number of key identification points, such as IP address, Internet service provider, PC and browser settings, time of day and geographic location. These access identities are used by Bank to authenticate Authorized Users. Further authentication may occur automatically due to the detection of unusual source occurrences in relation to that access identity. An additional security procedure incorporates use of a physical security device or token ("Token") for certain transactional functionality associated with ACH transactions and wire transfers. A Token will be issued to any Authorized User(s), for example, for use in initiating and/or approving ACH transactions and wire transfers. Notwithstanding the foregoing, Bank reserves the right to incorporate the use of Tokens for certain other functionality from time to time, in its sole discretion, including by way of example only and not by way of limitation, the use of Tokens with certain administrative functionality and for the creation of ACH and wire templates. Physical security of each Token is Customer's sole responsibility. With the Token, each Authorized User will receive a PIN number that the Authorized User must keep in a secure place. When an Authorized User leaves Customer's employ, his or her Login ID must be deleted and, if a Token had been issued to such Authorized User, Bank must be promptly notified so that Bank may deactivate such Authorized User's Token. Any additional Authorized User requiring a Token must be authorized, in writing by Customer to Bank, for Token creation or re-creation and deployment. If applicable, fees may be assessed for additional Tokens.

6.4 Customer further acknowledges and agrees that all wire transfers and ACH transactions initiated through the Services incorporate "dual control" or

separation of duties. With this additional security feature, one Authorized User will be permitted to create, edit, cancel, delete and restore ACH batches or wire transfer orders under his/her unique Login ID, password and Token; a second *different* Authorized User with his/her own unique Login ID, password and Token will be required to approve, release or delete ACH batches or wire transfer orders.

6.5 Customer accepts as its sole responsibility the selection, use, protection and maintenance of confidentiality of, and access to, the Access Devices. Customer agrees to take reasonable precautions to safeguard the Access Devices and keep them confidential. Customer agrees not to reveal the Access Devices to any unauthorized person. Customer further agrees to notify Cash Management Customer Care immediately at 1-866-475-7262 if Customer believes that the confidentiality of the Access Devices has been compromised in any manner.

6.6 The Access Devices identify and authenticate Customer (including the Administrator and Authorized Users) to Bank when Customer accesses or uses the Services. Customer authorizes Bank to rely on the Access Devices to identify Customer when Customer accesses or uses any of the Services, and as signature authorization for any Payment, transfer or other use of the Services. Customer acknowledges and agrees that Bank is authorized to act on any and all communications or instructions received using the Access Devices, regardless of whether the communications or instructions are authorized. Bank owns the Access Devices, and Customer may not transfer them to any other person or entity.

6.7 Customer acknowledges and agrees that the Access Devices and other security procedures applicable to Customer's use of the Services and set forth in this Appendix, as well as such security best practices as described by Bank from time to time and made available on the Bank Internet System, are a commercially reasonable method for the purpose of verifying whether any Payment, transfer or other use of the Services was initiated by Customer. Customer also agrees that any election Customer may make to change or waive any optional security procedures recommended by Bank is at Customer's risk and that any loss resulting in whole or in part from such change or waiver will be Customer's responsibility. Customer further acknowledges and agrees that the Access Devices are not intended, and that it is commercially reasonable that the Access Devices are not intended, to detect any errors relating to or arising out of a Payment, transfer or any other use of the Services.

6.8 If Customer has reason to believe that any Access Devices have been lost, stolen or used (or may be used) or that a Payment or other use of the Services has been or may be made with any Access Devices without Customer's permission, Customer must contact its Administrator and Bank. In no event will Bank be liable for any unauthorized transaction(s) that occurs with any Access Devices.

6.9 Bank may, from time to time, propose additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for the security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

7. Debiting Customer's Account(s). Customer authorizes Bank to charge and automatically deduct the amount of any Payment from Customer's Account(s) (or any other Account Customer maintains with Bank, if necessary), in accordance with the Cash Management Master Agreement and the Account Agreement.

8. Electronic Statements.

8.1 As an eTreasury user, and subject to Bank's approval and applicable set-up and enrollment requirements, Customer may elect to stop or resume the mailing of paper statements for eligible Accounts by requesting this feature from Bank.

8.2 Only Accounts accessible via the Services may be enrolled for electronic statement delivery. Eligible Accounts are displayed on the "Statements" page of the Services. If Customer currently receives a consolidated periodic statement that includes multiple Accounts and Customer selects electronic statement delivery, all Accounts shown on the consolidated statement will be automatically enrolled for electronic statement delivery. For joint Accounts, only one Account owner need enroll for electronic statement delivery.

8.3 Customer's electronic statement will generally be available within 24 hours after the statement cut-off date. The statement cut-off date for Customer's electronic statement is the same as Customer's paper statement. Once made available as described herein, the information contained in Customer's electronic statement shall be deemed to have been delivered to Customer personally, whether actually received or not. Customer may view, print and download current statements and such period of statement history as set forth on the Bank Internet System. To view or print an electronic statement, Customer must have an appropriate version of Adobe Acrobat software installed on Customer's Computer sufficient to support access to a PDF file.

8.4 At Customer's request, Bank will send Customer a paper copy of Customer's electronic statement previously delivered through the Services at any time. Bank's standard fee then in effect and charged for paper delivery of copies of Account statements will apply. A request for a paper copy does not cause a termination of the electronic statement feature. A paper copy can be obtained until the copy is no longer required to be maintained by Bank as a record for the designated Account under applicable law or regulation.

8.5 Customer may revoke consent for the electronic statement feature for Customer's Accounts at any time by contacting Customer's Relationship Manager. Electronic posting of Customer's electronic statement on the Services' site and transmission of related email notices will continue until: (i) termination of the electronic statement feature; (ii) termination of Customer's designated Accounts with Bank; or (iii) termination of this Agreement or Customer's use of the Services.

8.6 Bank may discontinue the electronic statements feature at any time in Bank's discretion and resume mailing paper statements to Customer. Bank may also add, modify or delete any feature of the electronic statements feature in Bank's discretion. Bank will provide Customer with notice of any change or termination in the electronic statement feature in accordance with this Appendix.

9. Alerts.

9.1 The Services allow Customer to voluntarily choose alert messages regarding Customer's Account(s), including but not limited to messages to alert Customer about high or low Account balance thresholds, about debit or credit transactions cleared, and payment status for ACH and wire transactions. Bank may add new alerts from time to time, or cancel existing alerts. If Customer has opted to receive an alert that is being canceled, Bank will notify Customer in accordance with the terms of this Appendix. Each alert has different options available, and Customer will be asked to select from among these options upon activation of Customer's alerts service.

9.2 Voluntary Alerts.

9.2.1 Electronic alerts will be sent to the email address Customer has provided as Customer's primary email address for the Services or via the Services' secure messaging service. If Customer's email address changes, Customer is responsible for informing Bank of the change. Customer can also choose to have alerts sent to a secondary email address. Changes to Customer's primary and secondary email addresses will apply to all of Customer's alerts.

9.2.2 Customer understands and agrees that Customer's alerts may be delayed or prevented by a variety of factors. Bank will use commercially reasonable efforts to provide alerts in a timely manner with accurate information. Bank neither guarantees the delivery nor the accuracy of the contents of any alert. Customer also agrees that Bank shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by Customer or any third party in reliance on an alert. Customer agrees that Bank is not responsible for any costs or fees incurred as a result of alerts sent to email addresses or phone numbers connected with mobile or similar devices.

9.2.3 Alerts are not encrypted and will never include Customer's Access Devices or full Account number(s). However, alerts may include Customer's name and some information about Customer's Accounts, depending upon which alert(s) Customer selects. Anyone with access to Customer's email address will be able to view the contents of these alerts.

9.2.4 Customer may, at its option, customize the subject line of Customer's alerts for easier identification by Customer. Customer acknowledges and agrees that Customer should not include full Account number(s) or other sensitive Customer or Account information in any customized subject line.

10. Use of Financial Management (FM) Software. Use of the Services may be supplemented by use of certain FM software. Compatibility and functionality of the FM software with the Services may vary depending upon the FM software Customer is using, and Bank makes no representations or guarantees regarding use of the Services with Customer's FM software. Bank will provide Customer with reasonable assistance, when requested, to enable Customer's use of the Services with FM software. Bank is not responsible for any problems related to the FM software itself, Customer's Computer or Customer's ability to connect using the FM software as described in this Appendix. Customer acknowledges and agrees that the FM software versions supported by Bank for purposes of use with the Services shall be in accordance with the sunset policy of the FM software provider.

11. Security. Customer agrees not to disclose any proprietary information regarding the Services to any third party (except to Customer's Administrator(s) and Authorized User(s)). Customer also agrees to comply with any operating, security and recognition procedures Bank may establish from time to time with respect to the Services. Customer will be denied access to the Services if Customer fails to comply with any of these procedures. Customer acknowledges that there can be no guarantee of secure transmissions over the Internet and that the Services' security procedures are reasonable. Customer is responsible for reviewing the transaction reports Bank provides on-line and in Customer's monthly statements to detect unauthorized or suspicious transactions. In addition to any other provision hereof regarding authorization of

transactions using the Services, all transactions will be deemed to be authorized by Customer and to be correctly executed thirty (30) Calendar Days after Bank first provides Customer with a statement or online transaction report showing that transaction, unless Customer has provided written notice that the transaction was unauthorized or erroneously executed within that period. In order to minimize risk of loss, Customer agrees to cause its Administrator or designated Authorized User(s) to review the transaction audit log available with the Services to detect unauthorized or erroneous transactions not less frequently than once every five (5) Calendar Days.

12. Terminating this Appendix; Liability.

12.1 This Appendix may be terminated in accordance with the terms and conditions of the Cash Management Master Agreement.

12.2 The provisions of this Appendix relating to Customer's and Bank's liability and the disclaimer of warranties set forth in the Cash Management Master Agreement and incorporated herein by reference shall survive the termination of this Appendix.

13. Changes to the Services and this Appendix. Bank may change the Services and this Appendix (including any amendments hereto) in accordance with the terms and conditions of the Cash Management Master Agreement.

14. Notices. Notices required by this Appendix shall be provided in accordance with the terms and conditions of the Cash Management Master Agreement.

15. Effectiveness. Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Contract or Cash Management Master Agreement is terminated.

Remainder of page intentionally left blank.



APPENDIX II

TD ACH ORIGINATION SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and the parties' Bank Internet System Agreement, as applicable. This Appendix applies to all automated clearing house ("ACH") Services made available to Customer, in Customer's capacity as an Originator, by Bank, as an Originating Depository Financial Institution ("ODFI"). All capitalized terms used herein without definition shall have the meanings given to them in either the Cash Management Master Agreement or the *NACHA Rules* (as defined below), as applicable. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. **Services.** The ACH network is a funds transfer system which provides for the interbank clearing of electronic credit and debit Entries for participating financial institutions. The ACH system is governed by the National Automated Clearing House Association's ("NACHA") *Operating Rules and Operating Guidelines* (collectively the "*NACHA Rules*").

2. **Customer Obligations.**

2.1 Customer will comply and shall cause its employees, officers, directors, agents and its Authorized Representative(s) and Administrator(s) to comply with (i) the *NACHA Rules* as amended from time to time and (ii) any specifications, advisories, interim policies, or instructions related to ACH transactions issued, from time to time, by Bank, NACHA or any federal or state regulatory authorities. The duties of Customer set forth in this Appendix in no way limit the requirement that Customer comply with the *NACHA Rules*. Customer specifically adopts and makes to Bank all representations and warranties of an Originator under the *NACHA Rules*, including that Customer will not initiate Entries in violation of the laws of the United States. Customer has access to a copy of the *NACHA Rules* and acknowledges receipt of a copy. (The *NACHA Rules* may be obtained at NACHA's website at www.NACHA.org or by contacting NACHA directly at 703-561-1100.) Customer agrees to subscribe to receive revisions to the *NACHA Rules* directly from NACHA.

2.2 Customer will maintain a checking Account ("Settlement Account") at Bank with available balances sufficient to offset any Entries submitted and against which any rejected or returned Entries may be credited or debited. Bank reserves the right, in its sole and exclusive discretion and at any time, to require ACH pre-funding of credit Entries requested by Customer, in accordance with the terms and conditions of any agreement between Bank and

Customer relating to pre-funding of such Entries, including as otherwise set forth in this Appendix.

2.3 Customer agrees from time to time, upon Bank's request and in accordance with this Appendix and the parties' Cash Management Master Agreement, to promptly provide Bank with information pertaining to Customer's financial condition as Bank may request, including without limitation, the name(s) of other financial institutions that Customer is using to originate Entries.

2.4 Nothing in this Appendix or any course of dealing between Customer and Bank (i) constitutes a commitment or obligation of Bank to lend money to Customer, (ii) obligates Bank to extend any credit to Customer, to make a loan to Customer or otherwise to advance funds to Customer to pay for any payment order contrary to Bank's published availability schedules and the settlement timing as reflected herein, and in such other documents and materials as may be provided to Customer by Bank with regard to the Services from time to time, (iii) constitutes a modification of this Appendix, the *NACHA Rules*, or the Security Procedures, or (iv) otherwise constitutes an agreement between Bank and Customer regardless of whatever practices and procedures Bank and Customer may use.

2.5 Customer is responsible for all tariffs, duties or taxes (excluding U.S. federal, state and local taxation of the income of Bank) that may be imposed by any government or governmental agency in connection with any payment order executed pursuant to this Appendix, including without limitation any international tariffs, duties or taxes related to international ACH Entries as further described in Section 6 below.

2.6 Customer shall be liable for all fines including without limitation any international fines related to international ACH Entries as further described in Section 6 below, that may be incurred by Bank that are attributable to

Customer's failure to comply with (i) the *NACHA Rules*, or (ii) the laws, regulations and orders administered by the U.S., including without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN").

3. Risk Exposure Limits.

3.1 Bank will establish for Customer, in Bank's sole and exclusive discretion, a transactional "Credit Exposure Limit" and a "Debit Exposure Limit" ("Exposure Limit(s)"). Each Exposure Limit will be established as an aggregate limit over multiple Settlement Dates with other not-yet-settled transactions issued by Customer through any ACH application with Bank. The Exposure Limits are based on Customer's financial condition and anticipated or historical level(s) of Entry instructions with Bank. Bank will notify Customer of Customer's Exposure Limits prior to implementation of the Services.

3.2 Customer shall promptly notify Bank if Customer anticipates a significant increase or decrease in the dollar amount of any of its ACH transactions. Bank may, from time to time, in its sole discretion, change the amount of Customer's Exposure Limits. Bank may, on an annual or more frequent basis, in Bank's sole discretion, review Customer's Exposure Limits and make any adjustments to Customer's Exposure Limits that Bank may deem appropriate.

3.3 Bank monitors all Exposure Limits for every customer that originates ACH transactions. Bank may reject or suspend processing of any Entry instructions if such Entry exceeds Customer's Exposure Limit(s). Bank shall use commercially reasonable efforts to notify Customer of such rejection or suspension. Bank may, in its sole and exclusive discretion, but shall have no obligation, to elect to process occasional Entry instructions that would exceed Customer's Exposure Limit(s), subject to there being sufficient available funds in the Settlement Account for the total amount of all credit Entries submitted to Bank for processing. In such event, Bank will reduce available funds in the Settlement Account equal to the total amount of the ACH credit Entries on the Business Day that Bank begins processing Customer's ACH file, and Customer's Settlement Account will be debited at the end of the effective Settlement Date of the file.

4. File Transmission Methods; Addenda.

4.1 Customer may elect, in accordance with the Services' Setup Form(s), to transmit a NACHA-formatted file to Bank via the following methods, or via such other methods as Bank may permit from time to time in its sole and exclusive discretion:

4.1.1 **Bank Internet System Transmission.** Customer may transmit a NACHA-formatted file to Bank via the service described in the Bank Internet System Appendix. Customer agrees to the terms of

the Bank Internet System Appendix and its related security procedures when initiating Entries as described therein.

4.1.2 **Direct Electronic Transmission.** Customer may transmit a NACHA-formatted file directly to Bank, as described in or as otherwise permitted by Bank's Appendix for Data Transmission Services. Connectivity between Bank and Customer must be established and successfully tested prior to live transactions.

4.2 **Electronic Data Interchange ("EDI").** EDI consists of the electronic movement of data between Customer and Bank in a structured, computer-retrievable data format that permits information to be transferred between a computer program at Customer's location and a computer program at Bank's location without re-keying. Customer and Bank may transmit between each other an ACH file that contains ACH Addenda which conform to the *NACHA Rules* via EDI, and as described in or as otherwise permitted by Bank's Appendix for Data Transmission Services. Bank will process and forward Addenda information along with financial transactions through the ACH network. Bank will, upon Customer's request, forward Addenda information to Customer within two (2) Business Days of Bank's receipt of such information.

4.3 **Corporate Payment Notification.** Should Customer receive Addenda information or remittance details through the ACH network, Bank will, upon Customer's request, provide translated EDI data via a direct transmission file, as described in or as otherwise permitted by Bank's Appendix for Data Transmission Services, online through the Bank Internet System, or via other mutually-agreed method, each Business Day upon receipt of the information.

5. Transmittal of Entries by Customer.

5.1 Customer will send file(s) of credit and debit Entries to Bank (i) with computer readable information; (ii) with an ACH file and format consistent with current NACHA file and Bank specifications; and (iii) on the medium as agreed by the parties and in accordance with the security procedures associated with that transmission medium. Customer agrees to initiate Entries described herein in accordance with the requirements of, and in compliance with its responsibilities, representations and warranties as an Originator under, the *NACHA Rules*.

5.2 With respect to any credit and debit Entries initiated and transmitted by Customer that involve consumers, Customer will comply with, each as may be amended from time to time: (i) all authorization, disclosure and other requirements of the *NACHA Rules* and (ii) all applicable federal and state laws and regulations, including, without limitation, any applicable requirements of Regulation E of the Board of Governors of the Federal Reserve System (or any successor entity who administers Regulation E) (hereinafter "Regulation E") and the Federal Electronic Funds Transfer Act.

5.3 Customer acknowledges the right of a consumer Receiver of an unauthorized debit Entry, as applicable and as described in the *NACHA Rules*, to obtain a refund of the funds debited from Receiver's account by such Receiver sending a written notice to Receiver's Depository Financial Institution within fifteen (15) Calendar Days after the Receiver's Depository Financial Institution sends or makes available to the Receiver information pertaining to that debit Entry. Customer also acknowledges the right of a corporate Receiver of a debit Entry, as applicable and as described in the *NACHA Rules*, to obtain a refund of the funds debited from such Receiver's account by such Receiver sending a notice to Receiver's Receiving Depository Financial Institution ("RDFI") within two (2) Business Days following the Settlement Date of the original Entry. Customer indemnifies Bank against any such claim for a refund by any Receiver.

5.4 In accordance with this Appendix, Customer may use the Services to initiate and transmit credit and debit Entries with certain Standard Entry Class ("SEC") Codes. Authorized SEC Codes include PPD, PPD+, CCD, CCD+ and CTX. All other SEC Codes may be used with proper designation on the Services' Setup Form(s) and in accordance with additional instructions from and requirements by Bank, as applicable.

6. International ACH Transactions ("IAT Entries").

6.1 An IAT Entry is a debit or credit Entry that is part of a payment transaction involving a Financial Agency outside of the territorial borders of the United States, which is processed through the domestic ACH network, pursuant to the *NACHA Rules*, including the rules pertaining to International ACH Transactions. The *NACHA Rules* establish SEC Code "IAT" for all International ACH Transactions. Customer agrees to be bound by the *NACHA Rules* and all other applicable OFAC and FinCEN rules and regulations associated with IAT Entries. Customer acknowledges that IAT Entries require additional mandatory information, according to new formatting requirements, in the computer record for such Entries within an ACH batch file. Customer expressly agrees to identify and properly initiate all IAT Entries.

6.2 Customer acknowledges and agrees that the processing, settlement and/or availability of such Entries may be delayed or suspended in the event that Bank determines that enhanced scrutiny or verification of such Entries is necessary under the *NACHA Rules* and/or applicable U.S. law. Customer acknowledges that Bank shall have no liability for such delay. Customer further acknowledges and agrees that IAT Entries may be subject to laws, regulations and restrictions of U.S. and foreign governments relating to foreign exchange transactions. Before initiating an IAT Entry, Customer agrees to understand and accept the rules and requirements of the national payment system of the receiving foreign country. Customer assumes the risk of rejection of its Entries according to the rules of the national payment system of the

receiving foreign country. Customer expressly acknowledges and agrees that Outbound IAT Entries, once transmitted, are irrevocable and are subject to the national payments system of the receiving foreign country; furthermore, the time frames for return of an Entry are determined by the payment system rules of the foreign country and may exceed the sixty (60) day return window defined by the U.S. ACH system and the *NACHA Rules*. To the extent not otherwise prohibited by law, in connection with IAT Entries, Customer assumes the risk of all fluctuations in foreign exchange rates or availability.

7. Security Procedures.

7.1 Customer and Bank shall comply with the security procedures set forth or incorporated by reference in this Appendix, the Cash Management Master Agreement, the Bank Internet System Appendix, Data Transmission Services Appendix and/or associated documents provided by Bank, including without limitation the Services' Setup Form(s) (collectively the "Security Procedures"), with respect to Entries transmitted by Customer to Bank. Customer acknowledges and agrees the Security Procedures are a commercially reasonable method for the purpose of verifying the authenticity of Entries (or any request for cancellation or amendment thereof). Customer further acknowledges that the purpose of the Security Procedures is not to detect an error in the transmission or content of an Entry. No security procedures have been agreed upon between Bank and Customer for the detection of any such error.

7.2 Customer is strictly responsible for establishing and maintaining procedures to safeguard against unauthorized transmissions. Customer warrants to Bank that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and Customer agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices and related instructions Bank provides in connection with the Security Procedures. If Customer believes or suspects that any such information or instructions have been known or accessed by an unauthorized person, Customer agrees to notify Bank immediately by calling 1-866-475-7262, followed by written confirmation to TD Bank, N.A., Attn: Cash Management Customer Care, 6000 Atrium Way, Mt. Laurel, New Jersey, 08054. The occurrence of unauthorized access will not affect any transfers Bank makes in good faith prior to, and within a reasonable time period after, its receipt of such notification.

7.3 Bank may, from time to time, propose additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for the security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

8. Compliance with Security Procedures.

8.1 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by Customer, it will be deemed effective as Customer's Entry (or request), and Customer shall be obligated to pay Bank the amount of such Entry (or request) even though the Entry (or request) was not authorized by Customer, provided Bank acted in compliance with the Security Procedures. To the extent that signature comparison is to be used as part of any applicable Security Procedures, Bank shall be deemed to have complied with that part of such Security Procedures if it compares the signature accompanying a file of Entries (or request) with the signature of an Authorized Representative of Customer and, on the basis of such comparison, believes the signature to be that of such Authorized Representative.

8.2 If an Entry (or a request for cancellation or amendment of an Entry) received by Bank was transmitted or authorized by Customer, Customer shall be obligated to pay the amount of the Entry as provided herein, whether or not Bank complied with the Security Procedures and whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with the Security Procedures.

9. **Recording and Use of Communications.** Customer and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Appendix may be electronically recorded and retained by either party by use of any reasonable means.

10. Processing, Transmittal and Settlement of Entries by Bank.

10.1 Bank will process, transmit and settle for credit and debit Entries initiated by Customer as provided in the *NACHA Rules* as in effect from time to time, and pursuant to this Appendix. Bank will transmit such Entries as an RDFI to the ACH Operator by the deadline of the ACH Operator, provided such Entries are received by Bank prior to 8:00 p.m. Eastern Time ("ET") and the ACH Operator is open for business on such Business Day. Entries received after 8:00 p.m. ET will be deemed received the following Business Day. An Entry must have an Effective Entry Date of at least two (2) Business Days but no more than such period of time after the Business Day such Entry is received by Bank as the Services permit. Such Entries may also recur as frequently as quarterly. If the Settlement Date falls on a non-Business Day, final settlement will occur on the next Business Day. Customer may submit a NACHA-formatted file up to the time limit in advance of the Effective Entry Date as the Services permit. Subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, Customer will hold Bank harmless from all charges and liabilities that may be incurred as a result of the delivery of late Entries.

10.2 If the file of Entries is received other than in specified NACHA and Bank format, Customer will be required to provide Bank with a corrected file. If a corrected file of Entries is received later than 8:00 p.m. ET on the delivery date, subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, Customer will hold Bank harmless from all charges and liabilities that may be incurred as a result of the processing of late Entries.

10.3 For purposes of this Appendix, Entries shall be deemed received by Bank, in the case of electronic file transmission, when the transmission is completed as set forth in Bank's Appendix for Data Transmission Services and/or the Services' Setup Form(s).

10.4 If any of the requirements of this Section 10 are not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline on which the ACH Operator is open for business.

11. **On-Us Entries.** Except as otherwise provided herein, in the case of an Entry received for credit or debit to an account maintained by Bank (an "On-Us Entry"), Bank will credit or debit the Receiver's account in the amount of such Entry on the Settlement Date, provided the requirements set forth herein are otherwise met. If those requirements are not met, Bank will use reasonable efforts to credit or debit the Receiver's account in the amount of such Entry on the next Banking Day following the date the Entry was received by Bank. Bank will have the right to reject an On-Us Entry as described in Section 12, *Returned or Rejected Entries*. In the case of an On-Us Entry, Bank will have all rights of an RDFI including, without limitation, the rights set forth in *NACHA Rules*.

12. Returned or Rejected Entries.

12.1 In the event any Entry is returned or rejected by the ACH Operator or any RDFI or Intermediary Depository Financial Institution for any reason whatsoever, it shall be the responsibility of Customer to remake and resubmit such Entry or otherwise resolve the returned Entry in accordance with the *NACHA Rules*.

12.2 Bank shall remake such Entry in any case where rejection by the ACH Operator was due to mishandling of such Entry by Bank and sufficient data is available to Bank to permit it to remake such Entry. In all other instances, Bank's responsibility will be to receive rejected or returned Entries from the ACH Operator, perform necessary processing, control and settlement functions, and to forward such Entries to Customer. Except for an Entry retransmitted by Customer in accordance with the requirements of Section 5, *Transmittal of Entries by Customer*, Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Appendix with respect to the original Entry.

12.3 Bank may reject any Entry which does not comply with the requirements of Section 5, *Transmittal of Entries by Customer*, or Section 7, *Security Procedures*. Bank

may also reject any Entry which contains a future Settlement Date that exceeds the limits set forth within the Services. Bank may reject an On-Us Entry for any reason for which an Entry may be returned under the *NACHA Rules*. Bank may reject any Entry if Customer has failed to comply with its Settlement Account balance obligations under Section 2, *Customer Obligations*. If Customer has authorized an ACH file containing individual payment orders and the applicable Account has insufficient funds, Bank reserves the right to reject the entire file. Notices of rejection shall be effective when given. Bank shall have no liability to Customer by reasons of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein. Bank may monitor Customer's rejected or returned Entries. Bank reserves the right, in its sole and exclusive discretion, to require Customer to establish a reserve Account in the event that an excessive number of Customer's debit Entries are rejected or returned.

13. Cancellation or Amendment by Customer. Customer shall have no right to cancel or amend any Entry or file after its receipt by Bank. However, if such request complies with the Security Procedures applicable to the cancellation of data, Bank shall use reasonable efforts to act on a request by Customer for cancellation of an Entry prior to transmitting it to the ACH Operator, or in the case of an On-Us Entry, prior to crediting or debiting a Receiver's account, but Bank shall have no liability if such cancellation is not effected. Customer shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to effect the cancellation or amendment of an Entry.

14. Reversing Entries/Files. If Customer discovers that any Entry or file Customer has initiated was in error, it may use the Services to correct the Entry or file by initiating a reversal or adjustment, or Customer may notify Bank of such error and Bank will utilize reasonable efforts on behalf of Customer, consistent with the *NACHA Rules*, to correct the Entry or file by initiating a reversal or adjustment of such Entry or file. In all such cases, it shall be the responsibility of Customer to notify the affected Receiver that an Entry or file has been made which is at variance with the authorization or is otherwise erroneous. Customer indemnifies Bank against any claim by any Receiver that a reversing Entry or file requested by Customer is wrongful. Customer understands and acknowledges that certain RDFIs may not or cannot comply with such reversal and that, in such an event, Bank will debit Customer's Settlement Account in the amount of the provisional credit applied to the Settlement Account for such Entry or file.

15. Notice of Returned Entries. Bank will use reasonable efforts to notify Customer by phone or electronic transmission of the receipt of a returned Entry from the ACH Operator no later than one (1) Business Day after the Business Day of such receipt. Except for an Entry re-transmitted by Customer in accordance with the requirements of Section 5, *Transmittal of Entries by Customer*, Bank shall have no obligation to re-transmit a returned Entry to the ACH Operator if Bank complied with

the terms of this Appendix with respect to the original Entry.

16. Notifications of Change. Bank will use reasonable efforts to notify Customer of each Notification of Change ("NOC") or Corrected Notification of Change ("Corrected NOC") received by Bank related to Entries transmitted by Customer within two (2) Business Days after receipt thereof. Customer shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) Business Days of Customer's receipt of the NOC or Corrected NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

17. Pre-Notification and Rejection of Pre-Notification. Bank recommends that, as permitted by the *NACHA Rules* or applicable law, Customer send pre-notifications at least six (6) Business Days prior to initiating an authorized Entry to a particular account in a format and medium approved by the *NACHA Rules*. Customer may also initiate a new pre-notification (i) when any changes are made to an account number, financial institution, or individual identification number or (ii) as otherwise stated in the *NACHA Rules*. If Customer receives notice that any such pre-notification has been rejected by an RDFI, Customer will not initiate any related Entry until the cause for rejection is resolved as provided in the *NACHA Rules*. If Customer receives notice that an RDFI will not receive Entries without having first received a copy of the authorization signed by its customer, Customer will not initiate any Entry to such customer(s) until it has provided the RDFI with such authorization within the time limits provided in the *NACHA Rules*. Customer understands and acknowledges that once a pre-notification has been initiated using the Services, Customer will be restricted from initiating any Entry to such customer(s) for six (6) Business Days.

18. Participant Authorization for Entries.

18.1 To the extent required by the *NACHA Rules* or applicable law, Customer will obtain all consents and written authorizations for all Entries in accordance therewith. Such authorizations and any related disclosures shall be in a form that complies with (i) all requirements of the *NACHA Rules* and (ii) all applicable federal and state laws and regulations, as the same may be amended from time to time, including, without limitation, any applicable requirements of Regulation E, the Federal Electronic Funds Transfer Act, and sanctions enforced by OFAC. Customer shall obtain and maintain current information regarding OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC or by visiting the OFAC website at www.ustreas.gov/ofac.) Each Entry will be made according to such authorization and shall comply with the *NACHA Rules*. No Entry will be initiated by Customer after such authorization has been revoked or the arrangement between Customer and such Receiver or other party has terminated.

18.2 Customer shall retain all consents and authorizations for the period required by the *NACHA Rules*.

Customer will furnish to Receiver, or to Bank upon its request, an original or a copy of an authorization as required under or for any purpose required by the *NACHA Rules*. No investigation or verification procedure undertaken by Bank shall be deemed to limit or waive Customer's obligations under this Section.

19. Re-initiation of Entries. Customer may not re-initiate Entries except as prescribed by the *NACHA Rules*.

20. Payment by Customer for Entries; Payment by Bank for Entries.

20.1 Except as may otherwise be agreed by Bank in its sole and exclusive discretion, Customer shall pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Appendix at such time on the date of transmittal by Bank of such credit Entry as Bank, in its discretion, may determine.

20.2 Customer shall promptly pay Bank the amount of each debit Entry returned by an RDFI pursuant to this Appendix.

20.3 Bank will pay Customer the amount of each debit Entry transmitted by Bank pursuant to this Appendix at such time on the Settlement Date with respect to such debit Entry as Bank, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Entry Date as Bank, in its discretion, may determine.

20.4 Bank will use reasonable efforts to promptly pay Customer the amount of each credit Entry returned by an RDFI that was transmitted by Bank pursuant to this Appendix.

20.5 Customer acknowledges and agrees that any failure of Customer to make payment to Bank as described in this Section may constitute an event of default under any other agreement for credit that Customer or any of Customer's Affiliates has with Bank or any Affiliate of Bank. Customer further acknowledges and agrees to execute and deliver any further documents and instruments as Bank may require to effectuate the cross-default contemplated hereby.

21. Third-Party Service Provider. Subject to Bank's prior approval and in its sole and exclusive discretion, Customer may appoint a third party to act as Customer's agent to process Entries on Customer's behalf and for purposes of the services provided hereunder ("Third-Party Service Provider"), as set forth in the Services' Setup Form(s). All data received by Bank from Third-Party Service Provider, including Entries and instructions (and corrections or adjustments thereto), are hereby authorized by Customer. All acts and omissions of Third-Party Service Provider shall be the acts, omissions and responsibility of Customer and shall be governed by the provisions of this Appendix. Subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, Customer

agrees, jointly and severally with Third-Party Service Provider, to indemnify and hold Bank harmless from any and all liabilities, losses, damages, costs and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceedings, whether or not Bank shall be designated a party thereto) which may be incurred by Bank relating to or arising out of the acts or omissions of Third-Party Service Provider on behalf of Customer. Customer and Third-Party Service Provider shall execute any such other agreement(s) or documents as deemed necessary or appropriate by Bank prior to the initiation or continuation by Third-Party Service Provider of any services on Customer's behalf, including without limitation Bank's Third-Party Service Provider Agreement, as the same may be modified by Bank from time to time. Notice of any termination of Third-Party Service Provider's authority to transmit data and instructions to Bank on Customer's behalf shall be given to Bank in writing. The effective date of such termination shall be ten (10) Business Days after Bank receives written notice of such termination. Customer agrees that Bank retains the right to reject any Third-Party Service Provider and any Entries initiated by Customer's Third-Party Service Provider in its sole discretion.

22. Customer Representations and Agreements; Indemnity. In addition to Customer representations, agreements and warranties otherwise described in this Appendix, Customer further represents and warrants to Bank and agrees, with respect to each and every Entry transmitted by Customer or any Third-Party Service Provider on Customer's behalf, that:

(i) Each person shown as the Receiver of an Entry received by Bank from Customer has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry;

(ii) Such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein;

(iii) Entries transmitted to Bank by Customer are limited as set forth in Sections 3 and 5;

(iv) Customer shall perform its obligations under this Appendix in accordance with the laws of the United States and all other applicable laws, regulations and orders, including, but not limited to, the transaction screening and sanctions laws, regulations and orders administered by OFAC; laws, regulations and orders administered by FinCEN; and any state laws, regulations or orders applicable to the providers of ACH payment services;

(v) Customer shall be bound by and comply with the provisions of the *NACHA Rules* (among other provisions of the *NACHA Rules*) that make payments of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry;

(vi) Customer specifically acknowledges that it has received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount of the Entry;

(vii) with respect to each International ACH Transaction ("IAT") that Customer may be permitted by Bank to initiate, Customer shall (a) classify and format payments transmitted to or received from a financial agency outside the U.S. as an IAT in accordance with the *NACHA Rules*, (b) provide data necessary to accompany the transaction in compliance with the Bank Secrecy Act's "Travel Rule," (c) screen the IAT prior to transmitting any file(s) of Entries to the Bank in accordance with the requirements of OFAC and comply with OFAC sanctions, and (d) otherwise comply with and be subject to all other requirements of U.S. law, the *NACHA Rules*, OFAC and FinCEN, as well as the laws and payment system rules of a non-U.S. receiving destination;

(viii) with respect to each Internet-initiated ("WEB") ACH Entry that Customer may be permitted by Bank to initiate, (a) Customer employs (1) commercially reasonable detection systems to minimize risk of fraud related to Internet-initiated payments, (2) commercially reasonable procedures to verify validity of routing numbers, (3) commercially reasonable methods of authentication to verify the identity of the Receiver, and (4) commercially reasonable security technology that at a minimum is equivalent to 128-bit encryption technology, and (b) where required by the *NACHA Rules* and/or Bank, Customer conducts annual audits as to its security practices and procedures that include, at a minimum, verification of adequate levels of (1) physical security to protect against theft, tampering, or damage, (2) personnel and access controls to protect against unauthorized access and use and (3) network security to ensure secure capture, storage, and distribution;

(ix) with respect to each Telephone-Initiated ("TEL") Entry that Customer may be permitted by Bank to initiate, Customer has (a) employed commercially reasonable procedures to verify the identity of the Receiver, and (b) utilized commercially reasonable procedures to verify that routing numbers are valid;

(x) with respect to each Accounts Receivable ("ARC") Entry that Customer may be permitted by Bank to initiate, (a) the amount of the Entry, the routing number, the account number and the check serial number are in accordance with the source document, (b) Customer will retain a reproducible, legible image, microfilm or copy of the front of the Receiver's source document for each ARC Entry for two (2) years from the Settlement Date of the ARC Entry, (c) Customer has employed commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to ARC Entries, (d) Customer has established reasonable procedures under which the Receiver may notify Customer that receipt of Receiver's checks does not constitute authorization for ARC Entries to the Receiver's

account and that Customer will allow the Receiver to opt-out of check conversion activity, and (e) the source document to which each ARC Entry relates may not be presented or returned such that any person will be required to make payment based on the source document unless the ARC Entry is returned;

(xi) with respect to each Back Office Conversion ("BOC") Entry that Customer may be permitted by Bank to initiate, (a) Customer has employed commercially reasonable procedures to verify the identity of the Receiver, (b) Customer has established and maintains a working telephone number for Receiver inquiries regarding the transaction that is answered during normal business hours and that such number is displayed on the notice required by the *NACHA Rules* for BOC Entries, (c) the amount of the Entry, the routing number, the account number and the check serial number are in accordance with the source document, (d) Customer will retain a reproducible, legible image, microfilm or copy of the front of the Receiver's source document for each BOC Entry for two (2) years from the Settlement Date of the BOC Entry, (e) Customer has employed commercially reasonable procedures to securely store (1) all source documents until destruction and (2) all banking information relating to BOC Entries, and (f) the source document to which each BOC Entry relates will not be presented or returned such that any person will be required to make payment based on the source document unless the BOC Entry is returned;

(xii) with respect to each Point-of-Purchase ("POP") Entry that Customer may be permitted by Bank to initiate, the source document provided to Customer for use in obtaining the Receiver's routing number, account number, and check serial number for the initiation of the POP Entry (a) is returned voided to the Receiver after use by Customer and (b) has not been provided to the Receiver for use in any prior POP Entry; and

(xiii) with respect to each Returned Check ("RCK") Entry that Customer may be permitted by Bank to initiate, (a) all signatures on the item are authentic and authorized, (b) the item has not been altered, (c) the item is not subject to a defense or claim, (d) the Entry accurately reflects the item, (e) the item will not be presented unless the related Entry has been returned by the RDFI, (f) the information encoded after issue in magnetic ink on the item is correct, and (g) any restrictive endorsement placed on the item is void or ineffective.

Subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, Customer shall indemnify and hold Bank harmless from any loss, liability or expense (including reasonable attorneys' fees and costs) resulting from or arising out of any breach of the foregoing warranties, representations or agreements. Customer shall also indemnify and hold Bank harmless from any claim of any person that Bank is responsible for any acts or omissions of Customer regarding any Entry received from Customer, or those of any other person related thereto, including, without

limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI.

23. Inconsistency of Name and Account Number. Customer acknowledges and agrees that if an Entry describes a Receiver inconsistently by name and account number, then (i) payment of such Entry transmitted to an RDFI may be made by the RDFI (or by Bank for an On-Us Entry) on the basis of the account number, even if it identifies a person different from the named Receiver and (ii) Customer's obligation to pay the amount of Entry to Bank is not excused in such circumstances. Similarly, if an Entry describes an RDFI inconsistently by name and routing number, payment of such Entry may be made based on the routing number, and Customer shall be liable to pay that Entry.

24. Banks Unable to Accept ACH Transactions. If Customer submits an Entry to Bank relating to an RDFI which is not a participant in an ACH network or submits an Entry which has a same-day settlement, then (i) Bank may reject such Entry and use reasonable efforts to notify Customer of such rejection or (ii) if Bank does not reject such Entry, upon receiving a return transaction related to the Entry from the ACH Operator, Bank may offset the Settlement Account and notify Customer of such transaction.

25. Notices, Instructions, Etc.

25.1 Except as otherwise expressly provided herein, Bank shall not be required to act upon any notice or instruction received from Customer or any other person, or to provide any notice or advice to Customer or any other person with respect to any matter.

25.2 Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been provided in accordance with the provisions of the parties' Cash Management Master Agreement.

26. Data Retention. Customer shall retain data on file adequate to permit remaking of Entries for five (5) Business Days following the date of their transmittal by Bank as provided herein and shall provide such data to Bank upon request. Without limiting the generality of the foregoing provision, Customer specifically agrees to be bound by and comply with all applicable provisions of the *NACHA Rules* regarding the retention of documents or any record, including, without limitation, Customer's responsibilities to retain all items, source documents and records of authorization, in accordance with the *NACHA Rules*.

27. Data Breaches.

27.1 Customer agrees that it will adopt and implement commercially reasonable policies, procedures and systems to provide security as to the information being transmitted and to receive, store, transmit and destroy data

or information in a secure manner to prevent loss, theft, or unauthorized access to data or information ("Data Breaches"), including but not limited to, Consumer-Level ACH Data.

27.2 Customer agrees that it will promptly investigate any suspected Data Breaches and monitor its systems regularly for unauthorized intrusions.

27.3 Customer will provide timely and accurate notification to Bank by calling 1-866-475-7262 with regard to any Data Breaches when known or reasonably suspected by Customer, including but not limited to, Data Breaches to Consumer-Level ACH Data, and will take all reasonable measures, including, without limitation, retaining computer forensic experts, to determine the scope of any data or transactions affected by any Data Breaches, providing all such determinations to Bank.

28. Audit. Bank has the right to periodically audit Customer's compliance with the *NACHA Rules*, U.S. law and Bank policies, including, but not limited to, this Appendix.

29. Records. All electronic or other files, Entries, Security Procedures and related records used by Bank for transactions contemplated by this Appendix shall be and remain Bank's property. Bank may, in its sole discretion, make available such information upon Customer's request. Any expenses incurred by Bank in making such information available to Customer shall be paid by Customer.

30. Termination. The parties may terminate this Appendix in accordance with the terms and conditions of the parties' Cash Management Master Agreement or the Contract. In addition, if Customer breaches the *NACHA Rules* or causes Bank to breach the *NACHA Rules*, this Appendix may be terminated or suspended by Bank upon ten (10) Business Days' notice, or such shorter period as may be provided in the parties' Cash Management Master Agreement. Any termination of this Appendix shall not affect any of Bank's rights and Customer's obligations with respect to Entries initiated by Customer prior to termination, the payment obligations of Customer with respect to services performed by Bank prior to termination or any other obligations or provisions that survive termination of this Appendix, including without limitation Sections 2, 5, 10, 12, 13, 14, 18, 20, 21, 22, 26, 31, 32 and 33.

31. Cooperation in Loss Recovery Efforts. In the event of any damages for which Customer or Bank may be liable to the other or to a third party relative to the Services, both parties shall undertake reasonable efforts to cooperate with the other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that Customer or Bank may be obligated to defend or elects to pursue against a third party.

32. Governing Law. In addition to the terms and conditions of the parties' Cash Management Master Agreement, the parties agree that if any payment order governed by this Appendix is part of a funds transfer subject to the federal Electronic Funds Transfer Act, then all actions and disputes as between Customer, or any Third-Party Service Provider acting on Customer's behalf, and Bank shall be governed by Article 4-A of the Uniform Commercial Code, as varied by this Appendix.

33. Effectiveness. Customer agrees to all the terms and conditions of this Appendix. The liability of Bank

under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the services described herein and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Contract or Cash Management Master Agreement is terminated.

Remainder of page intentionally left blank.



APPENDIX III

TD WIRE TRANSFER SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement, and the parties' Bank Internet System Agreement, and applies to all TD Wire Transfer Services ("Services") made available to Customer by Bank via the Bank Internet System. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement or the Bank Internet System Agreement, as applicable. To the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, or with the terms and conditions of the Bank Internet System Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. Description of the Services.

1.1 The Services described in this Appendix provide Customer with the capability to transfer funds from specific Account(s) to other accounts (the "Recipient Account(s)") as directed via the Bank Internet System. The Recipient Account(s) may be Customer accounts or third-party accounts, and may be with Bank or with domestic or foreign third-party financial institutions. Customer may use the Services to initiate one-time wire transfers, or to create templates for wire transfers made on a repetitive basis which involve the same Customer Account and Recipient Account ("Repetitive Transfer(s)"). All wire transfers must be initiated by an Authorized Representative of Customer.

1.2 Prior to Customer's use of the Services, Customer must first agree to and transmit all instructions in accordance with all of the terms, conditions and security procedures associated with the Bank Internet System, as further set forth in the Cash Management Master Agreement.

2. Execution of Wire Transfers.

2.1 By submitting a wire transfer, Customer authorizes Bank to withdraw the amount of any requested wire transfer which Customer may authorize and instruct via the Bank Internet System, plus any applicable fees and charges, from Customer's designated Account. Subject to the terms of this Appendix, Bank will accept and execute a wire transfer received from Customer that has been authenticated by Bank and that is in conformity with the Security Procedure (as further described below), cut-off times and other requirements as described in this Appendix and associated Bank setup form(s) and other documentation.

2.2 All wire transfers to accounts at other depository institutions are transmitted using the Fedwire funds transfer system owned and operated by the Federal Reserve Bank, or a similar wire transfer system used primarily for funds transfers between financial institutions. Notwithstanding the foregoing or anything to the contrary in this Appendix, Bank may use any means of transmission, funds transfer system, clearing house, intermediary or

correspondent bank that Bank reasonably selects to transfer funds from time to time.

2.3 Each wire transfer must include the following information in addition to any information which Bank may require for proper identification and security purposes: (i) account number from which the funds are to be withdrawn, (ii) amount to be transferred, (iii) Customer's address, (iv) name and ABA routing number of the payee's bank, and (v) account name, address and account number of the payee. In the event a wire transfer describes an account number for the payee that is in a name other than the designated payee, Bank may execute the wire transfer to the account number so designated notwithstanding such inconsistency.

2.4 Templates created by Customer for Repetitive Transfers are the sole and exclusive responsibility of Customer. Subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, Customer agrees to release and hold Bank harmless from any loss or liability which Customer may incur after Bank has executed a Repetitive Transfer, including without limitation, any loss due to Customer error in creating the Repetitive Transfer template.

3. Time of Execution.

3.1 Bank will execute each authenticated wire transfer that is in conformity with all security procedures, cut-off times and other requirements set forth herein. Bank may require additional authentication of any wire transfer request. Bank reserves the right to reject a wire transfer request that cannot be properly authenticated. Cut-off times may be established and changed by Bank from time to time. Instructions for wire transfers received after such cut-off times may be treated by Bank for all purposes as having been received on the following Business Day.

3.2 Except for future-dated wire transfers, domestic wire transfers (U.S.-based receivers) initiated and approved by Bank's cut-off time on a Business Day will be processed that same day if that day is also a Business Day for Bank's correspondent facility and the recipient bank; wire transfers initiated and approved after Bank's cut-off time for domestic wire transfers will be processed the next

Business Day if that day is also a Business Day for Bank's correspondent facility and the recipient bank. Future-dated domestic wire transfers will be initiated on the effective date requested by Customer, not on the date Customer entered the transaction using the Services.

3.3 Bank may handle wire transfers received from Customer in any order convenient to Bank, regardless of the order in which they are received.

4. International Wires.

4.1 International wire transfers (non-U.S. receivers) of foreign currency initiated and approved by Bank's cut-off time for international wire transfers of foreign currency on a Business Day, and an international wire transfer of U.S. currency initiated and approved by Bank's cut-off time for international wire transfers of U.S. currency on a Business Day will be processed within the industry standard delivery time (in most, but not all cases, two (2) Business Days). Foreign wire transfers may be subject to delays based on time-zone issues; the remote location of the recipient bank; cultural differences with respect to holidays and times of observation, etc.; and incorrect or incomplete information being supplied by Customer.

4.2 Bank shall send Customer's authorized and authenticated wire transfers to foreign banks through any bank which is a member of Bank's correspondent network. Neither Bank nor any of Bank's correspondents shall be liable for any errors, delays or defaults in the transfer of any messages in connection with such a foreign wire transfer by any means of transmission. If the wire transfer is of currency other than that of the country to which it is being transferred, it shall be payable in the currency of the country of the recipient financial institution, unless the payee arranges otherwise. If the wire transfer is received by Bank prior to any cut-off time established from time to time, the currency exchange shall be made at the rate quoted by Bank at the time of the wire transfer.

4.3 Bank makes no guarantee or representation as to the availability of funds at the foreign destination. Bank makes no express or implied warranty as to the time or date the wire transfer will arrive at the receiving bank, the amount of any fees to be charged by the receiving bank or the time or date the beneficiary will receive credit for funds.

4.4 Customer understands and acknowledges that if the named beneficiary does not match the account at the receiving bank, there is a risk the beneficiary may not receive the wired funds. If the transfer is not received or credited in a timely manner, Bank will follow normal and customary procedures to complete the wire transfer, determine the location of the wired funds and/or return the funds to Customer. If Bank is unable to determine that the funds have been credited to the beneficiary's account or have the funds returned, Customer assumes all financial liability or risk of loss for the amount of the wire transfer.

4.5 International wire transfers are subject to any and all applicable regulations and restrictions of U.S.

and foreign governments relating to foreign exchange transactions. Bank has no obligation to accept any international wire transfer(s) directed to or through persons, entities or countries restricted by government regulation or prior Bank experience with particular countries. Subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, and to the extent not otherwise prohibited by law, in connection with any international wire transfer(s) involving a transfer to or from any country outside of the U.S., Customer agrees to release and hold Bank harmless from any loss or liability which Customer may incur after Bank has executed the international wire transfer(s), including without limitation, any loss due to failure of a foreign bank or intermediary to deliver the funds to a beneficiary.

5. **Cancellation and Amendment of a Wire.** An Authorized Representative may request that Bank attempt to cancel or amend a wire transfer previously received from Customer. If a cancellation or amendment request is received by Bank before the wire transfer is executed and with sufficient time to afford Bank an opportunity to act upon Customer's request, Bank may, on its own initiative but without obligation, make a good faith effort to act upon such request. In the event Customer's cancellation or amendment request is received after execution of Customer's wire transfer request, Bank will attempt to have the wire transfer returned. Notwithstanding the foregoing, Bank shall have no liability for the failure to effect a cancellation or amendment, and Bank makes no representation or warranty regarding Bank's ability to amend or cancel a wire transfer. Customer agrees to indemnify Bank against any loss, liability or expense which Bank incurs as a result of the request to cancel or amend a wire transfer and the actions Bank takes pursuant to such request.

6. **Notice of Rejection or Return.** Bank shall have no liability for wire transfers sent by Bank as directed by Customer which cannot be completed or which are returned due to incorrect information furnished by Customer. Customer is required to fully complete beneficiary name, and address, as beneficiary bank may elect to return an otherwise valid wire transfer for incomplete beneficiary information. Bank may reject or impose conditions that must be satisfied before it will accept Customer's instructions for any wire transfer, in its sole discretion, including without limitation Customer's violation of this Appendix, Customer's failure to maintain a sufficient Account balance, or Bank's belief that the wire transfer may not have in fact been authorized. A wire transfer may also be rejected by an intermediary or beneficiary bank other than Bank, or by operation of law. If a wire transfer is rejected by Bank, Bank will notify Customer by telephone, by electronic means, by facsimile or by mail, depending on the method of origination. Upon rejection or return, Bank shall have no further obligation to act upon a wire transfer, nor shall Bank have any liability to Customer due to rejection by another person in the wire transfer process, or the fact that notice was not given or was not given at an earlier time, or within any specified time of receipt, acceptance, execution or payment of any wire transfer.

7. Security Procedure.

7.1 Customer agrees that the security procedures used by Customer and set forth or incorporated by reference in this Appendix and/or associated documents, including but not limited to the Bank Internet System Appendix, are a commercially reasonable method of providing security against unauthorized wire transfers and for all other instructions from Customer to Bank (hereinafter the "Security Procedure"). Any wire transfer by Customer shall bind Customer, whether or not authorized, if transmitted in Customer's name and accepted by Bank in compliance with the Security Procedure. Customer also agrees that any election Customer may make to change or refuse the Security Procedure is at Customer's risk and that any loss resulting in whole or in part from such change or refusal will be Customer's responsibility.

7.2 Bank may, from time to time, modify the Security Procedure. Except as expressly provided otherwise in this Appendix or in the parties' Cash Management Master Agreement, any such changes generally will be effective immediately upon notice to Customer as described in the parties' Cash Management Master Agreement. Customer will be deemed to accept any such changes if Customer accesses or uses any of the Services after the date on which the change becomes effective.

7.3 Bank may, from time to time, propose additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for security of Bank or Customer funds, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

7.4 Customer hereby acknowledges that the Security Procedure is neither designed nor intended to detect errors in the content or verify the contents of a wire transfer by Customer. Accordingly, any errors contained in wire transfers from Customer shall be Customer's responsibility, and Customer shall be obligated to pay or repay (as the case may be) the amount of any such wire transfer. No security procedure for the detection of any such Customer error has been agreed upon between Bank and Customer.

7.5 Customer is strictly responsible for establishing and maintaining procedures to safeguard against unauthorized wire transfers. Customer covenants that no employee or other individual will be allowed to initiate wire transfers in the absence of proper authority, supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedure and any Access Devices and related instructions provided by Bank in connection with any Security Procedure utilized by Bank and/or Customer. If Customer believes or suspects that any such Access Devices, Security Procedure, information or instructions have been disclosed to or accessed by unauthorized persons, Customer agrees to notify Bank immediately by calling 1-866-475-7262, followed by written confirmation to TD Bank, N.A., Attn: Cash Management Customer Care, 6000 Atrium Way, Mt. Laurel, New Jersey, 08054. The occurrence of unauthorized access will not affect any transfers made in good faith by

Bank prior to receipt of such notification and within a reasonable time period thereafter.

8. Inconsistency of Receiving Beneficiary Name and Account Number. Customer acknowledges and agrees that, in accordance with Article 4A of the Uniform Commercial Code, Bank shall be entitled to rely upon the numbers supplied by Customer to identify banks, beneficiaries and other parties to the wire transfer, even if those numbers disagree or are inconsistent with the names of those parties as provided by Customer.

9. Payment; Authorization to Charge Account. Customer agrees to pay Bank the amount of each wire transfer received from Customer on the Business Day Bank executes said wire transfer or at such other time as Bank may determine. Bank will validate that sufficient funds are available in Customer's Account prior to a wire transfer being executed. Generally, if sufficient funds are not available in Customer's Account, the wire transfer will not be executed by Bank. Bank may, without prior notice or demand, obtain payment of the amount of each wire transfer by debiting the Account designated. In the event there are not sufficient funds available in the Account, Bank also reserves the right to debit any other Account that Customer maintains with Bank.

10. Wire Confirmation; Account Reconciliation. Customer may confirm the execution of a wire transfer via the Bank Internet System. Completed wire transfers will also be reflected in Customer's periodic Account statement. Customer acknowledges and agrees that Bank is not obligated to provide Customer with a separate advice or notice for each completed wire transfer. If Customer requests that Bank provide a special notice and Bank agrees to do so, Bank reserves the right to impose a Service Fee for such notice in accordance with the Cash Management Master Agreement.

11. Service Providers. Bank may use a service provider to perform, as Bank's agent, all or any portion of Bank's obligations under this Appendix. Customer may be required to direct wire transfers and other requests to said provider.

12. Bank Reliance; Authentication.

12.1 Bank shall be entitled to rely in good faith on communications it receives as being given or sent by an Authorized Representative and as being genuine and correct. Bank shall not be liable to Customer for the consequences of such reliance.

12.2 **BANK MAY TAKE SUCH ADDITIONAL STEPS AND IMPLEMENT SUCH PROCEDURES AS IT MAY DEEM APPROPRIATE TO VERIFY THE AUTHENTICITY OF ANY WIRE TRANSFER. BANK MAY DELAY THE EXECUTION OF ANY WIRE TRANSFER PENDING COMPLETION OF A CALL-BACK, OR RECEIPT OF ANOTHER FORM OF VERIFICATION WHICH IS SATISFACTORY TO BANK. IF BANK IS UNABLE TO OBTAIN SATISFACTORY VERIFICATION, BANK, IN ITS SOLE DISCRETION, MAY REFUSE TO EXECUTE ANY**

WIRE TRANSFER. In no event shall Bank be liable for any delay in executing a wire transfer or for failure to execute a wire transfer due to the absence of satisfactory verification.

12.3 Bank may electronically record any telephone conversations between Bank personnel and Customer.

12.4 Wire transfer transactions are subject to all the foregoing and all regulations governing electronic transactions, including but not limited to Article 4A of the Uniform Commercial Code.

13. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Contract or Cash Management Master Agreement is terminated.

Remainder of page intentionally left blank.



APPENDIX V

TD POSITIVE PAY SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Positive Pay Services (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict. In the event of inconsistency between a provision of this Appendix and the Uniform Commercial Code ("U.C.C."), the parties intend to modify the effect of the applicable U.C.C. provisions to the maximum extent permitted by law.

TERMS AND CONDITIONS

1. Definitions.

1.1 Statutory Definitions. Unless otherwise defined in this Appendix, words or phrases shall have the meanings set forth in the U.C.C. in effect from time to time under the laws of the State specified in the governing law provision of the parties' Cash Management Master Agreement.

1.2 Definitions.

"*Authorized Account*" means the Account(s) of Customer, maintained at Bank, to which the positive pay services described herein and rendered by Bank will apply.

"*Available Funds*" means funds on deposit in an Authorized Account and available for withdrawal pursuant to Federal Reserve Board Regulation CC and Bank's applicable funds availability schedule and policies.

"*Check Issue File*" means a record describing checks drawn by Customer on an Authorized Account and provided by Customer to Bank in accordance with Section 2.2.

"*Exception Check*" means a Presented Check or a Systematic Override Check that does not match data included in a Check Issue File.

"*Exception Check Report*" means a record describing Exception Checks which is provided by Bank to Customer in accordance with Section 2.3.

"*Pay Decision(s)*" means the instructions of Customer to Bank instructing Bank to pay an Exception Check.

"*Presented Check*" means a check, substitute check, or electronically-presented check drawn on an Authorized Account and presented to Bank for payment through the check collection system or over-the-counter at one of Bank's branch teller stations.

"*Return Decision(s)*" means the instructions of Customer to Bank instructing Bank not to pay an Exception Check.

"*U.C.C.*" means the Uniform Commercial Code as in effect under the laws of the State specified in the parties' Cash Management Master Agreement, as it may be amended from time to time.

2. Services.

2.1 Description. The positive pay service described in this Appendix will provide Customer with a means to either affirmatively approve the payment of a particular check upon presentment or to object to its payment. Customer acknowledges that positive pay is a service that has been identified by Bank as reducing the risk of fraudulent items being paid against Customer's Account(s) when such Service is adopted and properly utilized by Customer. By conforming to the terms and conditions of this Appendix, Customer agrees and acknowledges that it may significantly reduce the chance that fraudulent items will post to Customer's Account(s).

2.2 Check Issue File.

2.2.1 Customer shall submit a Check Issue File to Bank. The Check Issue File shall accurately state the check number and the exact amount of each check drawn on each Authorized Account since the last Check Issue File was submitted (and the payee name, if Customer elects to receive payee verification services). Each Check Issue File shall also identify any checks that have been cancelled by Customer prior to issuance.

2.2.2 If Customer elects to receive payee verification services, the following additional terms shall also apply. Bank's payee verification services require the payee name to match against Customer's Check Issue File at a minimum threshold or matching score. The payee name in the Check Issue File will be electronically compared to the payee name on Presented Checks. Other information related to the payee name may also be electronically compared as part of the automated verification process to establish a matching score. Such comparisons that result in a minimum threshold or matching score will be deemed to be a matching check.

Customer is responsible for complying with the payee verification services' check specifications as specified by Bank from time to time in order to ensure the highest level of performance from the payee verification services. If Customer is unable or unwilling to comply with the payee verification services' check specifications as specified by Bank, Bank may, in its sole and exclusive discretion, (a) terminate or suspend Customer's use of the payee verification services as provided in the Cash Management Master Agreement, or (b) at Customer's request, re-configure the software associated with the payee verification services to systematically process Presented Checks in reliance solely on the payee name provided by Customer to Bank in the Check Issue File and without regard to any other information related to the payee name that may appear on the Presented Checks (hereinafter "Systematic Override Checks"). Any Presented Check or Systematic Override Check that does not result in a minimum threshold or matching score shall be deemed an Exception Check and reported as such in accordance with the terms of this Appendix. Except as may otherwise be provided in this Appendix and in the Cash Management Master Agreement, Bank shall have no liability for Systematic Override Checks.

2.2.3 Customer shall send the Check Issue File to Bank in the format and medium, by the deadline(s), at scheduled day(s), at the place(s) specified by Bank and agreed to by Customer, as set forth in Services' Setup Form(s). The deadline for transmissions of the Check Issue File to Bank shall be set forth in the Services' Setup Form(s).

2.3 Payment of Presented Checks and Reporting of Exception Checks. Bank shall compare each Presented Check by check number, check amount and payee name (if Customer elects to receive payee verification services) against each Check Issue File received by Bank. Bank may satisfy its obligation hereunder by comparing check number, amount and payee name (if applicable) set forth in Substitute Checks, checks presented over-the-counter at one of Bank's teller stations and/or electronic presentment of checks. On each Banking Day, Bank:

(a) may pay and charge to the Authorized Account each Presented Check that matches, by check number, amount and payee name (if applicable), a check shown in any Check Issue File;

(b) may pay and charge to the Authorized Account all Systematic Override Checks that match, by check number, amount and payee name (if applicable and as described herein), a check shown on any Check Issue File; and

(c) shall provide to Customer an Exception Check Report that indicates whether Bank has received any Exception Checks and, if so, provide the image of the Exception Check(s) by the deadline set forth in the Services' Setup Form(s) via the Bank Internet System. Customer must provide check payment approval or return instructions to Bank on each Exception Check reported by the deadline set forth in the Services' Setup Form(s) via the Bank Internet System ("Pay or Return Decisions").

2.4 Payment and Dishonor of Exception Checks. Except as provided in Section 2.4.4 below, Bank will pay or return Exception Checks in accordance with Customer's Pay or Return Decisions.

2.4.1 **Pay Decisions.** Bank shall finally pay and charge to the Authorized Account, to the extent there are sufficient Available Funds in the Authorized Account, any Exception Check that Customer directs Bank to pay.

2.4.2 **Return Requests.** Bank shall return to the depository bank any Exception Check drawn on an Authorized Account that Customer directs Bank to return.

2.4.3 **Default Options.** If Customer fails to provide Pay or Return Decisions to Bank in accordance with these requirements, Exception Checks will be handled in accordance with the default option as set forth in the Services' Setup Form(s) for each Authorized Account, in accordance with the following:

(a) **Return Default.** Where Customer has selected the return default option, Bank shall return to the depository bank any Exception Check drawn on that Authorized Account.

(b) **Pay Default.** Where Customer has selected the pay default option, Bank may finally pay and charge to the Authorized Account any Exception Check drawn on that Authorized Account.

2.4.4 **Checks Presented for Payment at Bank Teller Stations.** Notwithstanding anything in this Appendix to the contrary, Bank may, in its sole and absolute discretion, return to the person presenting a check drawn on an Authorized Account for payment over-the-counter at one of Bank's teller stations any such check that does not appear on a Check Issue File. Customer acknowledges and agrees that Bank shall have no obligation to inform Customer that any such check has been presented for payment at a Bank teller station. Bank shall have no liability to Customer for wrongful dishonor with respect to any such check.

2.5 Customer and Bank Communications.

2.5.1 Customer or Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Appendix. The revised communication must (i) be sent in its entirety and not in the form of a partial amendment to the communication originally sent, (ii) identify the original communication, and (iii) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke the original communication.

2.5.2 Bank shall use only Check Issue Files that comply with Section 2.2 and have not been revoked in accordance with Section 2.5.1 in the preparation of Exception Check Reports under this Appendix.

2.5.3 Customer shall use only Exception Check Reports that comply with Section 2.3 and have not been revoked in accordance with Section 2.5.1 in the preparation of Pay Decisions and Return Decisions. Bank shall not be obligated to comply with any Pay Decision or Return Decision received in a format or medium, after a deadline, or at a place not permitted under this Appendix and Services' Setup Form(s), but may instead treat such a Pay Decision or Return Decision in accordance with the default option selected by Customer in the Services' Setup Form(s).

2.5.4 Bank is not responsible for detecting any Customer error contained in any Check Issue File, Pay Decision or Return Decision sent by Customer to Bank.

2.6 **Submission of Data Prior to Implementation of Services.** Customer shall submit to Bank a current, reconciled list of all outstanding checks issued on each Authorized Account one (1) week prior to the implementation of the Services hereunder. Depending on the frequency with which Customer issues checks, Bank reserves the right to require Customer to submit one or more additional such lists so that all outstanding, unpaid checks issued on any Authorized Account have been reported to Bank prior to the implementation of the Services.

3. Remedies.

3.1 **U.C.C. Liability.** To the extent applicable, the liability provisions of U.C.C. Articles 3 and 4 shall govern this Appendix, except as modified below. To the extent permitted by U.C.C. Articles 3 and 4, the liability of Bank under this Appendix shall in all cases be subject to the provisions of the parties' Cash Management Master Agreement, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank.

3.2 **Wrongful Honor.** It shall constitute wrongful honor by Bank if Bank pays an Exception Check listed in a timely Exception Check Report unless: (i) Customer issued a Pay Decision, or (ii) Customer selected the pay default option and did not issue a Return Decision by the deadline set forth in the Services' Setup Form(s). In the event that there is wrongful honor, the following shall apply:

3.2.1 Bank shall be liable to Customer for the lesser of the amount of the wrongfully paid Exception Check or Customer's actual damages resulting from Bank's payment of the Exception Check.

3.2.2 Bank expressly waives any right it may have to assert that Customer is liable for the amount of the wrongfully honored Exception Check on the grounds that the Exception Check was properly payable under U.C.C. Section 4-401.

3.2.3 Bank retains the right to assert Customer's failure to exercise reasonable care under U.C.C. Sections 3-406 and 4-406.

3.2.4 Bank retains the right to assert the defense that Customer has sustained no actual damages because Bank's honor of the Exception Check discharged for value an indebtedness of Customer.

3.3 **Wrongful Dishonor.** Except as provided below, it shall constitute wrongful dishonor by Bank if Bank dishonors an Exception Check: (i) that Bank has been ordered to pay pursuant to a Pay Decision, or (ii) for which Customer has not issued a Return Decision under the pay default option by the deadline set forth in the Services' Setup Form(s).

3.3.1 Bank's liability for wrongful dishonor of an Exception Check shall be limited to the damages for wrongful dishonor recoverable under U.C.C. Articles 3 and 4.

3.3.2 Notwithstanding Section 3.3.1, Bank shall have no liability to Customer for wrongful dishonor when Bank, acting in good faith, returns an Exception Check:

(a) that it reasonably believed was not properly payable; or

(b) if there are insufficient Available Funds on deposit in the Authorized Account; or

(c) if required to do so by the service of legal process on Bank or the instructions of regulatory or government authorities or courts.

3.4 **Rightful Payment and Dishonor.** Except as provided in Section 3.5, the following shall apply:

3.4.1 If Bank honors an Exception Check in accordance with the pay default option selected by Customer or in accordance with a Pay Decision issued by Customer, such honor shall be rightful, and Customer waives any right it may have to assert that the Exception Check was not properly payable under U.C.C. section 4-401.

3.4.2 If Bank dishonors an Exception Check in accordance with the return default option selected by Customer or in accordance with a Return Decision issued by Customer, the dishonor shall be rightful, and Customer waives any right it may have to assert that the dishonor was wrongful under the U.C.C. section 4-402.

3.4.3 Customer agrees that Bank exercises ordinary care whenever it rightfully pays or returns an Exception Check consistent with the provisions of this Appendix.

3.5 **Faulty Information.** Subject to the terms and conditions of the Cash Management Master Agreement, Bank shall be liable for losses, other than incidental or consequential damages, proximately caused by its honor of a check that was not properly payable, or its dishonor of a check that was properly payable, if the honor or dishonor occurred because Bank, in accordance with the provisions of Section 2 of this Appendix:

(a) should have shown the check on an Exception Check Report but failed to do so; or

(b) showed the check on an Exception Check Report but referenced the wrong check number, unless Bank provided Customer with timely information that disclosed the error.

3.6 **Assignment.** To the extent that Customer suffers a loss under this Appendix, Bank assigns to Customer any claim that Bank would have against a depository or collecting bank to recover the loss, including any claim of breach of warranty under U.C.C. Sections 4-207, 4-208, and 4-209.

4. **Governing Law.** Except where expressly required by contrary provisions of the U.C.C., any claim, controversy or dispute arising under or related to this

Appendix shall be governed by and interpreted in accordance with the governing law provision of the parties' Cash Management Master Agreement.

5. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the parties' Cash Management Master Agreement or the Contract is terminated. In the event of termination, all sums owed to Bank hereunder shall be immediately due and payable.

Remainder of page intentionally left blank.



APPENDIX VI

TD CONTROLLED DISBURSEMENT SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Controlled Disbursement Services (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. **Defined Terms.** Capitalized terms used herein shall have the following meanings:

"Controlled Disbursement Account" means a checking Account established by Customer for the purpose of obtaining the Services described in this Appendix.

"Funding Account" means a checking Account designated by Customer in the Services' Setup Form(s) that will fund all checks presented for payment from the Controlled Disbursement Account, as described below.

2. **Services.** The Services provide check presentation information to Customer each Business Day intended to permit Customer to use the Funding Account to fund the total amount of checks presented for payment from the Controlled Disbursement Account for that Business Day. The Services will be provided to Customer in accordance with the selections, designations, authorizations and other instructions set forth in the Services' Setup Form(s).

3. **Controlled Disbursement Account.** Customer agrees to open and maintain a Controlled Disbursement Account at Bank, which Account will be subject to and governed by such terms and conditions relating to such Account as Bank may issue from time to time. Customer agrees to comply with all requirements established by Bank from time to time with respect to the handling of Controlled Disbursement Accounts, including, but not limited to, all specifications for printing checks to be paid from the Controlled Disbursement Account. Customer agrees to complete and sign all documents required by Bank in order to establish the Controlled Disbursement Account and/or to provide the Services to Customer. Upon termination of the Services for any reason, Customer authorizes Bank to close the Controlled Disbursement Account, subject to any written agreement between Customer and Bank with respect to the handling of checks presented for payment after the Controlled Disbursement Account is closed.

4. **Controlled Disbursements.** Twice each Banking Day, Bank will notify Customer of all checks

presented for payment from the Controlled Disbursement Account via Bank's Internet Banking System. This check information is provided by the Federal Reserve Bank and its accuracy is not guaranteed by Bank. Bank will transfer into the Controlled Disbursement Account from the Funding Account such amounts as may be required in order to pay all checks presented and identified in the notification to Customer. Customer authorizes Bank to execute such funds transfers from the Funding Account as may be required in order to pay all such checks, including all checks presented for payment from the Controlled Disbursement Account after termination of the Service.

5. **Sufficient Balances.** Customer agrees to maintain sufficient collected balances in the Funding Account to pay all amounts required to be transferred by Bank to the Controlled Disbursement Account to pay all checks presented for payment and drawn on the Controlled Disbursement Account, and all debits thereto, including checks presented for payment after termination of the Service. In the event there are not sufficient collected funds in the Funding Account to pay all checks so presented, checks may be paid in the order determined by Bank, in its sole discretion.

6. **Overdrafts.** Checks presented for payment or other debits to the Controlled Disbursement Account may be returned unpaid in any order if there are not sufficient collected funds in the Controlled Disbursement Account to cover the debits. If there are insufficient funds in the Controlled Disbursement Account to cover checks or other debits, Bank may, in its sole discretion, make transfers into the Controlled Disbursement Account to pay checks or other debits presented for payment, even if such transfers will result in the creation of an overdraft in the Funding Account, but Bank shall not be obligated to make such transfers if Customer fails to maintain sufficient collected balances in the Funding Account to avoid the creation of an overdraft. The transfer of funds by Bank on one occasion to pay checks presented for payment shall not obligate Bank to transfer funds to pay checks presented for payment on any other occasion.

7. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank

under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior

agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Contract or Cash Management Master Agreement is terminated.

Remainder of page intentionally left blank.



APPENDIX VIII

TD DIGITAL EXPRESS SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Digital Express Services (the "Service(s)") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. **Services.** The Services provide Customer with an Internet-based system designed to expedite check depositing services by enabling Customer to use check conversion technology to submit to Bank, for deposit to Customer's Account(s), electronic check images and associated information ("Check Images") in lieu of the original checks from which such Check Images were obtained. These Services are provided in accordance with the *Check Clearing for the 21st Century Act* ("Check 21").

2. Hardware Requirements.

2.1 In order to use the Services, Customer must utilize certain Bank-approved image/scanner hardware (the "Hardware"). Customer must either (a) have or obtain the Hardware, as approved by Bank ("Customer Hardware"), or (b) utilize Hardware provided by Bank ("Bank Hardware"). Customer must also have a Computer as outlined in the Cash Management Master Agreement, as Bank may specify and approve from time to time.

2.2 If Customer elects option (a), Customer Hardware, Customer is solely responsible for the purchase, maintenance, performance and adequacy of Customer Hardware. Bank makes no representations or warranties concerning, and has no responsibility or liability for, Customer Hardware or its use with the Services. Bank shall have no liability or responsibility whatsoever for errors, including but not limited to processing or transmission errors, resulting from any Check Images transmitted by Customer using Customer Hardware.

2.3 If Customer elects option (b), Bank Hardware, Customer agrees as follows:

(i) Bank will retain ownership of Bank Hardware provided by Bank for use with the Services.

(ii) Customer will not use Bank Hardware in connection with any remote check deposit service offered by any other financial institution other than Bank.

(iii) Customer acknowledges that Bank did not manufacture Bank Hardware and has

provided the same to Customer on an "AS IS" basis, and warrants only that, upon delivery, Bank Hardware will conform to Bank's then current applicable standards for use of the Services. Bank Hardware is provided to Customer with a standard manufacturer's warranty. Customer shall thereafter be responsible for purchasing any and all additional manufacturer warranty period(s) beyond the standard warranty, as may be made available by the manufacturer, for complying with all manufacturer recommendations for preventive maintenance, or for repairing or replacing Bank Hardware.

(iv) Customer shall bear the entire risk of loss, theft, damage or destruction of Bank Hardware from the date of receipt until return shipment to a Bank branch or shipped postage-paid to Bank. Such loss, damage or destruction of Bank Hardware shall not relieve Customer of the obligation to make payments or to comply with any other obligation under this Appendix.

(v) Upon termination of this Appendix by either party for any reason, Customer shall return Bank Hardware in the same condition as when originally provided to Customer, except for ordinary wear and tear resulting from proper use. Bank Hardware shall be packed for proper return shipment to such place as Bank shall specify. In the event Bank Hardware has not been returned within fifteen (15) days of termination of this Appendix, Customer shall make payment to Bank in an amount equivalent to Bank's replacement cost for Bank Hardware.

3. Check Images; Image Replacement Documents.

3.1 Customer may use the Services to deposit original paper checks using the Hardware to scan, capture and submit Check Images to Bank through the Services' Internet site ("Services Site"). Eligible items for deposit include original checks that Customer has received for payment or deposit, and obligations of financial institutions (travelers' checks, cashier checks, official checks, and money orders). The following check types, however, are *not eligible* for use with and may not be processed using the Services:

(i) Checks payable to a third party (rather than to Customer);

- (ii) Remotely-created checks;
- (iii) Checks drawn on banking institutions outside the U.S. or in currencies other than U.S. Dollars;
- (iv) Irregular checks (e.g., where the numerical and written amounts are different);
- (v) Previously-returned checks;
- (vi) Checks payable to or in cash;
- (vii) Checks exceeding any Customer transaction or file limits as Bank may establish from time to time; and
- (viii) Checks that are postdated or more than six (6) months old.

3.2 Customer shall enter check information into the Services Site, imaging the front and the back of each paper check and capturing the information contained in the MICR line of the paper check. Customer shall review each Check Image for clarity to ensure that the item can be reproduced as an Image Replacement Document ("IRD(s)" or "Substitute Check(s)"). Using the Services, an electronic file will be created ("Electronic File") that contains electronic information relating to and converted from the paper checks that have otherwise been truncated or removed from the forward collection and payment process (each an "Electronic Item"). To ensure accuracy, Customer shall balance the dollar total of each deposit to the sum of the Electronic Items prior to transmitting the Electronic File to Bank. Customer shall determine that the Electronic File has been received based on the confirmation page of the Services Site. Bank will indicate acceptance of the transactions and any rejected transactions on the Services Site. Customer shall process any rejected transactions as paper checks through the normal paper check deposit process.

3.3 Customer shall enter the dollar amount of a paper check(s), along with any other optional information that Customer would like retained by the Services Site. The Services Site provides for reports and exporting of the information that has been entered.

3.4 Bank shall electronically deliver to Customer, through the Services Site, a confirmation of receipt for each deposit submitted, and the deposit shall be considered received by Bank when such confirmation is delivered to Customer. Deposits received via the Service by 9:00 p.m. Eastern Time on any Business Day or at any time on any Calendar Day that is not a Business Day will be posted to Customer's Account on the same Business Day, with next Business Day availability of deposits based on Bank's Account Agreement. Bank reserves the right to reject any single check image or group of check images for any reason, before or after delivery of confirmation of receipt.

3.5 Customer acknowledges and agrees that in the event any deposited item converted to a Check Image is returned for any reason (for example, non-sufficient funds), Bank may return the item to Customer by delivery of either a Substitute Check or the Check Image, including all return information. Return items will be handled in the same manner as check deposits in accordance with the Account Agreement.

4. Customer Responsibilities and Obligations.

4.1 Customer represents, warrants and covenants that after truncation of an original check, Customer shall safeguard the Electronic Items and original checks identified in any Electronic File previously sent to Bank in order to ensure that such original checks and Electronic Items: (i) shall not be submitted for deposit with Bank or any other financial institution, except in accordance with the terms and conditions of this Appendix related to un-processable Electronic Items and (ii) shall not be transferred for value to any other person or other entity. Customer shall ensure that each original check is properly marked with the wording which states that the deposit has been sent for processing ("Electronically Presented").

4.2 Upon receipt of any transmitted Electronic File, Bank shall be the lawful owner of such Electronic File and each Electronic Item with respect to original checks imaged in that Electronic File. Customer shall retain all original checks truncated pursuant to this Appendix for a period of sixty (60) Calendar Days in a manner that is mutually agreed upon between the parties hereto. However, for accounting, auditing and other legal purposes, Customer may keep electronic records regarding its receipt and deposit of such checks, provided such internal electronic records cannot be used to generate duplicate Electronic Files for purposes of depositing and presenting such checks for payment.

4.3 Customer shall deliver promptly to Bank, upon its request, the original check if a request is made within the retention period provided above, or Substitute Check or Sufficient Copy thereof, for each Electronic Item created by Customer. The term "Sufficient Copy" means a copy of an original check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or is otherwise sufficient to determine whether or not a claim is valid.

4.4 Customer shall not create at any time an Electronic File under this Appendix or otherwise use the Application to capture or maintain tax identification numbers or non-public personal information of any third-party from whom Customer has received an original check for payment or deposit or which Customer has selected for truncation.

4.5 Customer agrees to abide by all federal and state laws, and rules and regulations applicable to banking transactions.

4.6 If Bank receives a returned item for a check deposited by Customer after Customer has terminated this Appendix, then Customer agrees that Bank may debit Customer's Account, or if such Account has been closed by Customer, Bank will send a request for payment to Customer, and Customer agrees to pay Bank within a commercially reasonable period of time.

4.7 Customer agrees to have controls in place to ensure that the Services, including the Hardware and checks processed through the Hardware, are properly

safeguarded and stored in accordance with the timeframe set forth in Section 4.2 above and in a secure location, under effective control, in order to safeguard against unauthorized access and use. Customer shall ensure that all such checks are thereafter destroyed by a cross-shredder, and/or pulped or otherwise destroyed in such a manner that does not permit recovery, reconstruction or future use of the checks. Customer agrees that it will not simply throw out such paper checks with other classes of records or with miscellaneous trash. Customer agrees to be responsible for all consequential damages resulting from lack of proper controls over processed checks.

4.8 Customer shall notify Bank of any interruptions in, delay or unavailability of, or errors caused by the Services immediately upon discovery thereof. Notwithstanding the foregoing, in the case of any error caused by the Services and subject to Section 11 of the parties' Cash Management Master Agreement, Customer shall provide such notice within thirty (30) Calendar Days of the date of the earliest notice to Customer which reflects the error. Failure of Customer to provide such notice to Bank shall relieve Bank of any liability or responsibility for such error, omission or discrepancy.

5. Customer Warranties, Covenants. Customer makes the following representations, warranties and covenants as of the effective date of this Appendix and upon each delivery of an Electronic File to Bank:

5.1 An Electronic File may include an electronic representation of a Substitute Check. Customer shall redeposit a returned original check or a returned Electronic Item by delivering the same to any Bank branch location. A returned original check or returned Electronic Item may not be re-submitted by Customer using the Services. Customer may only use the Services to re-submit an IRD or Substitute Check that has been returned to Customer for non-sufficient funds.

5.2 With respect to each Electronic Item in any Electronic File delivered to Bank, the Electronic Item accurately represents all of the information on the front and back of the original check as of the time that the original check was created by the payor; contains all required and valid endorsements; replicates the MICR line of the original check; and meets all FRB standards of and technical requirements for sending Electronic Items to any as set forth in the applicable FRB operating circular, or as established by the American National Standards Institute ("ANSI") or any other regulatory agency, clearing house or association. Specifically, each Electronic Item of each original check shall be of such quality that the following information can clearly be read and understood by sight review of such Electronic Item:

- (i) the amount of the check;
- (ii) the payee of the check;
- (iii) the signature of the payor of the check;
- (iv) the date of the check;
- (v) the check number;

(vi) the information identifying the payor and the paying bank that is preprinted on the check, including the MICR line; and

(vii) all other information placed on the original check prior to the time an image of the original check is captured, such as any required identification written on the front of the check and any endorsements applied to the back of the check.

5.3 Customer shall also ensure that the following information is captured from the MICR line of each original check:

- (i) the American Bankers Association routing transit number ("RTN");
- (ii) the number of the account on which the check is drawn;
- (iii) when encoded, the amount of the check; and
- (iv) when encoded, the auxiliary on-us field (serial number) and the process control field of the check.

5.4 The Electronic Item bears all endorsements, if any, applied by previous parties that handled the check in any form (including the original check, as Substitute Check, or another paper or electronic representation of such original check or Substitute Check) for transfer, forward collection or return. Customer shall endorse each original check prior to truncation.

5.5 Customer is entitled to enforce the original check, or Customer is authorized to obtain payment of the original check on behalf of a person who is either entitled to enforce the original check or is authorized to obtain payment on behalf of a person entitled to enforce the original check.

5.6 Customer will submit financial and/or other additional information to Bank upon request in order for Bank to establish or amend Customer's deposit and file limits as further described in Section 6 and as established by Bank and communicated to Customer, or to otherwise monitor or audit Customer's use of the Services and compliance with this Appendix. Customer will also notify Bank of any change in transaction volumes or financial condition that may have an effect on this Appendix or Customer's use of the Services.

5.7 Customer shall also request permission from Bank in advance of any change in locations at which the Services are used or change in the physical location or address of any Hardware from its original Bank-approved location or address, which permission Bank may grant or refuse in its sole and exclusive discretion. In addition to but not in lieu of the foregoing, Customer shall request advance permission from Bank prior to using the Services and/or any Hardware outside the continental United States and/or outside of those states (including the District of Columbia) in which Bank operates from time to time. Bank may grant or decline such request in its sole and exclusive discretion and in consideration of applicable law.

5.8 Both Customer and the clients with whom it does business are reputable and are not using Bank as a conduit for money laundering or other illicit purposes.

5.9 None of Customer's transactions to be processed by Bank are prohibited by any applicable law, regulation, order, rule or judgment.

5.10 Customer Electronic Files will not contain viruses that originate from Customer's Computer.

5.11 None of Customer's employees are a national of a designated blocked country or "Specially Designated National", "Blocked Entity", "Specially Designated Terrorist", "Specially Designated Narcotics Trafficker", or "Foreign Terrorist Organizations" as defined by the United States Office of Foreign Assets Control.

5.12 Customer is responsible for implementing operational controls and risk-monitoring processes, as well as conducting periodic self-assessments of the security of the Services and its processes and practices with regard to use of the Services.

6. Deposit and File Limits. Customer's use of the Services is limited as more particularly described in the Services' Setup Form(s), and as the parties may otherwise agree from time to time. Such limits may include but are not limited to maximum total daily dollar amounts; maximum per item dollar amounts; maximum percentage of monthly transactions returned; and maximum number of items to be deposited per day.

7. Administrator(s) and Authorized Users.

7.1 Customer may designate Administrator(s) relative to the Services, as set forth in the Services' Setup Form(s). Customer is solely responsible for designating its Administrator(s). Customer agrees to provide Bank, upon Bank's request, with any certificate or documentation that is acceptable to Bank specifying the name of the person who is authorized to be designated as Administrator(s) from time to time.

7.2 The Administrator(s) may designate other Administrators and/or Authorized Users. Customer accepts as its sole responsibility an Administrator's designation of other Administrators and Authorized Users. Customer understands that the Administrator(s) will control, and Customer authorizes the Administrator(s) to control, access by other Administrator(s) and Authorized Users of the Services through the issuance of passwords. The Administrator(s) may add, change or terminate Customer's Authorized Users from time to time and in his/her sole discretion. Bank does not control access by any of Customer's Authorized Users to any of the Services.

7.3 Customer will require each Administrator and each Authorized User to comply with all provisions of this Appendix and all other applicable agreements. Customer acknowledges and agrees that it is fully responsible for the failure of any Administrator or any Authorized User to so comply.

7.4 Whenever any Authorized User leaves Customer's employ or Customer otherwise revokes the authority of any Authorized User to access or use the Services, Customer must notify the Administrator immediately, and the Administrator is solely responsible for de-activating such Authorized User's password. Whenever an Administrator leaves Customer's employ or Customer otherwise revoke an Administrator's authority to access or use the Services, Customer remains fully responsible for all use of the passwords and the Services.

8. Security Procedures.

8.1 Upon successful enrollment, Customer can access the Services via the Services Site, or any website that Bank may designate from time to time, using the security procedures as described from time to time. Bank will provide Customer with an organizational or User ID that is the electronic identification, in letters and numerals, assigned to Customer by Bank that will be used for log-in by Customer's Administrator(s) and Authorized User(s). Bank will also provide the Administrator(s) initially designated by Customer with an initial individual password to gain access to the Services. The Administrator(s) and Authorized User(s) must change his or her individual password from time to time for security purposes, as prompted by the Services Site, or more frequently.

8.2 Customer acknowledges that Administrator(s) will, and Customer authorizes Administrator(s) to, select other Administrators and Authorized Users by issuing to any person an individual password. Customer further acknowledges that Administrator(s) may, and Customer authorizes Administrator(s) to, change or de-activate the individual password and/or any individual password from time to time and in his or her sole discretion.

8.3 Customer acknowledges that, in addition to the above individual passwords, access to the Services includes, as part of the Access Devices, a multi-factor authentication security procedure at log-in for Customer, including Administrator(s) and Authorized Users. This additional security procedure involves an additional access code and Computer registration that is in addition to User ID and individual password security (hereinafter "Enhanced Log-in Security").

8.4 Bank does recommend as a commercially reasonable security procedure that Customer implement dual control of the Services, whereby one Authorized User creates, edits, cancels, deletes and restores an Electronic File, and a second different Authorized User reviews the Electronic File prior to it being released.

8.5 Customer accepts as its sole responsibility the selection, use, protection and maintenance of confidentiality of, and access to, the Access Devices. Customer agrees to take reasonable precautions to safeguard the Access Devices and keep them confidential. Customer agrees not to reveal the Access Devices to any unauthorized person. Customer further

agrees to notify Bank immediately if Customer believes that the confidentiality of the Access Devices has been compromised in any manner.

8.6 The Access Devices identify and authenticate Customer (including Administrator(s) and Authorized Users) to Bank when Customer accesses or uses the Services. Customer authorizes Bank to rely on the Access Devices to identify Customer when Customer accesses or uses any of the Services, and as signature authorization for any Payment, transfer or other use of the Services. Customer acknowledges and agrees that Bank is authorized to act on any and all communications or instructions received using the Access Devices, regardless of whether the communications or instructions are authorized. Bank owns the Access Devices, and Customer may not transfer them to any other person or entity. If this Appendix is terminated, Customer's access to the Services will be immediately terminated.

8.7 Customer acknowledges and agrees that the Access Devices and other security procedures applicable to Customer's use of the Services are a commercially reasonable method for the purpose of verifying whether any Payment, transfer or other use of the Services was initiated by Customer. Customer agrees to be responsible for any transmission Bank receives through the Services that is processed by Bank in accordance with the security procedures, even if such transmission is not authorized by Customer, including any fraudulent transmission by Customer's employees or agents. Customer agrees that any election Customer may make to change or waive any optional security procedures recommended by Bank is at Customer's risk and that any loss resulting in whole or in part from such change or waiver will be Customer's responsibility account. Customer further acknowledges and agrees that the Access Devices are not intended, and that it is commercially reasonable that the Access Devices are not intended, to detect any errors relating to or arising out of a Payment, transfer or any other use of the Services.

8.8 If Customer has reason to believe that any Access Devices have been lost, stolen or used (or may be used) or that a Payment, transfer or other use of the Services has been or may be made with any Access Devices without Customer's permission, Customer must contact its Administrator. Customer also agrees to provide Bank with immediate notice of any actual or suspected breach in the security of or other unauthorized access to the Services through use of Customer's Computer. Such notice shall include a description of the incident in general terms; a description of the type of information or data related thereto that was the subject of unauthorized access or use; a description of what Customer has done to protect the information or data from further unauthorized access; and a telephone number or other contact information so that Bank can call for further information or inquiry. In no event will Bank be liable for any unauthorized transaction(s) that occurs with any Access Devices.

9. **Limitation of Liability.** In addition to but not in lieu of the limitations of liability and related provisions contained in the parties' Contract, Bank shall have no liability for any error or delay in performing the Services and shall have no liability for not affecting a Check Image, if:

(i) Bank receives actual notice or has reason to believe that Customer has filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;

(ii) The ownership of funds involving a Check Image or Customer's authorized representative's authority to transmit a Check Image is in question;

(iii) Bank suspects a breach of the security procedures;

(iv) Bank suspects that Customer's Account has been used for illegal or fraudulent purposes; or

(v) Bank reasonably believes that a Check Image is prohibited by federal law or regulation, or otherwise so provided in the Appendix.

Further, Bank will not be liable to Customer for any unauthorized actions or fraud initiated or caused by Customer or its employees or agents. Bank will also be excused from failing to transmit or delay in transmitting a Check Image if such transmittal would result in it exceeding any limitation imposed on it by any governmental or regulatory body.

10. **Audit Rights and Site Visits; Internal Controls.** Bank, its accountants, auditors or agents shall have the right to conduct site visits of Customer, as well as review, inspect and audit, at Bank's expense and with reasonable notice, and at any time as Bank may in good faith deem necessary or reasonable during or after the term of this Appendix, Customer's compliance with the terms of this Appendix, including but not limited to Customer's use of the Services, its Computer and security infrastructure, and the books and records of Customer related to: (i) Customer's activities hereunder and/or (ii) conformance with Customer's obligations hereunder. In addition, Bank reserves the right, in its sole and exclusive discretion, to require Customer to implement additional internal controls at Customer location(s) where use of the Services occurs and to request information from Customer relative to Customer's security infrastructure. Any review, inspection or audit to be performed by or for Bank pursuant to this Section 10 shall be conducted only during normal business hours, using reasonable care not to cause damage and not to interrupt the normal business operations of Customer.

11. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable by or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in

writing by Bank or the Contract or Cash Management
Master Agreement is terminated.

Remainder of page intentionally left blank.



APPENDIX IX

TD ACCOUNT RECONCILEMENT SERVICES - FULL

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Account Reconciliation Services - Full (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. **Services.** The Services described in this Appendix will assist Customer in reconciling and managing the check and deposit activity in Customer's designated checking Account(s) ("Authorized Accounts"). Use of the Services does not affect any of Customer's obligations, which are described in Bank's Business Deposit Account Agreement, to discover and report unauthorized or missing signatures and endorsements, or alterations on checks drawn on Customer's Accounts.

2. Submission of Data.

2.1 Customer shall have checks prepared in accordance with Bank specifications, and will supply Bank with twenty-five (25) voided checks to be used for testing. The checks will be tested to ensure the paper stock is of a minimum weight and is encoded with Bank's ABA (routing and transit) number, account number and check number to ensure the readability of the MICR line on Bank's equipment.

2.2 Customer shall send a file to Bank containing information regarding checks that have been issued by Customer ("Check Issue File") in the format and medium, by the scheduled day(s) and to the place(s) specified by Bank and agreed to by Customer as set forth in the Services' Setup Form(s). The Check Issue File shall include check issue date, check issue amount, payee, stop payments, and voided or cancelled checks, if applicable.

2.3 Prior to implementation of the Services, Customer shall submit to Bank a current, reconciled list of all outstanding checks issued on each Authorized Account one (1) week prior to the implementation of the Services hereunder. Depending on the frequency with which Customer issues checks, Bank reserves the right to require Customer to submit one or more additional lists so that all outstanding, unpaid checks issued on any Authorized Account have been reported to Bank prior to the implementation of the Services hereunder.

2.4 Customer will send to Bank a test file in the format and medium as identified in the Services' Setup Form(s) to ensure the readability of the Check Issue File on Bank's equipment.

2.5 Customer agrees to receive its paid check data ("Paid Check Data") from Bank in the specified format and medium, on the scheduled day(s) and at the place(s) specified by Bank and as set forth in the Services' Setup Form(s).

2.6 Prior to receiving a file from Bank containing Customer's Paid Check Data, Customer will be provided a test file by Bank to ensure the readability of the Paid Check Data, on Customer's equipment. Customer agrees to report any test file failures.

2.7 Bank shall compare each of Customer's paid checks by check number and amount against each Check Issue File received by Bank. Bank does not, and shall not be obligated to, compare any other data (such as payee names) on a presented check with a Check Issue File, even if a Check Issue File contains such other data. Bank may satisfy its obligation hereunder by comparing check numbers and amounts received in substitute checks and/or electronic presentation of checks.

3. **Statement of Transactions.** Within five (5) Business Days following the scheduled date for reconciliation, as set forth in the Services' Setup Form(s), or receipt of the final Check Issue File for the current reconciliation period as set forth in the Services' Setup Form(s), Bank will forward to the address provided by Customer a fully reconciled report including a listing in check number sequence of all outstanding paid, issued, voided, stopped and cancelled items from the statement schedule. Customer shall review the listing and report any errors as set forth in the Cash Management Master Agreement between Bank and Customer.

4. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. Bank's liability under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Full Reconciliation Services Appendix is

accepted in writing by Bank or the Contract or Cash Management Master Agreement is terminated.

Remainder of page intentionally left blank.



APPENDIX XII

TD CHECK IMAGING SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Check Imaging Services (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. **Services.** The Services are designed to provide Customer with images of Customer's paid checks and a file in Portable Document Format ("PDF") of the Account statement associated with those checks on an optical compact disc ("CD"). On a predetermined schedule, or upon Customer's Account statement cycle, a CD which contains front-and-back images of all Customer checks paid during that period will be mailed to Customer. The CD contains an associated index that is used for the retrieval of the paid check images. Application software, sublicensed to Customer by Bank and installed on Customer's Computer ("Computer Software"), is used to scan the CD and produce images that match the index search criteria entered by Customer. Bank will include images of any substitute checks and/or reconstituted electronic images on the CD. Bank may also provide Customer with images of Customer's deposited checks (front and back) and deposit tickets as part of the Services, subject to Bank's prior approval.

2. **Software; Hardware.** In addition to but not in lieu of the terms and conditions contained in the parties' Cash Management Master Agreement regarding software and Customer's Computer, the following shall also apply:

2.1 The Computer Software will be included with each CD mailed to Customer. Customer may be provided with additional Computer Software, or with software to be placed on Customer's network ("Network Software"). Service is contingent upon the successful installation of the Computer Software and any Network Software (collectively, the "Services' Software") by Customer.

2.2 A user manual will be provided to Customer which outlines the hardware and Services' Software requirements, as well as specific Customer instructions for use of the Services. Customer shall be solely responsible, at Customer's expense, for obtaining any and all requisite hardware and software, in addition to the Services' Software, for proper utilization of the CD and for repairing, servicing, and maintaining any and all such hardware.

2.3 Customer understands and acknowledges that the Services' Software is not the property of Customer. Customer acknowledges that

Customer has, and shall have, no right, title, or interest in or to the Services' Software, except the perpetual license and right to use the Services' Software for the purposes described herein. Customer further acknowledges that Customer has, and shall have, no right to copy, transfer, alter, modify, reverse compile, reproduce in any manner or convey in any manner, any part or all of the Services' Software.

2.4 Bank shall have the right to modify, correct, enhance or issue replacement Services' Software from time to time at its sole discretion. Customer shall immediately update the Services' Software with any requisite changes upon notice thereof from Bank.

3. CD Issuance.

3.1 Bank will use reasonable efforts to produce and mail a CD to Customer within five (5) Business Days after the end of the Account statement cycle (the "Cycle Cut-Off Period"). Bank will use reasonable efforts to produce a replacement CD within five (5) Business Days of receipt of notice from Customer should the CD be lost or deficient.

3.2. **Maximum Time Period for Replacement.** Customer acknowledges and understands that Bank may not be able to produce or replace a CD after one hundred twenty (120) days have elapsed from the end of the respective Cycle Cut-Off Period.

4. **No Warranty.** In addition to but not in lieu of the terms and conditions contained in the parties' Cash Management Master Agreement regarding disclaimer of warranties, BANK FURTHER DISCLAIMS ANY IMPLIED WARRANTY OF DURABILITY OF THE IMAGES OF CHECKS IMAGED IN CONNECTION WITH THE SERVICES.

5. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in

writing by Bank or the Contract or Cash Management Master Agreement is terminated.

Remainder of page intentionally left blank.



APPENDIX XIII

TD ZERO BALANCE ACCOUNT SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Zero Balance Account Services (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. Services.

1.1 Customer will designate a primary checking Account (the "ZBA Parent Account"), and one or more secondary Accounts (the "ZBA Sub-Accounts").

1.2 Through the Services, Customer authorizes Bank to transfer funds between the ZBA Parent Account and ZBA Sub-Accounts in order to bring the respective balances of the ZBA Sub-Account(s) to the pre-selected target balance(s), as set forth in the Services' Setup Form(s).

1.3 Customer may select a target balance for each Sub-Account in the amount of \$0 or a pre-defined collected or ledger balance amount.

1.4 Each ZBA Sub-Account's daily balance in excess of the target balance, including both collected and uncollected balances, will be transferred automatically to the ZBA Parent Account, unless Customer elects to transfer daily collected balances only.

1.5 In the event the daily balance in any ZBA Sub-Account is less than the target balance, sufficient funds from the ZBA Parent Account will, to the extent available, be transferred to the ZBA Sub-Account to reach the target balance.

1.6 Bank is under no obligation to transfer funds to any one or more ZBA Sub-Accounts to the extent that such transfer(s) would cause an overdraft of collected balances in the ZBA Parent Account. Bank may, in its sole discretion, determine the priority in which funds from the ZBA Parent Account are applied to ZBA Sub-Account(s).

1.7 Customer agrees that Bank is not acting as a fiduciary with respect to funds in either the ZBA Parent Account or in any ZBA Sub-Account.

1.8 If any of the ZBA Sub-Accounts are owned by an Affiliate of Customer, then (1) Customer represents and warrants it has all necessary power and authority to transfer funds into and out of such ZBA Sub-Account(s), and (2) Customer will indemnify Bank from any claim by any owner(s) of such ZBA Sub-Account(s) or any third party with respect to a transfer into or out of such ZBA Sub-Account(s).

2. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Contract or Cash Management Master Agreement is terminated.

Remainder of page intentionally left blank.



APPENDIX XIV

TD CURRENCY SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Currency Services (the "Services") made available to Customer by Bank or Bank's third-party service provider. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. **Services.** The Services described in this Appendix provide Customer with (1) money room cash and check deposit processing, as described in further detail below, including: counting, validating, posting and adjustments to Customer's Account, and (2) cash disbursement orders, as described in further detail below, including: packaging of coin and currency orders and debiting of Customer's Account.

2. Money Room Cash and Check Deposits.

2.1 With respect to money room cash and check deposit services, Customer shall engage and execute an agreement between Customer and an armored carrier company ("Armored Carrier") that is on Bank's approved list of Armored Carriers. Customer will provide Bank with a copy of Customer's agreement with the Armored Carrier upon Bank's request. Customer will arrange for the Armored Carrier to retrieve and transport all U.S. or Canadian (the latter being subject to Bank's pre-approval and acceptance in limited geographic areas only) coin and currency ("Cash Deposits") and checks ("Check Deposits") (collectively, the "Deposits") from certain of Customer's locations. Customer will disclose to Bank its chosen Armored Carrier, and Bank will designate a Bank money room processing location (each a "Cash Processing Center") to which Armored Carrier shall deliver Customer's Cash Deposits. Customer will inform Bank of any requested changes to these arrangements. Customer will prepare all Deposits in accordance with Bank's Deposit Preparation Guidelines to ensure accurate and timely credit. Bank will provide Customer with a copy of Bank's Deposit Preparation Guidelines.

2.2 The Armored Carrier will transport the Deposits to Customer's Bank-designated Cash Processing Center. The Cash Processing Center will count all Cash Deposits and record the total amount of funds to be credited on Bank's books and records as a Cash Deposit to Customer's Account(s). To the extent the Deposits include Check Deposits, Bank shall arrange for transport of those Check Deposits to a Bank-designated Bank check processing location (each a "Check Processing Center").

2.3 In accordance with the Bank's Deposit Preparation Guidelines, Cash Deposits shall be prepared separately from Check Deposits and bundled separately by Customer for pick-up by Customer's Armored Carrier and delivery to Bank's Cash Processing Center.

2.4 Bank will provide Customer with same-day provisional credit for Cash Deposits received by the Bank-designated Cash Processing Center in accordance with the Cash Processing Center's cut-off time of 6:00 pm. ET. Bank is not responsible if Customer's Armored Carrier does not deliver to the Bank-designated Cash Processing Center in time to meet the same-day provisional credit cut-off time. Credit may not be issued same-day if the Deposits are not prepared in accordance with Bank's Deposit Preparation Guidelines. Deposits remain the sole and exclusive property of Customer until Customer's Armored Carrier has delivered the Deposits to Bank's Cash Processing Center. Customer shall bear the entire risk of loss, theft, damage or destruction of the Deposits upon Customer's Armored Carrier pick-up of the Deposits until delivery to Bank's Cash Processing Center.

3. Currency Requisitions.

3.1 Customer may initiate a request for Cash (a "Cash Order") via Bank's Cash Processing Center's automated touchtone system, or by special arrangement with Bank only, via Bank's local branch office(s). Cash Orders via Bank's automated touchtone system shall be initiated by Customer using its Bank-issued User ID and personal identification number ("PIN"). The ordering deadline for Cash Orders on a Business Day for delivery the following Business Day varies by Cash Processing Center. Cash Orders must be made by the designated Cash Processing Center's ordering deadline on a Business Day for the Armored Carrier's pick-up on the following Business Day. All Cash Orders must be in Federal Reserve Standard Lots as set forth in the Cash Order form provided by Bank to Customer.

3.2 For Cash Orders placed by Customer in accordance with this Section, Bank will fulfill Customer's Cash Order and debit Customer's Account on the Business Day prior to the Business Day for pick-up by Customer's

Armored Carrier. Cash Orders on a Customer Account with insufficient funds may not be processed, in Bank's sole and exclusive discretion. Cash remains the sole and exclusive property of Bank until Customer's Armored Carrier signs the Bank-designated Cash Processing Center's manifest confirming Customer's Armored Carrier's pick-up of the Cash Order. Customer shall bear the entire risk of loss, theft, damage or destruction of the Cash Order upon Customer's Armored Carrier signing the Cash Processing Center's manifest confirming the Armored Carrier's pick-up of the Cash Order.

4. Armored Carrier as Customer's Authorized Agent. Customer represents and warrants that its Armored Carrier is acting as its duly authorized agent at all times when interacting with Bank as described in this Appendix. Customer authorizes Bank to rely upon that authorization when interacting with Customer's Armored Carrier. Subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, Customer agrees that Bank's reliance on the foregoing when interacting with Customer's Armored Carrier shall be deemed reasonable, and further agrees to defend, indemnify, and hold Bank harmless from any and all claims, demands, damages, and liabilities (including reasonable attorneys' fees and expenses) directly or indirectly arising out of or incurred by reason of the Armored Carrier interacting with Bank as an agent for Customer.

5. Disputes Regarding Validity of Instructions; Deliveries.

5.1 Customer agrees that any and all disputes, claims, controversies, or causes of action that it may have now or in the future that are or may be directly or indirectly related to either (a) the legitimacy, accuracy, or timeliness of arrival of any Deposits to the Bank-designated Cash Processing Center, or (b) the pick-up of Cash Orders by Customer's Armored Carrier from the Bank-designated Cash Processing Center, shall be solely and exclusively between the Armored Carrier and Customer. Customer agrees that Bank shall be held harmless and excluded from any and all such matters.

5.2 Customer further agrees that Bank may make any and all adjustments to amounts deposited to or withdrawn from Customer's Account(s) if, subsequent to receipt and/or processing of a Deposit or a Cash Order, Bank discovers or becomes aware of an error in or omission from such Deposit or Cash Order. The parties understand and agree, however, that this right of correction

and adjustment shall be at Bank's sole and exclusive discretion and shall not create any obligation or duty of Bank to examine, inspect, scrutinize or question any Deposit or Cash Order it receives from Customer or its Armored Carrier.

6. Adjustments to Cash Order(s). In the event Customer believes there is a discrepancy with a delivery of a Cash Order, Customer must send a written notice of discrepancy to Bank no later than ten (10) Business Days after Customer's receipt of the Cash Order. The written notice shall be on Customer's letterhead, signed by an Authorized Signer on the Account, and shall describe the discrepancy and request research and resolution of the discrepancy. Customer should include originals of any currency straps involved, and copies of any and all Bank materials provided with the Cash Order delivery. If Customer fails to notify Bank within such time period, and Bank is required to adjust Customer's Account, Bank will not pay interest to Customer on the amount of the adjustment.

7. Adjustments to Check Deposits and Cash Deposits. Bank shall also have the right to make any and all adjustments to the amount to be credited to Customer's Account(s) as a Check Deposit or Cash Deposit if, subsequent to Bank's receipt and/or processing, Bank discovers or becomes aware of an error or omission in the Deposit.

8. Availability of Deposits. Customer understands and agrees that the availability for withdrawal, including for the fulfillment of any Cash Order(s), of any deposit of Cash Deposits or Check Deposits, shall be governed by the funds availability provisions of this Appendix and the Account Agreement, as the same may be amended from time to time.

9. Effectiveness. Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the Contract or Cash Management Master Agreement is terminated.

Remainder of page intentionally left blank.



APPENDIX XXI

TD DATA TRANSMISSION SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to TD Data Transmission Services made available to Customer by Bank or Bank's third-party service provider. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement. Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. **Services.** The Data Transmission Services (the "Services") provide Customer with the ability to exchange information files with Bank's (or its third-party service provider's) information systems for a variety of needs and functions. This Service allows Customer to send and/or receive its Bank files using File Transfer Protocol ("FTP"), Hypertext Transfer Protocol Secure ("Secure Web"), Secure File Transfer Protocol ("SFTP"), or via such other method as the parties may agree upon from time to time, as may be set forth in a Services' Setup Form(s).

2. FTP Transmission.

2.1 This method of data transmission permits Customer to deliver and/or receive encrypted files to a Bank-maintained FTP server. Bank will create a drop-box directory on the server where Customer may upload and deliver data files. To send data to Bank, Customer will either push the data files to Bank's directory, or Customer will give Bank a unique user name, password and Customer service address, and Bank will deliver the file. For data Bank sends Customer, Customer will pull the data files from its outbound directory on the server.

2.2 The technical requirements for FTP over the Internet include an Internet connection, FTP client capabilities, and Pretty Good Privacy ("PGP") or equivalent software for file encryption and decryption.

2.3 Files for transmission by FTP must be encrypted using PGP Version 4.0 or higher. PGP provides encryption technology including encryption, decryption, key management, encrypted email, digital signatures, key generation, certified keys and key revocation. Bank will generate a public key/private key pair for Customer. The public part of the key will be sent to Customer via Customer's assigned mailbox on Bank's transmission platform. The private part of the key will be securely kept within Bank. Customer will also generate a key pair for files that it sends to Bank. The public part of this key pair will be sent to Bank, also via the mailbox, while only Customer will know the private key.

2.4 To begin transmission by FTP, Bank will establish Customer's access to Bank's FTP server. Bank will provide Customer with the domain name required for the FTP connection. Customer will be provided a User ID and password that is unique to

Customer and will be required each time Customer wishes to connect to Bank's transmission platform to send or receive files. PGP public keys for encryption will be exchanged. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms and encryption testing on transmitted files prior to Customer's use of the Service via FTP transmission.

3. Secure Web Transmission.

3.1 This method of data transmission permits Customer to deliver and/or receive files using an Internet connection, User ID and password. Bank will provide Customer with the domain name of a website that will display a web page with Customer's root directory. Customer can upload data files to this directory by clicking the Browse button and selecting the file from Customer's local network. Data files sent by Bank will be displayed in Customer's outbound directory and may be downloaded by Customer to its local network.

3.2 The technical requirements for Secure Web include an Internet connection and browser supporting 128-bit Secure Sockets Layer ("SSL") encryption.

3.3 Files for transmission through Secure Web are encrypted using SSL. SSL is an open protocol for securing data communication across computer networks that provides a secure channel for data transmission through its encryption capabilities. SSL allows for the transfer of digitally-signed certificates for authentication procedures and provides message integrity to protect against data being altered en route. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms and encryption testing on transmitted files prior to Customer's use of the Service via Secure Web.

4. Secure FTP (SFTP) Transmission.

4.1 This method of data transmission permits Customer to deliver to and/or receive files from a Bank-maintained SFTP server. Files transfers through SFTP communications are encrypted using Secure Shell ("SSH"). SSH is an open protocol for securing data communication across computer networks providing a secure channel for data transmission. The encryption used by SSH is intended to provide confidentiality and integrity of data over an unsecured network, such as the Internet. SSH uses public-key cryptography to authenticate the

remote computer and allow the remote computer to authenticate the user, if necessary.

4.2 Customer has the option to push files to Bank's SFTP server or have Bank pull Customer's files. For Customer push, Bank will create a drop-box directory on the SFTP server and provide Customer with a user name, password, and URL/domain name. Customer must provide an external IP address of the location sending files so that Customer's IP address can be added to access control lists within Bank's firewalls. For Bank to pull Customer's files, Bank will need a user name, password, URL/domain name, and directory from Customer so that Bank can pull files from Customer's SFTP servers. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms prior to Customer's use of the Services.

4.3 Customer also has the option for Bank to push Customer files (recommended by Bank) or Customer can pull the files from Bank's SFTP server. For Bank to push Customer's file, Bank needs Customer's URL/domain name, unique user name, password, and directory. For Customer to pull files from Bank's SFTP server, Customer must provide the external IP address of the location pulling the files so that Customer's IP address can be added to access control lists within Bank's firewalls. If Customer chooses to pull files from Bank's SFTP server, then files must be PGP encrypted, since files will reside on an SFTP server within Bank's DMZ. Bank will need Customer's public PGP key so that Bank can encrypt files. Bank and Customer will perform, to their mutual satisfaction, connectivity testing between platforms and encryption testing (if necessary) on transmitted files prior to Customer's use of the Services.

4.4 Customer will need an FTP client capable of using the SSH (Secure Shell) Protocol. If Customer decides to pull files from Bank, Customer will need an application/utility capable of creating a PGP key pair and decrypting PGP files.

5. Security Procedures.

5.1 Customer agrees that the security procedures set forth or incorporated by reference in this Appendix, the Cash Management Master Agreement and/or associated documents provided by Bank, including without limitation the Services' Setup Form(s), are a commercially reasonable method of providing security against unauthorized access to or interception of transmissions between Customer and Bank (hereinafter the "Security Procedure"). Any transmission by Customer shall be deemed authorized if transmitted in accordance with the Security Procedure. Bank may, from time to time, modify the Security Procedure. Such modifications shall become effective upon receipt of notice by Customer or such later date as may be stated in the Bank's notice to Customer. If Customer fails to object to such change, it shall be deemed to agree to such change.

5.2 Nothing in this Appendix shall be deemed a representation or warranty by Bank that FTP, Secure Web or SFTP communications are secure. Rather,

after review of the alternatives, Customer has selected a communication method that it believes best suits its needs.

5.3 Bank may, from time to time, propose different, additional or enhanced security procedures to Customer. Customer understands and agrees that if it declines to use any such enhanced procedures, it will be liable for any losses that would have been prevented by such procedures. Notwithstanding anything else contained in this Appendix, if Bank believes immediate action is required for security of Bank or Customer funds or data, Bank may initiate additional security procedures immediately and provide prompt subsequent notice thereof to Customer.

5.4 Customer hereby acknowledges that the Security Procedure is neither designed nor intended to detect errors in the content or verify the contents of a transmission between the parties. Accordingly, any errors contained in a transmission from Customer shall be Customer's responsibility. Except as otherwise expressly provided in the parties' Cash Management Master Agreement or other Appendix between the parties, no security procedure for the detection of any such Customer error has been agreed upon between Bank and Customer.

5.5 Customer is strictly responsible for establishing and maintaining procedures to safeguard against, detect and mitigate unauthorized access to or interception of transmissions. Customer covenants that no employee or other individual under Customer's control will be allowed to initiate transmissions in the absence of proper authority, supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedure and any passwords, codes, security devices and related instructions provided by Bank in connection with any Security Procedure utilized by Bank and/or Customer. If Customer believes or suspects that any such password, code, security device, Security Procedure, information or instructions have been disclosed to or accessed by unauthorized persons, Customer agrees to notify Bank immediately followed by written confirmation as provided in the Services' Setup Form(s).

5.6 Customer shall retain data files for five (5) Business Days following the date of their transmittal by Customer as provided herein, and shall provide such data files to Bank upon request.

6. **Effectiveness.** Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to Data Transmission Services and shall remain in full force and effect until termination or such time as a different or amended Appendix is accepted in writing by Bank or the parties' Cash Management Master Agreement or the Contract is terminated.

Remainder of page intentionally left blank.



APPENDIX XXII

TD ACH POSITIVE PAY SERVICES

This Appendix is incorporated by reference into the parties' Cash Management Master Agreement and applies to all TD Automated Clearing House ("ACH") Positive Pay Services (the "Services") made available to Customer by Bank. All capitalized terms used herein without definition shall have the meanings given to them in the Cash Management Master Agreement or the *NACHA Rules* (as defined below). Except as otherwise expressly provided in this Appendix, to the extent that this Appendix is inconsistent with the provisions of the Cash Management Master Agreement, this Appendix and any amendment hereto from time to time shall control, but only to the extent necessary to resolve such conflict.

TERMS AND CONDITIONS

1. Definitions.

"*Authorized Account*" means the Account(s) of Customer, maintained at Bank, to which the Services will apply.

"*ACH Entry*" means an order or request for the transfer of money to an Authorized Account (a "Debit Entry"), and/or an order or request for the withdrawal of money from an Authorized Account (a "Credit Entry").

"*ACH Authorizations*" means Customer's written instructions and authorization criteria provided to Bank in conjunction with the set-up and implementation of the Services, including via a separate ACH block and filter agreement with Bank (hereinafter the "Filter Agreement"), and/or otherwise in accordance with the Services as described in this Appendix, which either prohibits all ACH Entries or permits only the posting of specified ACH Entries to an Authorized Account.

"*Exception Entry*" means an ACH Entry (excluding an ARC, BOC, POP, RCK, or XCK SEC Codes) that does not meet Customer's ACH Authorizations previously provided to Bank (and is referred to within the Services as a "Rejected" Entry), and that is therefore scheduled to be returned to the Originator of the ACH Entry.

"*NACHA Rules*" means the National Automated Clearing House Association's ("NACHA") *Operating Rules and Operating Guidelines*, which govern the ACH system.

"*Pay Decision(s)*" means Customer's instruction to Bank to pay/post an Exception Entry.

"*Return Decision(s)*" means Customer's confirmation instruction to Bank to not pay/post an Exception Entry but to instead return the ACH Entry to the Originator.

"*Return Default Disposition*" means the automatic default disposition of all ACH Entries that do not

meet Customer's ACH Authorizations, whereby all such ACH Entries are scheduled to be returned to the Originator of the ACH Entry.

2. Services.

2.1 Description.

2.1.1 The Services described in this Appendix will provide Customer with a means to review ACH Entries received on a particular Customer Account that are scheduled to be returned to the Originator as an Exception Entry in accordance with Customer's ACH Authorizations and to confirm the return of the Exception Entry through a Return Decision, or to override the Return Default Disposition and instruct Bank to pay/post the Exception Entry to Customer's Account through a Pay Decision.

2.1.2 Customer acknowledges that the Services have been identified by Bank as a service that can reduce the risk of fraudulent ACH Entries being posted against Customer's Account(s) when such Services are adopted and properly utilized by Customer. By conforming to the terms and conditions of this Appendix, Customer acknowledges and agrees that it may significantly reduce the chance that fraudulent ACH Entries will post to Customer's Account(s) by electronically matching incoming ACH transactions to ACH Authorizations.

2.2 Customer Authorizations.

2.2.1 Customer will designate Authorized Account(s) to be used with the Services via the Services' Setup Form.

2.2.2 As applicable, Customer shall begin the Services with either (a) any ACH Authorizations initially submitted by Customer to Bank and then established by Bank on Customer's behalf in conjunction with the set-up and implementation of the Services, or (b) any existing ACH Authorizations on Customer's Authorized Account(s) that have been established via a Filter Agreement. Customer may add to or modify those initial or existing ACH Authorizations from time to time as set forth herein. Customer shall be responsible for the accuracy and completeness of all information provided to

Bank both through the use of the Services and via the Services' Setup Form.

2.2.3 Customer may submit additional ACH Authorizations, make changes to initial or existing ACH Authorizations, or delete initial or existing ACH Authorizations related to the Authorized Account(s) online via the Services. Such changes shall become effective on the next Business Day following the day on which the changes were made by Customer. Each Business Day, Bank will provide an updated list of successfully processed ACH Authorizations to Customer via the Services. In the event Customer submits a change or addition to the ACH Authorizations that is incomplete, contains an error or that cannot otherwise be processed by Bank, Bank will use commercially reasonable efforts to notify Customer on the next Business Day that the associated ACH Authorization(s) has been rejected. Until such time as Customer reviews and corrects it, the rejected ACH Authorization(s) will not appear on the updated list of successfully processed ACH Authorizations that Customer receives.

2.2.4 Should Customer fail to fully and accurately populate or complete all requested fields associated with the ACH Authorizations, the following will also apply:

(a) If Customer does not insert a specified maximum dollar amount, then no maximum dollar amount shall apply with respect to the applicable ACH Entry(ies) or transaction subject to the ACH Authorization(s).

(b) If Customer does not insert a specified expiration date, then no expiration date shall apply to the applicable ACH Entry(ies) or transaction subject to the ACH Authorization(s).

2.3 Processing of ACH Entries and Reporting of Exception Entries. Bank shall electronically compare each ACH Entry presented to Bank for settlement against Customer's Authorized Account(s) on a Business Day (including those presented by other depository institutions, ACH Operators or by Bank) with Customer's ACH Authorizations. On each Business Day, Bank:

(a) will allow incoming ACH Entries that match Customer's ACH Authorizations to post to Customer's Authorized Account(s); and

(b) will treat as Exception Entries all incoming ACH Entries that do not match Customer's ACH Authorizations and will provide to Customer, through the Bank Internet System, a listing of all Exception Entries that are otherwise scheduled for Return Default Disposition. Customer must monitor, review and issue a Post Decision or Return Decision on each Exception Entry reported through the Bank Internet System by the pre-established deadline set forth within the Services. Customer may also set up alerts to be sent to Customer by a pre-established time each Business Day advising Customer whether or not there are any Exception Entries to be reviewed that Business Day.

2.4 Payment and Dishonor of Exception Entries.

2.4.1 Customer may choose to confirm the Return Default Disposition of individual Exception Entries presented via the Services by providing a Return Decision to Bank by the pre-established deadline set forth within the Services, in which case such Exception Entries will be automatically returned to the Originator.

2.4.2 Customer may choose to override the Return Default Disposition of individual Exception Entries presented via the Services by providing a Pay Decision to Bank by the pre-established deadline set forth within the Services, in which case such Exception Entries will be paid/posted to Customer's Authorized Account(s) at the end of the current Business Day.

2.4.3 Customer may choose not to or may otherwise fail to review and provide a Post Decision or a Return Decision for any Exception Entries by the pre-established deadline, in which case the Return Default Disposition will apply and all such Exception Entries will be automatically returned to the Originator.

2.8 Customer and Bank Communications.

2.8.1 Customer shall use the Services' module of the Bank Internet System to report all Pay Decisions or Return Decisions. Bank shall not be obligated to comply with any Pay Decision or Return Decision received in a format or medium, after a pre-established deadline, or at a place not permitted under this Appendix or the Services' Setup Form(s), and may instead treat any such Pay Decision as a Return Decision or otherwise apply the Return Default Disposition to such Pay Decision.

2.8.2 Bank is not responsible for detecting any Customer error contained in any ACH Entries presented, decisioned, returned or processed, or in any Pay Decision or Return Decision by Customer.

2.8.3 In the event that Bank is unable to provide Customer with a listing of Exception Entries through the Bank Internet System for Customer's Pay Decision or Return Decision as described in Section 2.3, the Return Default Disposition shall apply in accordance with Customer's previously established ACH Authorizations.

2.8.4 Bank shall be bound only to exercise ordinary care in attempting to post or return ACH Entries as described in this Appendix.

3. Remedies.

3.1 **Bank Liability.** To the extent permitted by applicable law, the liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank.

3.2 **Wrongful Payment/Posting.** It shall constitute wrongful payment/posting by Bank if Bank

pays/posts an Exception Entry for which Customer has provided a Return Decision by the pre-established deadline set forth within the Services. In the event that there is wrongful payment/posting, Bank shall be liable to Customer for the lesser of the amount of the wrongfully paid/posted Exception Entry or Customer's actual damages resulting from Bank's posting of the Exception Entry, subject to the terms of the parties' Cash Management Master Agreement.

3.3 Rightful Payment and Return.

3.3.1 If Bank honors an Exception Entry in accordance with a Pay Decision by Customer as described in Section 2.4.2, such payment/posting shall be rightful, and Customer waives any right it may have to assert otherwise.

3.3.2 If Bank returns an Exception Entry in accordance with a Return Decision by Customer as described in Section 2.4.1, or otherwise pursuant to a Return Default Disposition as described in this Appendix, the return shall be rightful, and Customer waives any right it may have to assert otherwise.

3.3.3 Customer agrees that Bank exercises ordinary care whenever it rightfully pays/posts or returns an Exception Entry consistent with the provisions of this Appendix.

4. Other Terms of the Services.

4.1 Customer acknowledges that the Services do not preclude Bank's standard ACH processing procedures, which may cause an ACH Entry to be dishonored even if Customer's instructions do not otherwise require Bank to return such ACH Entry.

4.2 Customer acknowledges that the Services do not apply to transactions between Customer and Bank, including any Bank affiliates and subsidiaries, such as loan or credit card payments ("Bank-Related Entries"). Bank is permitted to pay Bank-Related Entries whether or not Customer has included these in Customer's ACH Authorizations as reflected in this Appendix and until such time as Customer's authorization with respect to the underlying Bank-Related Entries is revoked or otherwise terminated.

4.3 Customer acknowledges that the Services are intended to be used to identify and return ACH

Entries which Customer suspects in good faith are fraudulent or otherwise unwarranted. The Services are NOT intended to be a substitute for authorization instructions or to delay Customer's decision on ACH Entries, including but not limited to stop payment orders on ACH Entries which are not suspected in good faith to be unauthorized. If Bank suspects or deems, in Bank's sole discretion, that Customer is using the Services contrary to those intentions, Bank may require Customer to provide evidence that ACH Entries that Bank returns pursuant to Customer's instructions were in fact unauthorized. In addition, Bank may hold Customer liable for losses that Bank sustains on ACH Entries which Bank is requested to return under the Services and which Customer does not reasonably establish as unauthorized ACH Entries, including as under the *NACHA Rules*.

5. **Governing Law.** Any claim, controversy or dispute arising under or related to this Appendix shall be governed by and interpreted in accordance with the governing law provision of the parties' Cash Management Master Agreement.

6. Effectiveness.

6.1 Customer agrees to all the terms and conditions of this Appendix. The liability of Bank under this Appendix shall in all cases be subject to the provisions of the Contract, including, without limitation, any provisions thereof that exclude or limit warranties made by, damages payable to or remedies available from Bank. This Appendix replaces and supersedes all prior agreements on file with respect to the Services, except for any existing ACH Authorizations currently on record with regard to the Authorized Account(s) as of the date of this Appendix.

6.2 This Appendix and the associated Services shall remain in full force and effect until such time as the Appendix or the Services are terminated, or a different or amended Appendix is implemented by Bank. This Appendix and the associated Services shall automatically terminate in the event the underlying Authorized Account(s) are closed or Customer's ACH Authorizations are otherwise terminated. In the event of termination of this Appendix and the associated Services, Customer's ACH Authorizations in effect as of the date of termination will remain in effect with respect to Customer's Authorized Accounts, and all ACH Entries will thereafter be processed in accordance with such ACH Authorizations. Also, upon termination of the Services, all sums owed to Bank hereunder shall be immediately due and payable.

Remainder of page intentionally left blank.



ACH BLOCK & FILTER SERVICES AGREEMENT

This ACH Block & Filter Services Agreement (this "Agreement") is by and between TD Bank, N.A. ("Bank") and the customer identified below ("Customer"). This Agreement is incorporated by reference into that certain "Contract" between the parties, the terms of which include: (1) City of Sunny Isles Beach Agreement With TD Bank for Banking Services ("City's Form of Agreement") dated on or about the date of this Agreement; (2) Customer's Request for Proposals No. 14-04-02 (the "RFP"); and (3) Bank's response to the RFP, Solutions Prepared for City of Sunny Isles Beach, dated May 15, 2014 (the "Proposal") (hereinafter, collectively, the "Contract"). The parties agree that any ambiguity, conflict or inconsistency in the foregoing documents that together constitute the Contract shall be resolved in the order of precedence provided in Section 2(d) of the City's Form of Agreement.

Bank and Customer agree that the ACH Block & Filter Services (the "Services", as described below) provided to Customer by Bank will be governed by the terms of this Agreement and any amended agreement entered into by Bank and Customer from time to time with respect to the Services, and by the terms and conditions of the parties' agreement governing the underlying deposit account(s) in Customer's name at Bank (hereinafter "Account(s)") and that are associated with the Services (the "Account Agreement"). All capitalized terms used herein without definition shall have the meanings given to them in the Account Agreement or the National Automated Clearing House Association's ("NACHA") *Operating Rules and Operating Guidelines* which govern the ACH system (the "NACHA Rules").

New Add

| | | | |
|-------------------------|---------------------------|--------------------------------|--------------------------------|
| Customer/Company Name: | Bank (Select one): | <input type="checkbox"/> 01/91 | <input type="checkbox"/> 04/94 |
| | | <input type="checkbox"/> 02/92 | <input type="checkbox"/> 11/86 |
| | | <input type="checkbox"/> 03/93 | <input type="checkbox"/> 18/87 |
| Type of Business: | Customer/Company Contact: | | |
| Treasury Mgmt. Officer: | Contact Phone: | | |

| |
|---|
| <u>BLOCKS</u> |
| <input type="checkbox"/> Block All ACH Credits. If checked here, Customer instructs Bank to block <u>ALL</u> incoming ACH credits. If not checked, Customer instructs Bank to HONOR ONLY the ACH credits identified below. |
| Account Number(s): |
| |
| <input type="checkbox"/> Block All ACH Debits. If checked here, Customer instructs Bank to block <u>ALL</u> incoming ACH debits. If not checked, Customer instructs Bank to HONOR ONLY the ACH debits identified below. |
| Account Number(s): |

TERMS AND CONDITIONS

1. Services.

1.1 The Services described in this Agreement allow Customer to elect how Bank will handle incoming Automated Clearing House ("ACH") Entries presented to Customer's Account(s). Customer may pre-establish certain ACH payment authorization, which include several options to filter ACH Entries (hereinafter collectively referred to as "ACH Authorizations").

1.2 Customer acknowledges that the Services do not apply to transactions between Customer and Bank, including Bank's affiliates and subsidiaries, such as loan or credit card payments ("Bank-Related Entries"). Bank is permitted to pay Bank-Related Entries whether or not Customer has included them in Customer's ACH Authorizations as reflected in this Agreement and may do so until such time as Customer's authorization with respect to the underlying Bank-Related Entries is revoked or otherwise terminates.

2. Operations.

2.1 If Customer checks the box(es) above to block incoming ACH Debit Entries or ACH Credit Entries presented to Customer's Account(s), Customer thereby instructs Bank to block all incoming ACH Debit Entries or ACH Credit Entries presented to such Account(s).

2.2 If Customer elects the ACH filter feature, Customer thereby instructs Bank to permit only those incoming ACH Entries from the specific Originator identified by Customer above by the Originating Company ID number. All other incoming ACH transactions will be returned to the Originator.

2.3 This Agreement is Bank's record of Customer's ACH Authorizations and represents Bank's understanding of Customer's instructions associated with incoming ACH Entries. If the information that Customer has provided above is incorrect in any category, Customer must advise Bank immediately, as Bank is NOT responsible for blocking or filtering ACH transactions unless Customer's ACH Authorizations are accurately described in this Agreement.

2.4 Customer's ACH block instruction(s) will be accepted subject to the condition that ACH transactions have not already been posted or are not in the process of posting, and that Bank will have a reasonable opportunity to act on Customer's request before any such processing.

2.5 Bank shall be bound only to exercise ordinary care in attempting to block or filter ACH transactions.

2.6 Bank shall have a reasonable time after receipt of Customer's request to implement this Agreement and shall not assume responsibility for stopping ACH transactions that have already been posted to the Account.

3. Account Agreement; Service Fees.

3.1 Bank and Customer agree that the Services and any Account established by Customer in connection with the Services shall also be governed by the Account Agreement, including one or more fee schedules issued by Bank for the Account, and the terms of the Account Agreement are incorporated herein by reference. If there is any conflict between the terms and provisions of this Agreement and the Account Agreement, the terms and provisions of this Agreement shall govern, but only to the extent reasonably necessary to resolve such conflict. Customer agrees to compensate Bank for the Services in accordance with the applicable fee schedules or written agreements between Bank and Customer in effect from time to time that apply to the Services.

3.2 Customer authorizes Bank to charge Customer's Account for all applicable charges and fees to the extent that such charges and fees are not offset by earnings credits or allowances for Customer's Account(s). Customer also agrees to pay all sales, use or other taxes (other than taxes based upon Bank's net income) that may be applicable to the Services.

3.3 Bank may amend fees associated with the Services and Account(s) in aggregate or individually, at any time. To the extent that such changes adversely affect Customer, Bank will use commercially reasonable efforts to give notice to Customer of such changes, in accordance with applicable law, or as may otherwise be agreed to by the parties.

4. Limitation of Liability; Disclaimer of Warranties.

4.1 Except to the extent required by law, the liability of Bank in connection with the Services shall in all cases be limited in accordance with the terms of the Contract.

4.2 CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK, AND THE SERVICES ARE PROVIDED "AS IS," AND BANK AND ITS SERVICE PROVIDERS AND AGENTS DO NOT MAKE AND EXPRESSLY DISCLAIM ANY WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, WITHOUT BREACHES OF SECURITY OR WITHOUT DELAYS. IN THOSE STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE LIABILITY OF BANK AND ITS SERVICE PROVIDERS AND AGENTS IS LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY LAW.

5. **Indemnification.** Subject to the provisions of Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time, and except as

otherwise expressly prohibited or limited by law, Customer agrees to indemnify and hold Bank harmless from any and all claims, liabilities, losses, damages, costs and expenses (including its reasonable attorneys' fees) that Bank may incur or that may be asserted by any person or entity against Bank, in accordance with the terms of the Account Agreement, and that may be incurred by Bank relating to or arising out of its refusing or accepting payment of ACH Debit Entries or receipt of ACH Credit Entries in accordance with Customer's ACH Authorizations, including, without limitation, any claim that the return of any blocked ACH Entry is improper as against the ACH Originator or its Originating Depository Financial Institution. Notwithstanding the foregoing, Bank shall have no right to be indemnified hereunder for losses resulting from its own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction, or as otherwise limited or prohibited by applicable law, including, without limitation, Section 768.28 of the Florida Statutes, as applicable and as the same may be amended from time to time.

6. Term and Termination.

6.1 This Agreement shall be effective when (i) signed by an Authorized Representative of Customer and accepted by Bank, and (ii) Customer delivers to Bank all documents and information reasonably required by Bank prior to commencing providing the Services.

6.2 Except as otherwise expressly set forth herein, this Agreement shall continue in effect until terminated by either party on five (5) days' prior written notice. Notice for Customer must be provided by an Authorized Representative. Termination will occur automatically upon the closure of the Account(s).

6.3 Any termination of this Agreement, whether initiated by Customer or Bank, will not affect any of Customer's or Bank's rights and obligations under this Agreement which have arisen before the effective date of termination of this Agreement. In addition, the provisions of this Agreement relating to Customer's and Bank's liability, Customer's indemnification of Bank, and the disclaimer of warranties shall survive the termination of this Agreement.

7. **Force Majeure.** Neither party shall bear responsibility for non-performance of this Agreement to the extent that such non-performance is caused by an event beyond that party's control, including, but not necessarily limited to, fire, casualty, breakdown in equipment or failure of telecommunications or data processing services, lockout, strike, unavoidable accident, act of God, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency that prevents Bank from operating normally.

8. **Entire Agreement; Changes to the Services and this Agreement.** Bank and Customer acknowledge and agree that the Contract, this Agreement and any amendments hereto, the Account Agreement, and all other documents incorporated by reference therein, constitute the complete and exclusive statement of the agreement

between them with respect to the Services, and supersede any prior oral or written understandings, representations, and agreements between the parties relating to the Services. Bank may change the Services and this Agreement (including any Amended Agreement) in accordance with the terms of the Account Agreement. Customer will remain obligated under this Agreement, including without limitation, being obligated to pay all amounts owing under this Agreement, even if Bank amends this Agreement.

9. **Severability.** If any provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable as written, that provision shall be interpreted so as to achieve, to the extent permitted by applicable law, the purposes intended by the original provision, and the remaining provisions of this Agreement shall continue intact. In the event that any statute, regulation or government policy to which Bank is subject and that governs or affects the transactions contemplated by this Agreement, would invalidate or modify any portion of this Agreement, then this Agreement or any part thereof shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Customer as a result of Bank's compliance with such statute, regulation or policy.

10. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

11. **Non-Waiver.** No deviation from any of the terms and conditions set forth or incorporated in this Agreement shall constitute a waiver of any right or duty of either party, and the failure of either party to exercise any of its rights hereunder on any occasion shall not be deemed to be a waiver of such rights on any future occasion.

12. **Governing Law; Conflicts.** Any claim, controversy or dispute arising under or related to this Agreement shall be governed by and interpreted in accordance with federal law, and, to the extent not preempted or inconsistent therewith, by the laws of the State of Florida. In the event of a conflict between the provisions of this Agreement and any applicable law or regulation, this Agreement shall be deemed modified to the extent necessary to comply with such law or regulation.

13. **Notices.** All notices required or permitted by this Agreement (including all documents incorporated herein by reference) to be given shall be sent by first class mail, postage prepaid, and addressed to Bank at the address provided to Customer in writing for that purpose or to Customer at the address associated with Customer's Account. All such notices shall be effective upon receipt.

14. **Beneficiaries.** This Agreement is for the benefit only of the undersigned parties hereto and is not intended to and shall not be construed as granting any rights to or otherwise benefiting any other person.

15. **Documentation.** The parties acknowledge and agree that all documents evidencing, relating to or arising from the parties' relationship may be scanned or otherwise imaged and electronically stored and the originals

(including manually signed originals) destroyed. The parties agree to treat such imaged documents as original documents and further agree that such reproductions and copies may be used and introduced as evidence at any legal proceedings including, without limitation, trials and arbitrations, relating to or arising under this Agreement.

16. **Recording of Communications.** Customer and Bank agree that all telephone conversations between them

or their agents made in connection with this Agreement may be recorded and retained by either party by use of any reasonable means.

17. **Facsimile Signature.** The parties acknowledge and agree that this Agreement and any Amended Agreement may be executed and delivered by facsimile, and that a facsimile signature shall be treated as and have the same force and effect as an original signature.

IN WITNESS WHEREOF, Customer and Bank have duly caused this Agreement to be executed by an Authorized Representative.

(Customer)

City of Sunny Isles Beach

(Address)

By: *Christopher J. Russo*
(Signature of Authorized Representative)

Print Name: CHRISTOPHER J. RUSSO

Title: CITY MANAGER

Date of Agreement: 7/14, 2014

TD BANK, N.A.

By: *Pamela Ramkalan*
(Signature)

Print Name: Vice Pamela Ramkalan

Title: Vice President

Business Deposit Account Agreement

General Information

1-888-751-9000

tdbank.com



America's Most Convenient Bank®



America's Most Convenient Bank®

Definitions:

Throughout this Agreement, unless otherwise indicated, the following words have the meanings given to them below:

- a) "**Account**" means your Business Checking Account, Savings Account, Money Market Account and/or CD Account with us, as applicable, unless limited by the heading under which it appears.
- b) "**Business Day**" means every day, except Saturdays, Sundays, and federal holidays.
- c) "**Calendar Day**" means every day, including Saturdays, Sundays, and federal holidays.
- d) "**Bank**," "**we**," "**us**," "**our**" and "**TD Bank**" refer to TD Bank, N.A.
- e) "**You**" and "**your**" mean each sole proprietor, corporation, limited liability company, partnership, business-purpose unincorporated association, estate, trust or other business-purpose entity, governmental or other public entity or not-for-profit organization who opens an Account and in whose name an Account is maintained on our records, and any joint owner of each Account.
- f) "**Store**" means a branch office.

Part I: Business Deposit Account Terms and Conditions

By opening and maintaining an Account with the Bank, you agree to the provisions of this Agreement, so you should read this Agreement thoroughly and keep it with other important records. From time to time, we may offer new types of Accounts and may cease offering some types of Accounts. This Agreement governs all of these new types of Accounts, and continues to govern any Accounts you may have that we no longer offer. If and to the extent the provisions of this Agreement vary from the provisions of the Uniform Commercial Code as adopted in the jurisdiction where your Account was opened, the terms and conditions of this Agreement shall control.

This Agreement includes your promise to pay the charges listed on the Business Fee Schedule and Business Schedule of Charges and your permission for us to deduct these charges, as earned, directly from your Account, except as otherwise agreed in writing by the Bank, in its sole discretion. You also agree to pay any additional reasonable charges we may impose for services you request which are not contemplated by this Agreement but are disclosed in our Business Fee Schedule(s) and Business Schedule of Charges which may be amended from time to time. Each of you agrees to be jointly and severally liable for any Account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from your Account, together with the costs we incur to collect the deficit, including, to the extent

permitted by law, our reasonable attorneys' fees.

You agree to use the Account only for lawful purposes. You agree that you will not use the Account for any unlawful or illegal purposes. This includes transactions on the Internet that involve unlawful gambling of any sort. Such transactions include, but are not limited to, online gambling, and any betting transaction including the unlawful purchase of lottery tickets, casino chips, or off-track betting and wagering. We reserve the right to block all such transactions. However, in the event that a charge or transaction described in this disclosure is approved and processed, you will still be liable for the charge.

Important Information about Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. When you open an Account, we will ask for your name, legal address, date of birth, Social Security or Tax Identification Number, and other information that will allow us to identify you. We may also ask to see your driver's license or any other identifying documents.

Telephone Numbers

If you give a cell phone number directly to us, you consent to and agree to accept calls to your cell phone from us and our agents. For any telephone or cell phone calls placed to you by us or our agents, you consent and agree that those calls may be automatically dialed and/or may consist of pre-recorded messages.

Insurance Coverage For Business Checking Accounts

All of a business's deposit accounts at an insured depository institution, including all noninterest-bearing transaction accounts, will be insured by the Federal Deposit Insurance Corporation (FDIC) up to the standard maximum deposit insurance amount (\$250,000), for each deposit insurance ownership category. For more information visit, www.fdic.gov/deposit/

Authorized Signers

You agree to give us certified copies of resolutions from your board of directors or other governing body, if any, or other certificate or evidence of authority satisfactory to us which specifically authorizes certain persons to take certain actions with respect to any of your Accounts, including, without limitation, signing, accepting, or endorsing checks, notes, bills, drafts, or other instruments drawn or deposited to your Accounts, or otherwise transferring funds to or from your Accounts ("Authorized Signers"). Such resolutions or other certificates of evidence of authority must set forth the name and title of

each Authorized Signer, and must be in a form and substance satisfactory to us. Until properly notified in writing of any change in such authorization and we have had a reasonable period of time to act upon such notice, we may pay, apply, or otherwise honor and charge your Account, without inquiry, without limit as to amount, and without regard to the application of the proceeds thereof (even if drawn or endorsed to the order of any Authorized Signer or other person signing the same, and/or tendered by such person for cashing, in payment of the individual obligation of such person, and/or for deposit to such person's personal account), for all instruments or orders for payment or transfer of money for whatever purpose.

To the fullest extent permitted by applicable law, you hereby waive demand, presentment, protest, notice of protest or dishonor, and all other notices relating to any instrument made, drawn, or endorsed in your name, when such instrument is signed, accepted or endorsed by an Authorized Signer. You must notify us immediately and in writing of any change in the status of any Authorized Signers. We may ask you to give us additional documentation. No action taken by us before we receive proper notification in writing of any such change shall be affected by any such notice. You agree to send any such written notice to the Store where you opened your Account.

No Two-Signer Accounts

We do not offer accounts on which two or more signatures are required for a check or other withdrawal. Notwithstanding any provisions to the contrary on any signature card or other agreement you have with us, you agree that if any Account purports to require two or more signers on items drawn on or withdrawals from the Account, such provision is solely for your internal control purposes and is not binding on us. If more than one person is authorized to write checks or draw items on your Account, you agree that we can honor checks signed by any Authorized Signer, even if there are two or more lines on the items for your signature and two signatures are required.

Joint Accounts

- a) Each of You Can Control the Account. If more than one of you opens an Account and signs a signature card or other documentation as an owner of the Account (other than persons signing as Authorized Signers for the same principal), the Account will be a joint Account. All of you are considered "joint tenants" of your Account. This means that each of you can control your Account as if you were the only Account owner, including the right to withdraw all the funds and close your Account.
- b) Joint and Several Liability. Your liability as an owner of a joint Account is joint and several. This means that we can enforce this Agreement against any one of you, some of you, or all

of you. This also means that we can look for repayment of any amount owed us as a result of any withdrawal, transfer or any other transaction made in connection with your joint Account from any one of you, some of you, or all of you.

- c) Signatures and Endorsements. Each of you, as an owner of a joint Account, guarantees that the signatures of (i) all other Account owners, and/or (ii) the Authorized Signers for the other Account owners are genuine. Each of you agrees to give us any missing endorsement(s) of any other Account owner(s) or the Authorized Signer(s) for the other Account owner(s) when we ask you.
- d) Deposits to Your Account. All deposits to your joint Account will become the property of each of you. Each of you agrees that we may credit to the joint Account any check or other item that is payable to the order of any one or more of you, even if the check or other item is endorsed by less than all or by none of you. When this credit is final, it will be considered by you and by us to be full payment of the check or other item to each Account owner named as payee.
- e) Withdrawals from Your Account. Subject to the terms of this Agreement, we will pay checks and other items drawn, and honor withdrawal requests made, by any of you. We may also follow instructions about your Account from any one of you. We may do any of these things without liability to the other Account owners. We may be required by service of legal process to hold or remit funds held in a joint Account to satisfy an attachment or judgment entered against, or other valid debt incurred by, any owner of the Account.
- f) Right of Survivorship. Except as otherwise provided by applicable law, if an Account owner is a natural person and dies, or is an entity and ceases to exist, (i) the Account will belong to each surviving Account owner, and (ii) we may pay checks and honor withdrawal requests from any surviving Account owner.
- g) You May Ask Us to Restrict Your Account. If any one of you does not want us to pay checks or otherwise release funds from your Account, we may ask that Account owner to give us documentation before we comply with that request. We may ask all joint Account owners to give us a written authorization before we resume paying checks or releasing funds from your Account.

IOLTA, IOTA and IOLA Accounts

Interest earned on IOLTA, IOTA and IOLA Accounts (or similar lawyer trust accounts) is directed to the designated IOLTA, IOTA or IOLA Committee or bar foundation, as applicable. If you establish one of these types of Accounts, you agree to comply with all of the applicable laws for such Accounts.

IOREBTA Accounts

Interest earned on IOREBTA Accounts (or similar realtor trust

accounts) is directed to the Realtors Affordable Housing Fund, as applicable, to support grants to provide housing to under-privileged individuals and families. The interest from this Account will aid housing and shelter programs within a particular jurisdiction. If you establish these types of Accounts, you agree to comply with all of the applicable laws for such Accounts.

Deposit Policy

We will usually give you provisional credit for items deposited into your Account. However, we may delay or refuse to give you provisional credit if we believe in our discretion that your item will not be paid. We will reverse any provisional credit we have given for an item deposited into your Account if we do not receive final credit for that item and charge you a fee (see Business Fee Schedule). If the reversal of a provisional credit creates an overdraft in your Account, you will owe us the amount of the overdraft, plus any overdraft fees (see Business Fee Schedule). We will determine when final credit is received for any item. Please read the Funds Availability Policy for a detailed discussion of how and when we make funds available to you.

We will accept certain items like foreign checks and bond coupons for collection only. You may also ask us to accept certain other items for collection only. You will not receive credit for (provisional or otherwise), and may not withdraw funds against, any of these items until we receive final credit from the person responsible for paying them. Items sent for collection will be credited to your Account in U.S. dollars, with the amount of U.S. dollars credited calculated using our applicable exchange rate that is in effect on the date when we credit the funds to your Account and not when the deposit is made. The Funds Availability Policy does not apply to items we have accepted for collection only. If and when we receive final credit for an item we have accepted for collection only, you agree that we may subtract our collection fee (see Business Fee Schedule) from the amount finally credited to us, before we credit your Account for the remaining amount.

Returned Checks/Waiver of Rights

If you deposit a check or item in your Account that the drawee bank returns unpaid for any reason (called "dishonor"), we may put the check or item through for collection again. This means that you are waiving your right to receive immediate notice of dishonor. If the check or item is dishonored for any reason, the amount of the dishonored check or item will be deducted from your Account. You agree to pay the Bank a fee for any such check or item that is dishonored (see Business Fee Schedule). The Bank may also collect any amounts due to the Bank because of returned checks, through the right of set-off, from any other of your Accounts at the Bank, or collect the funds directly from you.

Cashing of Checks

Typically, the Bank will cash checks drawn on other banks

for its customers who have adequate available funds in their Account(s). If any such check should be returned by the paying bank for any reason, the Bank will charge you a fee (see Business Fee Schedule). In addition, the Bank will debit the amount of the returned check from your Account(s). If the debit creates an overdraft in your Account, you will owe us the amount of the overdraft plus any overdraft fees (see Business Fee Schedule).

Withdrawal Policy

Business Passbook Account (if available in your jurisdiction) withdrawals can be made by an authorized signer only upon presentation of the passbook either in person or accompanied by a written order of withdrawal. If you lose the passbook, we require that a Lost Passbook Affidavit be signed by ALL persons named on the Account before a notary public.

Statement Savings Account withdrawals can be made per written order of withdrawal in accordance with the information contained on the signature card, corporate resolution or other relevant document accepted by the Bank, and may also be made with an ATM or Visa® Debit Card, as applicable. The Bank may refuse a request if any document or identification required by the Bank or law in connection with the withdrawal has not been presented.

The Bank reserves the right to require seven (7) Calendar Days written notice prior to withdrawal or transfer of funds from all Savings Accounts and Money Market Accounts offered by the Bank, as well as all Business Checking Accounts that are negotiable order of withdrawal (or "NOW") Accounts. While the Bank is required to reserve this right, the Bank does not presently exercise this right.

For any Statement Savings Account(s) (including Money Market Accounts), you may make as many in-person withdrawals at a teller window or any ATM as you wish. However, federal regulations permit the depositor to make no more than a combined total of six (6) pre-authorized, automatic, electronic (including computer initiated), telephone withdrawals or transfers, or payments by check, draft, debit card, or similar order payable to third parties in monthly period. We may impose a fee, as disclosed on the Business Fee Schedule, for each such withdrawal in excess of six (6) that you make in any monthly period. These fees will be reflected in your monthly statement. In addition, repeated violations will result in the Account being closed or changed from a savings type Account to a transaction Account.

Business Checking Accounts and Sub-Accounts

All Business Checking Accounts consist of two separate sub-accounts: a transaction sub-account, and a non-transaction sub-account. Whenever your transaction sub-account balance exceeds a certain level (which we may set and change at our discretion without notice to you), funds above that level may be transferred

from the transaction sub-account to the non-transaction sub-account at the Bank's discretion, as often as once each day. All of your Business Checking Account transactions are posted to the transaction sub-account. Balances transferred to the non-transaction sub-account are transferred back to the transaction sub-account to meet these transactional needs, so there is no adverse impact on the availability of the balances held in your Business Checking Account. In accordance with federal limitations, no more than six (6) transfers from the non-transaction sub-account can occur during any monthly period. Therefore, if a sixth transfer is needed, we will return all balances to the transaction sub-account for the remainder of the statement cycle.

These sub-accounts are treated as a single Account for purposes of deposits and withdrawals, access and information, statement reporting, and any fees or charges. There are no separate or additional balance requirements, fees, or charges associated with the creation of these sub-accounts. If your Business Checking Account is a non-interest bearing Account, neither the transaction sub-account nor the non-transaction sub-account receives any interest. If your Business Checking Account is an interest-bearing Account, both the transaction sub-account and the non-transaction sub-account receive the same interest rate at all times. In accordance with federal regulations, we reserve the right to require seven (7) Calendar Days advance notice of withdrawals from interest-bearing sub-accounts for Business Checking Accounts that are negotiable order of withdrawal (or "NOW") Accounts and for all non-transaction sub-accounts. While the Bank is required to reserve this right, the Bank does not presently exercise this right.

Stop Payments

At your request and risk, the Bank will accept a stop payment request for a check drawn on your Account for a fee (see Business Fee Schedule). To be effective, a stop payment request must be received in such timely manner so as to give the Bank a reasonable opportunity to act on it, and must precisely identify the Account number, check number, date and amount of the item, and the payee.

Your stop payment request will be effective after the request has been received by the Bank and the Bank has had a reasonable opportunity to act on it. Regardless of whether your stop payment request has been made orally or in writing, it will remain in effect for one (1) year from the date it was given. If your stop payment request has been made orally or in writing, the Bank will send you a written confirmation; this form will constitute written confirmation of your request. It is your responsibility to ensure that all of the information supplied on your written confirmation is correct and to promptly inform the Bank of any inaccuracies.

To maintain the validity of the stop payment request for more than one (1) year, you must furnish a new stop payment request that is confirmed in writing as described in the preceding paragraph before the expiration of the one (1) year period. If a new stop payment request is not received, the check may be paid.

We are not liable for failing to stop payment if you have not given us sufficient information or if your stop payment request comes too late for us to act on it. We are entitled to a reasonable period of time after we receive your stop payment request to notify our employees and take other action needed to stop payment.

You agree that "reasonable time" depends on the circumstances, but that we will have acted within a reasonable amount of time if we make your stop payment request effective by the end of the next Business Day following the Business Day on which we receive your stop payment request. If we stop payment, you agree to defend and pay any claims raised against us as a result of our refusal to pay the check or other item on which you stopped payment. The foregoing indemnity will not apply if and to the extent expressly prohibited or restricted by the laws governing you or your Account.

If we recredit your Account after we have paid a check or other item over a valid and timely stop order, you agree to sign a statement describing the dispute you have with the person to whom the check or item was made payable. You also agree to transfer to us all of your rights against the payee and any other holder, endorser or prior transferee of the check or item and, upon our reasonable request, to cooperate with us in any legal action taken to collect against the other person(s).

If we are liable for inadvertently paying your check over a stop payment order, you must establish the amount of your loss caused by our payment of the check. We will pay you only the amount of the loss, up to the face amount of the check. You agree that we shall not be liable for any punitive, exemplary or consequential damages.

The Bank has no duty to stop payment on a cashier's check, teller's check or other similar item because items of this type are not drawn on your Account. The Bank may, in its sole discretion, attempt to stop payment on a cashier's check, teller's check or other similar item if you certify to our satisfaction that the item has been lost, stolen or destroyed. You must also furnish any other documents or information we may require, which may include your affidavit attesting to the facts and your indemnification of the Bank. Even if the Bank agrees to attempt to stop payment on a cashier's check, teller's check or other similar item, if the item is presented for payment, the Bank may pay it and you will be liable to us for that item, unless otherwise required by applicable law. The foregoing indemnity will not apply if and to the extent expressly prohibited or restricted by the laws governing you or your Account.

International ACH and Wire Transactions

If your Account receives incoming ACH transactions (either credits or debits) or wire transfers initiated from outside of the United States, both you and we are subject to the Operating Rules and Guidelines of the National Automated Clearing House Association ("NACHA") or the rules of any wire transfer system involved, and the laws enforced by the Office of Foreign Assets Control ("OFAC"). Under such rules and laws, we may temporarily suspend processing of a transaction for greater scrutiny or verification against the OFAC list of blocked parties, which may result in delayed settlement, posting and/or availability of funds. If we determine there is a violation, or if we cannot satisfactorily resolve a suspected or potential violation, the subject funds will be blocked as required by law. If you believe you have adequate grounds to seek the return of any blocked funds, it is your sole responsibility to pursue the matter with the appropriate governmental authorities. Please see the OFAC website for procedures and form required to seek a release of blocked funds.

Incoming Wire Payment Instructions

We may impose a fee, as disclosed on the Business Fee Schedule, for any domestic or international incoming wire transactions.

Please provide the sender of a wire the following information in order for you to receive the funds in a timely manner:

1. For Incoming USD International wires from foreign countries, the wiring instructions are as follows:

Wire to: TD Bank N.A.
Wilmington, Delaware
FED ABA#: 0311-0126-6
Credit to: TD Bank Customer Name (Full Name)
Customer's full physical address
(street, city, state, country)
Customer's full Account Number

2. For Incoming Foreign Currency international payment, the wiring instructions are as follows:

Wire to: The Toronto-Dominion Bank
Swift code: TDOMCATTOR
The Toronto-Dominion Bank,
Toronto, Ontario,
Canada , MSK 1A2

For Further Credit to Beneficiary Bank, TD Bank N.A.:

Swift code: NRTHUS33XXX
TD BANK, N.A.
TD BANK, N.A. Branch Full Address
(street, city, state, country)

In Favor of:

Beneficiary Full Account Number:
The Customer's full account number

Beneficiary Full Name:
The Customer's full name on the account

Beneficiary Address:
The Customer's full physical address
(street, city, state, country)

Credit Verification and Obtaining Financial Information

You agree that we may verify credit information about you, as well as credit and employment history about any individual who is personally liable for your obligations under this Agreement (such as your principals, owners or guarantors), through third parties, including but not limited to consumer reporting agencies, or verify any of your or their previous banking relationships for any Accounts you have with the Bank now or in the future. By signing the signature card for your Account, or other written authorization, each such individual (i.e., principal, owner or guarantor who is personally liable for your obligations under this Agreement) authorizes the Bank to obtain such credit and employment information about him or her.

If an Account is declined based on adverse information, you may request from the consumer reporting agency a copy of the information supplied to us. Additionally, if your Account is closed for insufficient funds activity or other negative reason, a report may be made by us to one or more consumer reporting agencies or other third parties if permitted by applicable law. Please notify us if you have a dispute or if you have questions regarding the information we provide. Write to us at: TD Bank Collections, ATTN: ME100-36, P.O. Box 9547, Portland, ME 04112. Please provide your name, Account number, and why you believe there is an inaccuracy or describe the item you are not sure about. We will complete any investigation and notify you of our findings and, if necessary, corrections. Please note that calling us will not preserve your rights.

If you are a licensed attorney, you agree that we may report information about overdrafts on and/or returned checks drawn on Accounts which you maintain as trustee for the benefit of another person or in any fiduciary capacity, to the extent and in the manner required by applicable laws, rules, or regulations. You agree that we have no liability to you for reporting any information to applicable authorities regarding any Account which we believe in good faith is subject to such laws, rules, or regulations.

Certified Taxpayer Identification Number ("TIN")

Federal law requires you to provide to the Bank a valid and certified Taxpayer Identification Number ("TIN"). We may be required by federal or state law to withhold a portion of the interest credited to your Account in the following circumstances:

- a) you do not give us a correct TIN;
- b) the IRS tells us that you gave us an incorrect TIN;
- c) the IRS tells you that you are subject to backup withholding because you have under-reported your interest or other income;
- d) you fail to certify to us that you are not subject to backup withholding;
- e) you do not certify your TIN to us; or
- f) there may be other reasons why we may be required to do so under applicable law.

If we do this, the amount we withhold will be reported to you and the IRS and applied by the IRS to the payment of any federal income tax you may owe for that year.

Account Statements; Limitation on Time to Report Forgeries and Errors

If your Account is not a Passbook or CD Account, the Bank will provide you with a periodic statement. Unless you tell us of a change of address, we will continue to mail statements or any other notices to your address as it appears on our records, and you will be considered to have received those statements and any other notices sent to you at that address. We do not have to send you a statement or notice if (i) you do not claim your statement, (ii) we cannot deliver your statement or notice because of your instructions or your failure to tell us that you have changed your address, or (iii) we determine that your Account has been inactive for more than one year.

You should review your statements and balance your Account promptly after you receive them or, if we are holding them for you, promptly after we make them available to you. If you don't receive an Account statement by the date when you usually receive it, call us at once. You must review your statements to make sure that there are no errors in the Account information.

On Accounts with check-writing privileges, you must review your statement and imaged copies of paid checks, if any, we send you and report forgeries, alterations, missing signatures, amounts differing from your records, or other information that might lead you to conclude that the check was forged or that, when we paid the check, the proper amount was not paid to the proper person. You have this duty even if we do not return checks to you or we return only an image of the check. You should notify us as soon as possible if you think there is a problem.

Applicable law and this Agreement require you to discover and report any error in payment of a check within specified time periods. You agree that statements and any images of paid checks accompanying the statement shall be deemed to be "available" to you as of the statement mailing date. If we are holding your Account statements for you at your request, the statements become "available" on the day they are available for you to pick up. This means for example, that the period in which you must report any problem with an Account begins on the day we make the statement available, even if you do not pick up the statement until later.

If you assert against us a claim that an item was not properly payable because, for example, the item was forged, you must cooperate with us and assist us in seeking criminal and civil penalties against the person responsible. You must file reports and complaints with the appropriate law enforcement authorities. If we ask, you also must give us a statement, under oath, about the facts and circumstances relating to your claim. If you fail or refuse to do these things, we will consider that you have ratified the defect in the item and agree that we may charge the full amount of the item to your Account.

You must notify us as soon as possible if you believe there is an error, forgery or other problem with the information shown on your Account statement. You agree that fourteen (14) Calendar Days after we mailed a statement (or otherwise made it available to you) is a reasonable amount of time for you to review your Account statement and report any errors, forgeries or other problems. In addition, you agree not to assert a claim against us concerning any error, forgery or other problem relating to a matter shown on an Account statement unless you notified us of the error, forgery or other problem within thirty (30) Calendar Days after we mailed you the statement (or otherwise made it available to you). This means, for example, that you cannot bring a lawsuit against us, even if we are at fault, for paying checks bearing a forgery of your signature unless you reported the forgery within thirty (30) Calendar Days after we mailed you the statement (or otherwise made it available to you) listing the check we paid.

We may destroy original checks not less than thirty (30) Calendar Days after the statement mailing date. We will retain copies of the front and back of the checks on microfilm or other media for a period of seven (7) years. During that period, we will provide you an imaged copy of any paid check on request, but we need not do so thereafter. You agree not to make any claim against us arising out of the authorized destruction of your original checks or the clarity or legibility of any copy we provide.

Combined Statement With Checking

If more than one checking type Account is combined together on a monthly statement, then only one Checking Account can be designated as the primary Account. This primary Account

may receive imaged copies of the paid checks back with the statement, and we may impose a fee, as disclosed on the Business Fee Schedule, for providing these imaged copies. Checks for all other Accounts will be retained by the Bank. To request a copy of a paid check, please call **1-888-751-9000**.

Checks

All negotiable paper (called "checks") presented for payment must be in a form supplied by or previously approved by the Bank. The Bank may refuse to accept any check that does not meet this requirement or which is incompletely or defectively drawn. Once an outstanding check is six (6) months old, we may elect not to pay it. But if there is no stop payment order on file when we receive the check for payment, we may elect to pay it in good faith without consulting you.

You agree that you will use care in safeguarding your unsigned checks against loss or theft. You will tell us immediately if any checks are missing. You agree to assume all losses that could have been prevented if you had safeguarded unsigned checks, or had told us they were missing.

Processing Order For Payment of Checks and Other Items

The following describes how we pay or charge to your Account checks and other items presented for payment. An "item" includes a check, substitute check, purported substitute check, remotely created check or draft, electronic transaction, draft, demand draft, image replacement document, indemnified copy, ATM withdrawal or transfer, debit card point-of-sale transaction, pre-authorized debit card payment, automatic transfer, telephone-initiated transfer, ACH transaction, online banking transfer or bill payment instruction, withdrawal slip, in-person transfer or withdrawal, cash ticket, deposit adjustment, wire transfer, and any other instruction or order for the payment, transfer or withdrawal of funds.

For purposes of determining your Account balance and processing items to your Account, including returning items due to insufficient funds or paying items that overdraw your Account, all items are processed overnight at the end of each Business Day (which excludes Saturday, Sunday and federal holidays), as follows:

- a) First, deposits that have become available to you that Business Day are added to your available Account balance. Please read the Funds Availability Policy for a detailed discussion of how and when we make funds available to you.
- b) Next, the total amount of any "pending" debit card, ATM and electronic transactions that have been authorized but not yet paid is deducted from your available Account balance. When you use a debit card, ATM card, or other electronic

means to make withdrawals, we may receive notice of the transaction before it is actually presented to us for payment. That notice may be in the form of a merchant authorization request or other electronic inquiry. Upon receipt of such notice, we treat the transaction as "pending" at the time we receive notice, and subject to certain exceptions, we deduct the amount of the pending transactions from your available Account balance to determine the amount available to pay other items presented against your Account. The amount of a pending authorization may not be equal to the amount of the actual transaction that is presented for payment and posted to your Account. If a pending transaction is not presented for payment within three (3) Business Days after we receive notice of the transaction, we will release the amount of the pending transaction. We do not deduct the amount of pending debit card authorizations from your available Account balance for certain merchants that frequently request authorization for amounts in excess of the likely transaction amount, including hotels and resorts, airlines and cruise lines, car rental companies, and automated gas pumps (pay at the pump).

- c) We then post items to your Account by category, in the following order:
 - i) Outgoing wire transfers, deposit return chargebacks, and debit adjustments to your Account balance;
 - ii) Overdraft fees, other returned item fees, and deposit return fees;
 - iii) All other Account fees (except as described in (iv) below), and all other items including checks, ATM transactions, and debit card transactions; and
 - iv) Fees assessed at the end of the statement cycle including, for example but not limited to monthly maintenance fees.

Within categories i, ii, and iii, we post items in order from largest to smallest.

We do not process transactions in the order in which they occur. The order in which items are processed may affect the total amount of overdraft fees incurred. Overdraft fees may be assessed on items presented for payment that bring your Account into a negative balance, as well as any subsequent transactions presented for payment while the Account has a negative balance. See "Overdrafts" and "Sustained Fee for Overdrawn Accounts" below, as well as the Business Fee Schedule for more information. Overdraft fees are not charged on "pending" authorizations, although they reduce your available balance.

We may from time to time change the order in which we accept, pay or charge items to your Account even if (a) paying a particular item results in an insufficient balance in your Account to pay one or more other items that otherwise could have been paid out of your Account; or (b) using a particular order results

in the payment of fewer items or the imposition of additional fees. If we do change our processing order for checks and other items presented for payment from your Account, we will provide advance notice of the change.

Overdrafts

An overdraft is an advance of funds greater than the amount that has become available in accordance with the Bank's Funds Availability Policy, made by us to you, at our sole discretion. Overdrafts may include advances to cover a check, in-person withdrawal, ATM withdrawal, or a withdrawal by other electronic means from your Account. We may demand immediate repayment of any overdraft and charge you an overdraft fee (see Business Fee Schedule).

You may overdraw your account by up to \$5 per day without being charged a fee. If your negative available balance exceeds \$5 at the end of the day, we will charge you for each transaction that overdraws your account.

You agree to pay us, when we ask you, all of our costs of collecting an overdraft, to the fullest extent permitted by law. These costs include, but are not limited to, our expenses and reasonable legal fees. If more than one of you owns an Account, each of you will be responsible for paying us the entire amount of all overdrafts and obligations resulting from the overdrafts.

We do not have to allow you to make an overdraft. Intentionally withdrawing funds from an Account when there are not enough funds in the Account to cover the withdrawal or when the funds are not yet available for withdrawal may be a crime.

Sustained Fee for Overdrawn Accounts

We may charge you a fee, as disclosed in the Business Fee Schedule, for any Checking or Money Market Account that remains in overdrawn status for ten (10) consecutive Business Days. We will notify you if your Checking or Money Market Account is in overdrawn status. If your Checking or Money Market Account is in overdrawn status because of an overdraft, check returned for insufficient funds or for any other reason and the Account remains in overdrawn status for ten (10) consecutive Business Days, we may charge the fee. If you have overdraft protection and you have exceeded your limit and the Checking or Money Market Account remains in overdrawn status for ten (10) consecutive Business Days, we may charge the fee.

If the Checking or Money Market Account remains in overdrawn status for sixty (60) Calendar Days, or such earlier time that we determine that the overdraft balance is uncollectible, the Bank will close and place the Checking or Money Market Account in collection status.

We May Refuse to Pay a Check or Other Item Which:

- a) is illegible;
- b) is drawn in an amount greater than the amount of funds then available for withdrawal in your Account (see the Funds Availability Policy) or which would, if paid, create an overdraft;
- c) bears a duplicate check number;
- d) we believe has been altered;
- e) we believe is otherwise not properly payable; or
- f) we believe does not bear an authorized signature.

We are not required to honor any restrictive legend on checks you write unless we have agreed in writing to the restriction. Examples of restrictive legends are "Not Valid For More Than \$1000," "Void If Not Negotiated Within 30 Days of Issuance," and the like.

Postdated Items

You agree that when you write a check you will not date the check in the future. If you do and the check is presented for payment before the date of the check, we may either pay it or return it unpaid. You agree that if we pay the check, the check will be posted to your Account on the day we pay the check. You further agree that we are not responsible for any loss to you in doing so.

Pre-authorized Drafts

If you voluntarily give information about your Account (such as our routing number and your Account number) to a party who is seeking to sell you goods or services, and you do not physically deliver a check to the party, any debit to your Account initiated by the party to whom you gave the information is deemed authorized by you.

Power of Attorney

We may, in our sole discretion (unless we are required by law to recognize a statutory form of power of attorney), recognize the authority of a person to whom you have given a power of attorney to enter into transactions relating to your Account, until and unless we receive written notice or we have actual notice of the revocation of such power of attorney. However, you must show us an original copy or certified copy of the power of attorney, properly notarized, and any other documentation we may ask for from time to time. The power of attorney and all other documents must be in a form satisfactory to the Bank. We will not be liable for damages or penalty by reason of any payment made to or at the direction of a person holding a power of attorney.

Adverse Claims; Interpleader; Legal Process

We need not honor any claim against or involving an Account unless we are required to do so by order of a court or government agency that has jurisdiction over us, or pursuant to applicable law. This rule applies to any person asserting any rights or interest

regarding an Account, including you and other persons who are authorized to make withdrawals or write checks or who present a power of attorney signed by you.

If we receive notice of any claim or dispute or of any legal proceeding we reasonably believe involves you or any of your Accounts, in our discretion we may suspend transactions on any Account which we believe to be affected until final determination of the claim or proceeding. We may place a hold on any funds in the Account and suspend transactions whether the affected Account is in the name of a single depositor only, or is a joint Account.

You agree that we may comply with any state or federal legal process, including, without limitation, any writ of attachment, adverse claim, execution, garnishment, tax levy, restraining order, subpoena or warrant relating to you or your Account which we believe to be valid, without any liability from us to you. You agree that if we are served with legal process at any of our Stores or offices, we may comply with it, even if it is served at a location other than where your Account was opened. Further, you agree that we may comply with such process as we deem appropriate under the circumstances even if the legal process or document appears to affect the interest of only one owner of a joint Account. In such case, we may refuse to permit withdrawals or transfers from your Account until such legal process is satisfied or dismissed even if such action results in insufficient funds to pay a check you have written or otherwise satisfy an obligation you may have incurred.

You agree that we are entitled to a processing fee, for which you are liable to us, upon receipt of any legal process. We may deduct such fee, as well as any expenses, including without limitation our reasonable attorneys' fees, in connection with any such document or legal process, from your Account or any other Account you may have with us without prior notice to you, or we may bill you directly for such expenses and fees. Any garnishment, attachment or other levy against your Account shall be subject to our right of set-off and security interest.

You agree that we will not pay and you shall not be entitled to receive interest on any funds we hold or set aside in connection with or in response to legal process. Finally, you agree that we may accept and comply with legal process, irrespective of how and/or where it was received even if the law requires any particular method of service.

You agree to indemnify us against all losses, costs, reasonable attorneys' fees, and any other liabilities that we incur by reason of responding to or initiating any legal action, including any interpleader action we commence involving you or your Account. As part of that indemnity, in the event we incur liability to a creditor of yours as a result of our response or failure to respond to a legal action, you agree to pay us on demand the amount of our liability to your creditor and to reimburse us for any

expense, reasonable attorneys' fees, or other costs we may incur in collecting the amount from you. The foregoing indemnity will not apply if and to the extent expressly prohibited or restricted by the laws governing you or your Account.

We may, in our sole discretion and without any liability to you, initiate an action in interpleader to determine the rights of the persons making adverse claims to your Account. We may exercise this right regardless of whether the persons making the adverse claims have complied with all statutory requirements pertaining to adverse claims, such as posting a bond or giving other surety. Upon initiation of an interpleader action, we will be relieved and discharged of all further duties and obligations.

Limited Liability

UNLESS EXPRESSLY PROHIBITED OR OTHERWISE RESTRICTED BY APPLICABLE LAW, THIS AGREEMENT, OR THE ELECTRONIC FUNDS TRANSFERS DISCLOSURE, THE BANK'S LIABILITY IS LIMITED AS FOLLOWS: THE BANK WILL NOT BE LIABLE TO YOU FOR PERFORMING OR FAILING TO PERFORM OUR SERVICES UNDER OR IN CONNECTION WITH THIS AGREEMENT UNLESS WE HAVE ACTED WITH GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH. WITHOUT LIMITING THE ABOVE, THE BANK WILL NOT BE LIABLE FOR DELAYS OR MISTAKES WHICH HAPPEN BECAUSE OF REASONS BEYOND OUR CONTROL, INCLUDING, BUT NOT LIMITED TO, ACTS OF BANKING AUTHORITIES, NATIONAL EMERGENCIES, ACTS OF GOD, FAILURE OF TRANSPORTATION, COMMUNICATION OR POWER SUPPLY, OR MALFUNCTION OF OR UNAVOIDABLE DIFFICULTIES WITH THE BANK'S EQUIPMENT. SHOULD A COURT ESTABLISH THE BANK'S LIABILITY TO YOU PURSUANT TO WHAT WAS DONE OR NOT DONE UNDER THIS AGREEMENT, YOU MAY RECOVER FROM THE BANK ONLY YOUR ACTUAL DAMAGES, IN AN AMOUNT NOT TO EXCEED THE GREATER OF (I) THE AMOUNT OF THE TRANSACTION(S) TO WHICH THE ERROR, OMISSION OR OTHER DISCREPANCY RELATES, OR (II) THE TOTAL FEES AND CHARGES PAID BY YOU TO THE BANK PURSUANT TO THIS AGREEMENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. IN NO EVENT WILL YOU BE ABLE TO RECOVER FROM THE BANK INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES OR LOST PROFITS WHETHER OR NOT IT HAS NOTICE THEREOF.

This Agreement and the deposit relationship do not create a fiduciary, quasi-fiduciary or special relationship between you and us. Our deposit relationship with you is that of debtor and creditor. The Bank's internal policies and procedures are solely for our own purposes and do not impose on us a higher standard of care than otherwise would apply by law without such policies or procedures.

If you are a licensed attorney or a law firm, you agree that we may report information about overdrafts and/or returned checks

drawn on Accounts which you maintain as trustee for the benefit of another person or in any fiduciary capacity, to the extent and in the manner required by applicable laws, rules, or regulations. You agree that we have no liability to you for reporting any information to applicable authorities regarding any Account which we believe in good faith is subject to such laws, rules, or regulations.

Facsimile Signatures

If we allow you to use a facsimile signature, you understand and acknowledge that we will not be able to determine whether the facsimile signature on any item is authentic or has been authorized by you. If your items are signed using a facsimile signature, you acknowledge that it is solely for your benefit and convenience. You authorize us to accept the facsimile signature of any Authorized Signer which you designate in writing from time to time (by corporate resolution or otherwise) on any check, draft, or other order drawn on us, or any other document and we may debit any of your Accounts in the amount of each payment which we make in reliance upon any such facsimile signature and/or reproduction thereof. We will not be liable, and you will assume all liability, for any losses, liabilities, penalties, claims, damages, costs, expenses, or other harm or injury which you may incur or that may be asserted against you or us in connection with the authorized or unauthorized use or reproduction by any person or entity, including, but not limited to, court costs and reasonable attorneys' fees, relating to or arising out of (i) any use, misuse and/or reproduction, whether or not authorized, by any person of any actual or purported facsimile signature of any Authorized Signer on any check, draft or other such order drawn on us or any other document, and (ii) any payment which we make in reliance upon any such facsimile signature and/or reproduction thereof. You will indemnify us and hold us harmless from and against any and all losses, liabilities, penalties, claims, damages, costs, expenses or other harm or injury which we may incur or suffer or which may be asserted by any person with respect to any use or misuse of an actual or purported facsimile signature of any Authorized Signer on any check, draft or other order drawn on us or on any other document, or any payment which we make in reliance upon any such facsimile signature and/or reproduction thereof. You shall be solely responsible for maintaining security over any device used to affix or apply facsimile signatures. The foregoing indemnity will not apply if and to the extent expressly prohibited or restricted by the laws governing you or your Account.

Indemnity

a) In General. You agree to indemnify us and hold us harmless from and against any and all losses, liabilities, penalties, claims, damages, costs, expenses or other harm or injury that we may incur or that may be asserted by any person or entity against us, including, but not limited to, court costs and reasonable

attorneys' fees arising out of any action at any time taken or omitted to be taken by (i) you under or in connection with this Agreement, including, but not limited to, your failure to observe and perform properly each and every obligation in accordance with this Agreement and any other commercial or business purpose agreement which you enter into with us; or (ii) us in reliance upon any resolution, certification, evidence of authority, or other document or notice given or purporting to have been given by you to us, or any information or order which you provide to us. For purposes of clarification and the avoidance of doubt, this indemnification (and any other indemnification provision in this Agreement) does not apply to claims that you may assert against us, or to any amounts we are obligated to pay you under the terms of this Agreement or applicable law. The foregoing indemnity will not apply if and to the extent expressly prohibited or restricted by the laws governing you or your Account.

b) Your Instructions to Us. Without limiting the above, if you give us instructions which we believe may expose us to potential liability, we may refuse to follow your instructions. If we decide to follow your instructions, you agree to indemnify us against all losses, costs, reasonable attorneys' fees and any other liabilities we incur. In addition, we may ask you for certain protections, such as a surety bond or your indemnity in a form satisfactory to us.

If You Owe Us Money

If you withdraw funds from your Account which you do not have a right to withdraw, including the amount of a check or other item which we later charge back to your Account or any amounts that may be credited to your Account in error, you will have to pay us back. If you do not, we can bring a lawsuit against you to get the money back. We can also do this if you owe us any fees or charges in connection with your Account and you do not pay us.

Security Interest

You grant to us a security interest in your deposit Accounts to secure any debt you owe to us (either now or in the future). Debts include, but are not limited to, any amount by which any of your Accounts may from time to time be overdrawn, interest accrued thereon, and any collection costs or other costs due in connection therewith. The foregoing grant of a security interest will not apply if and to the extent expressly prohibited or restricted by the laws governing you or your Account.

Right of Set-Off

We reserve the right to withdraw at any time some or all of the funds that may now or later be on deposit in any or all of your Accounts and apply them to the payment of any debts (other

than amounts you may owe us on a personal credit card account with us) you may now or later owe us. We have this right even if the Account(s) we withdraw money from is a joint Account and the debt we apply it to is owed by only one of you. Likewise, we could withdraw money from an Account owned by only one person and apply it to reduce the joint debt of that person and another person. Our rights under this section are in addition to any right of set-off we may have under applicable law.

We also have the right to place a hold on funds in your Account if we have a claim against you or pending exercise of our right of set-off. If we place a hold on your Account, you may not withdraw funds from the Account and we can refuse to pay checks or other items drawn on the Account.

The foregoing right of set-off will not apply if and to the extent expressly prohibited or restricted by the laws governing you or your Account.

Accounts with Zero Balance

We may consider any Account (excluding CDs) having a zero balance for forty-five (45) Calendar Days to be closed by you.

Abandoned Accounts

If your Account is considered to be abandoned under applicable law because you have not used or acknowledged your Account for a time period directed by law, we must turn over the funds in your Account to the appropriate governmental authority. We may give notices as required by law before we do this. You may try to reclaim funds turned over to the governmental authority to the extent permitted by applicable law.

Banking Practices

In the absence of a specific provision in this Agreement to the contrary, your Account will be subject to our usual banking practices and, to the extent not inconsistent therewith, the general commercial banking practices and applicable laws in the area we serve.

Severability

If any provision of this Agreement is invalid, changed by applicable law or declared invalid by order of a court, the remaining terms of this Agreement will not be affected, and the invalid provision shall be reformed in order to preserve the original intent of this Agreement to the fullest extent feasible. However, if such reformation is not feasible, this Agreement will be interpreted as if the invalid provision had not been placed in this Agreement.

Jury Trial Waiver

YOU AND WE EACH AGREE THAT NEITHER YOU NOR WE SHALL (A) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER ACTION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY ACCOUNT OR THE

DEALINGS OF THE RELATIONSHIP BETWEEN YOU OR US, OR (B) SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER YOU NOR WE HAVE AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. YOU AND WE EACH ACKNOWLEDGE THAT THIS WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE.

Fraud Detection/Deterrence

The Bank offers certain products and services such as Positive Pay (with or without payee validation), ACH Positive Pay, and Account blocks and filters that are designed to detect and/or deter check, automated clearing house ("ACH") or other payment system fraud. While no product or service will be completely effective, the Bank believes that the products and services it offers will reduce the likelihood that certain types of fraudulent items or transactions will be paid against your Account. Failure to use such products or services could substantially increase the likelihood of fraud. **You agree that if, after being informed by us or after we otherwise make information about such products or services available to you consistent with this Agreement, you decline or fail to implement and use any of these products or services, or fail to follow these and other precautions reasonable for your particular circumstances, you will be precluded from asserting any claims against the Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service, or precaution was designed to detect or deter, and the Bank will not be required to re-credit your Account or otherwise have any liability for paying such items.**

Preventing Misuse of Your Account

You agree to take reasonable steps to ensure that you have adequate internal procedures to secure your Accounts and items drawn on your Accounts or deposited to them. To help prevent embezzlement and protect your business assets in particular, we recommend that you:

- Assign responsibilities for your Account(s) to multiple individuals – e.g., those who reconcile statements for your Account(s) should be different from those who issue items drawn on your Account(s);
- Reconcile statements for your Account(s) when received and notify us immediately of any problem;
- Contact us immediately if you do not receive the statement for your Account(s) when you would normally expect to;
- Watch for paper checks / items that are cashed out of sequence or made out to cash, as they are classic red flags for embezzlement;

- Secure your supply of paper checks / items at all times, as stolen paper items are a common method of embezzlement;
- Periodically reassign accounting duties such as reconciling your Account(s) or making a deposit;
- Review transaction activity on your Account(s) for unexpected fluctuations – for example, compare the percentage of cash deposits to total deposit size, as most businesses will maintain a constant average, and a large fluctuation may indicate embezzlement;
- Destroy any paper checks / items that you do not intend to use;
- Use tamper-resistant paper checks / items at all times;
- Notify us immediately when an Authorized Signer's authority ends so that his/her name can be removed from all signature cards and any online access, and any cards that we have issued to him/her can be cancelled;
- Do not sign blank paper checks / items; and
- Obtain business insurance for these risks.

Miscellaneous

- a) Our Right to Refuse/Close Accounts:** The Bank reserves the right to refuse to open any Account and, except as otherwise agreed in writing by the Bank in its sole discretion, to terminate any Account at any time, and for any reason or no reason, including without limitation any breach by you of this Agreement, without notice to you (unless notice is required under applicable law). This Agreement survives the closing of your Account.
- b) Our Right to Delay Enforcement:** We can choose to not enforce or delay in enforcing any provisions of this Agreement without losing the right to enforce them in the future.
- c) Items in the Mail:** We are not responsible for any items you mail to us that are lost in transit. Therefore, you may not wish to place currency or coupons in the mail.
- d) Direct Deposit:** If you have direct deposit, you agree that if a direct deposit must be returned for any reason, you authorize us to deduct the amount from this Account or any other Account you may have with us, without prior notice and at any time.
- e) Notice of Address Changes:** You must notify us in writing, by phone or at any of our banking offices, of any change of address. Any communication we send to you at the last address as shown on our records will be binding on you for all purposes. You agree we may change your address on our records based on information provided by the United States Postal Service without notice to you.
- f) Assignment:** You will not transfer, assign or pledge your Account(s) to any third party, and we will not recognize any such attempted assignment or pledge, without our prior written consent to be given or refused at our sole discretion.

g) Account Mailings: From time to time, the Bank may enclose advertising or promotional materials with any periodic statement that is mailed or otherwise made available to you with respect to your Account(s). These materials may include, without limitation, information regarding new, modified or discontinued products or services, as well as sweepstakes or other contests sponsored by the Bank. By opening and maintaining an Account with the Bank, you consent to the mailing and receipt of these advertising or promotional materials with your periodic statement.

h) Representations and Warranties: By establishing and maintaining an Account with us, you represent and warrant to us as follows for the duration of your Account relationship: This Agreement represents your valid and binding obligation and is enforceable in accordance with its terms. This Agreement represents the entire Agreement between you and us regarding your Account(s) and supersedes any and all prior discussions or agreements between you and us regarding your Account(s). Your performance of this Agreement does not violate your corporate or other governing documents, or any agreement or instrument to which you are a party, or any law or regulation applicable to you.

i) Amendments: We may change the terms of this Agreement or change the terms of your Account at any time, except as otherwise agreed in writing by the Bank in its sole discretion. We will ordinarily send you advance notice of an adverse change to this Agreement. However, we may make changes without prior notice unless otherwise required by law. We may, but do not have to, notify you of changes that we make for security reasons or that we believe are either beneficial or not adverse to you. When we do provide you with notice of changes, we may do so by any means we consider appropriate, unless applicable law requires notice by a specific means. In some cases, we will mail the notice to you at the address we currently show for your statement or we may provide it to you electronically. Otherwise, we may post a notice of a change in our Stores or banking offices or on our website, or as a message on your statement, or as an insert with your statement. Your continued use of the Account following the effective date of any such change indicates your consent to be bound by this Agreement, as amended. If you would like a copy of a current Agreement or have questions, please ask any Bank representative or call us a **1-888-751-9000**.

j) Governing Law: Any claim, controversy or dispute arising under or related to this Agreement shall be governed by and interpreted in accordance with federal law and, to the extent not preempted or inconsistent therewith, by the laws of the jurisdiction in which the Store (or branch) where you opened your Account is located, or if you are a government

or other public entity, by the laws of the jurisdiction pursuant to which you were incorporated or otherwise organized.

Funds Transfers

- a) Scope of Terms and Conditions:** The terms and conditions of this section apply to funds transfers, as defined in Article 4A of the Uniform Commercial Code ("Article 4A") as adopted by the state whose law applies to you or your Accounts and Subpart (B) of Regulation J of the Board of Governors of the Federal Reserve System, and which may include automated clearing house ("ACH") and wire transfers (hereinafter "Funds Transfer(s)"), that are made from business or non-consumer accounts. These terms and conditions do not apply to any funds transfers covered by the federal Electronic Fund Transfer Act and implementing regulation issued by the Consumer Financial Protection Bureau. Terms defined by Article 4A are used in this Agreement as so defined in Article 4A. If you have a separate agreement with us for Funds Transfer services involving, by way of example only, the Bank's cash management services, the provisions of this section supplement that agreement to the extent these provisions are not inconsistent with the specific agreement. Nothing in this Agreement shall be considered to require us to make any Funds Transfers requested by you.
- b) Execution of Transfer:** We may execute the Funds Transfer by any means we deem suitable for the transmission of funds. Regardless of the method of transfer we choose, we will be acting only as your agent and, in executing the Funds Transfer, may make use of any correspondents, agents or sub-agents and any routes for the forwarding of funds to the beneficiary at the address you provide. We may, in our sole discretion, decline to process any Funds Transfer without cause and without prior notice. If we decline to process a Funds Transfer, we may notify you by any means, including orally, by email or in writing. We will not process Funds Transfers with incomplete required information fields.
- c) Describing the Beneficiary's Bank and the Intermediary Bank:** You agree that your Funds Transfer may be executed in accordance with Article 4A. If you ask us to make a Funds Transfer from your Account to the beneficiary's account, you must identify the beneficiary, the beneficiary's bank, and the intermediary bank, if any, to which you want the Funds Transfer to be sent, by name and by an identification number. If you fail to provide us with an intermediary bank, you hereby direct us on your behalf, to select an intermediary bank. You acknowledge that under Article 4A, we are entitled to rely upon each identification number which you provide to us, as the proper identification of each person and bank, as applicable, even if it identifies a person or bank different from the named person or bank. We will not be responsible for the

amount of a Funds Transfer paid by means of a designated identification number or account number even if it goes to the wrong beneficiary. In addition, the beneficiary's bank may make payment to the beneficiary based on the identification number, even if it identifies a person different from the named beneficiary. If we are named as a beneficiary's bank, we will pay a Funds Transfer to the person identified by an identification number, even if it identifies a person different from the named beneficiary.

- d) Authorized Account:** If you make a Funds Transfer, you agree to tell us which of your Accounts will be used to pay the Funds Transfer. If you do not do so, we will not process your Funds Transfer.
- e) No Special Notice of Receipt of Funds:** If you are the beneficiary of a Funds Transfer, you agree that we are not obligated to give you a separate notice that we have received the Funds Transfer. However, if you normally receive or have electronic (e.g., online banking) access to a periodic statement for the Account to which we credited the Funds Transfer, you acknowledge and agree that the Funds Transfer will be reflected on the periodic statement that includes the date on which we credited the Funds Transfer to your Account. While we generally do not provide separate notices, we may do on occasion. If you request us to provide a separate notice and we agree to do so, we reserve the right to impose a fee, as disclosed on the Business Fee Schedule.
- f) Security Procedures:** Funds Transfers will be made according to our approved transmission methods and associated security procedure ("Security Procedure"). The Security Procedure is intended to verify that an order is authorized, but it is not intended to detect errors. The Security Procedure we will use may include but is not limited to: 1) your completion of a form(s) or other documentation of the request; 2) positive ID and verification of account information and signature with Bank records if the request is made in person; and 3) verification of account information and callback to a secure telephone number you have previously provided to us if the request is made by phone and we agree, in our sole discretion, to process that request. The Security Procedure will also apply to any amendment or cancellation of a Funds Transfer. You agree that the Security Procedure is commercially reasonable and that a Funds Transfer or payment order, verified by the Security Procedure, is effective as your order, whether or not the order is in fact authorized by you.
- g) Funds Transfers Made Without a Security Procedure:** If we agree to make a Funds Transfer for you without a security procedure, you will be bound by such Funds Transfer to the fullest extent allowed by applicable law.

- h) Cut-Off Time(s):** All Funds Transfer requests are subject to cut-off time(s) for processing such requests that we establish from time to time. Cut-off times may vary depending on the particular TD Bank Store or office and the type of Funds Transfer involved. We may treat Funds Transfer requests received after a cut-off time as if received the next Business Day based on our operational hours. We will tell you our cut-off times upon request.
- i) No Warranty:** We do not warrant that the funds will reach the beneficiary, or that the funds will reach the beneficiary at or by any particular time. We cannot warrant or guarantee in any way, nor do we assume any liability as to the length of time necessary to complete, your Funds Transfers to locations outside the U.S., and you assume all risks associated with such a Funds Transfer. We are excused from delays or failure to exercise the Funds Transfer to the extent that the delay or failure results from a cause beyond our reasonable control.
- j) Foreign Transfer Payment:** If a Funds Transfer is made to a beneficiary in a foreign country, you acknowledge that the beneficiary's bank may elect to pay the beneficiary in currency other than what was sent at any exchange rate determined by the beneficiary's bank. You agree to bear all risk of loss due to fluctuation in exchange rates. You are advised that our prevailing exchange rates may be less favorable to you than market exchange rates. A Funds Transfer-beneficiary who arranges with our paying correspondent, agent or sub-agent to obtain payment in some other currency shall pay the charges. We are not responsible for any handling fees that foreign and/or domestic banks may charge. If your Funds Transfer is returned for any reason, you agree to accept the return in U.S. dollars in the amount of foreign money credit, based on the then-current buying rate of the bank converting the currency to U.S. dollars on the date of the refund, less any charges or expenses we incur and any fees charged by any intermediary institutions handling the Funds Transfer.
- k) Refund:** If the beneficiary's bank does not pay the beneficiary specified in the Funds Transfer order, a refund will be made only after we have received confirmation of the effective cancellation of the Funds Transfer order and we are in free possession of the funds debited or earmarked in connection with the Funds Transfer order. Any refund will be made for either (i) the face amount of the Funds Transfer (less our fees and expenses, and expenses of our correspondents, agents or sub-agents) or (ii) the amount actually received by us in settlement of the liability to us of our correspondent, agents or sub-agents, or foreign postal services, whichever is lower. As a condition of making refund, however, we shall have the option, for a Funds Transfer composed or partially composed of foreign currency, to make refund (i) in that foreign currency,

or (ii) in U.S. Dollars at our buying rate on the date of refund to you. When the funds for payment of the Funds Transfer have been remitted abroad and have not been returned or otherwise made available to us, we shall not be obligated to make any refund on account of the Funds Transfer. We shall not be liable for a sum greater than the amount paid for the Funds Transfer, exclusive of commission, cable-charges, and other expenses.

- l) Foreign Government Regulations:** The Funds Transfer is subject to any and all applicable regulations and restrictions of foreign governments relating to foreign exchange transactions. We have no obligation to accept any Funds Transfer directed to or through persons, entities or countries restricted by government regulation or prior Bank experience with particular countries.
- m) You Must Tell Us About Errors:** You must use ordinary care to determine whether each Funds Transfer has been authorized properly by you, and to discover any errors relating to Funds Transfers executed by us. You must tell us about an unauthorized Funds Transfer or any errors relating to a Funds Transfer no later than ten (10) Business Days after the earlier of the date we tell you that your Funds Transfer has been executed or the date we tell you that your Account has been debited to pay for such Funds Transfer.
- You can do this by visiting one of our TD Bank Stores or contacting your relationship manager.
- If you fail to notify us within such time period, and we are required by law to refund to you all or part of the payment which you made, we will not pay interest to you on the amount refunded unless we are required to do so by applicable law.
- n) Limited Liability:** Any liability we may have under this Funds Transfers section for damages or losses you incur in connection with the Funds Transfer shall be limited to a refund to you of (i) the funds transferred (less any portion of the funds transferred which are received by you or applied for your benefit) and (ii) our charges relating to the Funds Transfer. Any rate of interest which we may be obligated to pay as a penalty under Regulation J or Article 4A shall be equal to the rate paid on the account from which the Funds Transfer should have occurred or to which the proceeds of the Funds Transfer were or should have been deposited, whichever is lower. Our liability is limited to the payment of this interest. Provided the Bank has complied with this Funds Transfers section, including without limitation the Security Procedure, you shall be liable for payment of the transferred amount plus transfer fees, even if the transfer request was not actually transmitted or authorized by you, and you agree to indemnify and hold the Bank harmless against any and all claims, causes of action, damages, expenses (including reasonable attorney's fees and other legal expenses), liabilities

and other losses arising from or in connection with the funds transfer services provided by Bank under this Funds Transfers section. You agree that under no circumstances will the Bank be liable for any indirect, incidental, consequential, remote or special losses or damages, including attorney's fees and costs. The foregoing limited liability and indemnity will not apply if and to the extent expressly prohibited or restricted by the laws governing you or your Account.

o) ACH Transactions: From time to time, originators that you authorize may send ACH credits or debits to your Account. For each ACH transaction, you agree it is subject to the NACHA Rules or other funds transfer system rules as applicable, and that the following additional terms shall apply:

- Our payment of a Funds Transfer to your Account will be provisional until we receive final settlement or payment, and you agree that we may reverse our provisional credit and/or obtain reimbursement from you if we do not receive final settlement or payment.
- A payment by the beneficiary's bank of a Funds Transfer from your Account to the beneficiary will be provisional until final settlement has been made or until payment is considered received under applicable law, and you agree that the beneficiary's bank may reverse its provisional credit and obtain a refund from the beneficiary and you, as the originator of the payment, will not be considered to have paid the beneficiary.
- You hereby authorize any Originating Depository Financial Institution (ODFI) to initiate, pursuant to ACH operating rules, ACH debit entries to your Account for electronic presentment or re-presentment of items written or authorized by you.
- You may place a stop payment order on a preauthorized ACH debit in accordance with the terms of Part IV of this Agreement.

Part II: Account Maintenance Information

This Part provides information about some but not all of the business deposit account products the Bank offers. Not all deposit account products described in this Part are available to all customers, and therefore the information below may not apply to you. If you would like specific and/or additional information about the types of deposit account products we make available to you, including information about the fees and charges associated with those deposit account products, or would like to learn more about our business deposit account products and services generally, please contact any of our Stores or call us at **1-888-751-9000**.

Certificates of Deposit

Maturity: Our Standard Business CDs and our Business

"No Catch" CDs will automatically renew to the same term at maturity.

At maturity, you will have ten (10) Calendar Days from the maturity date to withdraw the funds without being charged a penalty. After the Account is opened, you may not deposit into or withdraw from this Account before the maturity date except during promotional periods of which you will be notified. Deposits may only be withdrawn without penalty prior to maturity when the depositor has died or been judicially declared mentally incompetent. If you withdraw funds before maturity, a penalty, as shown below, will be imposed.

| CD Term | Penalty |
|-----------------------------|---|
| Less than 90 days | All interest with a minimum of 7 days' interest |
| 90 days to less than 1 year | 3 months' interest |
| 1 year to less than 2 years | 6 months' interest |
| 2 years or more | 9 months' interest |

TD Business No Catch CD: The minimum balance required to open a No Catch CD is \$25,000. The Customer has the option of making one withdrawal during the term without penalty. Additional withdrawals will be subject to an early withdrawal penalty as described above.

Interest Computation: The interest rate will be effective until the maturity date. The daily balance method is used to calculate the interest on your Account. This method applies a daily periodic rate to the principal in the Account each day. Interest is credited and compounded monthly for all CDs.

Jumbo and Trust CDs: The minimum balance required to open a Jumbo CD is \$50,000; there is no minimum requirement for a Trust CD. Interest rates are available in the Stores upon request. Rates are determined daily by our Investment Department. Interest is accrued using the simple interest method and does not compound. Depending on the term, interest is either paid at maturity or paid monthly to a TD Bank account with the same legal title. Jumbo and Trust CDs do not automatically renew at maturity. After the maturity date, the deposited funds will no longer earn interest. The Bank will not pay interest for Jumbo and Trust CDs once the CD has reached its maturity date, regardless of the circumstances.

TD Small Business Money Market Plus

The interest rate and Annual Percentage Yield (APY) applied to your Account will also be determined by whether or not you have an eligible Checking Account at TD Bank. An eligible Checking Account is a Small Business checking account that is in good

standing and has at least ten (10) combined deposit and debit transactions by the last Business Day of the month.

On the last Business Day of a calendar month, if you no longer maintain an eligible Checking Account, the interest rate and APY applied to your account from the first Business Day of the next calendar month will be adjusted to reflect this change. If you open your first eligible Checking Account subsequent to opening a TD Small Business Money Market Plus Account, the interest rate and APY applied to your TD Small Business Money Market Plus Account will be adjusted to reflect this change. This adjustment in interest rate and APY applied to your TD Small Business Money Market Plus Account will be effective on the first Business Day of the next calendar month.

TD Enterprise Money Market

The interest rate and Annual Percentage Yield (APY) applied to your Account will be determined by whether or not you have an eligible Checking Account at TD Bank. An eligible Checking Account is a Commercial checking account that is active and in good standing and has at least ten (10) combined deposit and debit transactions by the last Business Day of the month.

On the last Business Day of a calendar month, if you no longer maintain an eligible Checking Account, the interest rate and APY applied to your account from the first Business Day of the next calendar month will be adjusted to reflect this change. If you open your first eligible Checking Account subsequent to opening a TD Enterprise Money Market Account, the interest rate and APY applied to your TD Enterprise Money Market Account will be adjusted to reflect this change. This adjustment in interest rate and APY applied to your TD Enterprise Money Market Account will be effective on the first Business Day of the next calendar month.

TD Business Premier Checking and TD Business Convenience Checking Plus

The balance from a personal checking Account can be used to meet the minimum daily balance requirement on the following business checking Accounts: TD Business Premier Checking and TD Business Convenience Checking Plus Accounts. One (1) Authorized Signer on a TD Business Premier Checking Account and TD Business Convenience Checking Plus Account is eligible to link one (1) personal checking Account to be used to meet the minimum daily balance requirement on the linked business checking Account. Personal checking Account balances will not be used to fund overdrafts on the linked business checking Account. In order for personal checking Account balances to be used to meet the minimum daily balance requirement for the linked business checking Account, the owner of the linked personal checking Account must be an Authorized Signer on the linked business checking Account. All personal checking Account

products are eligible to be used to meet the minimum daily balance requirement on the linked business checking Account except Health Savings Accounts and TD Simply Free Checking.

TD Business Premier Checking

TD Business Premier Checking allows customers who are actively enrolled in TD Merchant Services to waive the monthly maintenance fee otherwise associated with TD Business Premier Checking. To be eligible, one or more TD Merchant Services transactions must be deposited into a TD Business Premier Checking Account or TD Business Simple Checking Account linked to a TD Business Premier Checking Account during the monthly statement cycle. Transactions from a mobile device do not qualify for this offer, and other eligibility restrictions may apply to certain TD Merchant Services customers.

TD Business Premier Checking also allows customers who are actively enrolled in TD Digital Express Services to waive the monthly maintenance fee otherwise associated with TD Business Premier Checking. To be eligible, one or more TD Digital Express transactions must occur from the TD Business Premier Checking Account or TD Business Simple Checking Account linked to a TD Business Premier Checking Account during the monthly statement cycle. Additional fees may apply. Please check the fee schedule associated with TD Digital Express Services for details.

TD Business Premier Checking also allows customers to use a TD Small Business Loan to waive the monthly maintenance fee otherwise associated with TD Business Premier Checking. TD Small Business Term Loans and Commercial Real Estate Mortgage Loans, as well as Small Business Lines of Credit for which you have received credit approval, are eligible and must be in good standing. Approved Small Business Lines of Credit must be in amounts greater than \$24,999.99.

As an added benefit TD Business Premier Checking allows up to two (2) additional TD Business Simple Checking Accounts, with no monthly maintenance fee. The two additional checking Accounts must be under the same Tax Identification Number (TIN) as the primary TD Business Premier Checking Account.

The two additional Accounts may also be included in the combined balance for the primary TD Business Premier Checking Account. The two additional checking Accounts must not exceed 200 items in a statement cycle each as defined in the Business Schedule of Charges. The first time an Account exceeds the 200 items in a statement cycle you will receive a letter about the violation. The second time the Account exceeds 200 items in a statement cycle you will receive a notice that the monthly maintenance and per item fee waiver on the Account will be permanently removed.

TD Business Premier Checking account holders are also automatically eligible for a TD Small Business Money Market Plus

Account. The special interest rate and APY applicable to and as described in the TD Small Business Money Market Plus Account paragraph above will also automatically apply, with no monthly maintenance fee or monthly transaction requirement otherwise associated with the latter Account.

Combined Balance Service

With some checking Accounts, you can designate your checking Account as your primary checking Account and then link many of your other Accounts to it for pricing. When you link another Account for pricing, you can use the balances in the other Account to help you meet the combined balance required to avoid the monthly maintenance fee on your primary checking Account. The Business Schedule of Charges lists the required combined balance for each checking Account to which the service applies and the types of Accounts that can be linked for pricing.

You must tell us what other Accounts you want us to link to your checking Account for pricing. We do not link your other Accounts for pricing unless you tell us to do so.

Once you have selected which Accounts to be included in the combined balance, we will look at the end-of-Business-Day-balance of each selected Account and add them together to get the total combined daily balance. If your end-of-Business-Day-balance in one of the selected Accounts is negative, it will have a negative effect on the total combined daily balance to meet the minimum balance requirement.

You still need to meet the balance requirements, if applicable, in each linked Account to avoid the monthly maintenance fees on those Accounts.

When an existing Account is closed and a new Account is opened to replace the existing Account, we do not automatically link the new Account to your checking Account for pricing, even if the existing Account was linked. You must tell us to link the new Account for pricing.

Some restrictions apply to what Accounts can be linked to your checking Account for pricing.

Part III: Funds Availability Policy

Your ability to withdraw funds you have deposited at the Bank will be determined according to this policy.

This disclosure applies to all transaction accounts such as Checking and Interest bearing Checking Accounts, and to Money Market, Savings, and Time Accounts.

The Bank's general policy is to make funds from your deposits available to you no later than the first (1st) Business Day after the day we receive your deposit. Electronic direct deposits and wire transfers will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

Determining the Availability of a Deposit

To determine the availability of your deposits, every day is a Business Day, except Saturdays, Sundays and federal holidays. On Business Days that we are open, the earliest time that we stop accepting deposits in our Stores for same day credit is 8pm. Thus, if you make a deposit with a bank teller before 8pm on a Business Day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after 8pm or on a day we are not open, we will consider that the deposit was made on the next Business Day we are open.

If you mail funds to us, the funds are considered deposited on the Business Day we receive them. Funds deposited in a night depository or lockbox are considered deposited on the next Business Day the Bank or lockbox is open.

If you make a deposit at a Bank ATM before 8pm on a Business Day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit at a Bank ATM after 8pm or on a day we are not open, we will consider that the deposit was made on the next Business Day we are open. Funds from any deposits (cash or checks) made at ATMs we do not own or operate will not be available until the fifth business day after the day of your deposit.

The length of the delay varies depending on the type of deposit and is explained below:

Same Day Availability

Funds from the following deposits are available on the same day they are deposited:

- Cash deposits made at the Bank's teller station;
- Funds received for deposit by an electronic payment (including ACH credits and transfers);
- Wire transfers;
- \$100.00 from non-cash deposits made at the Bank's teller station;
- \$100.00 from deposits made at the Bank's ATM (for accounts opened longer than 90 days).

Longer Delays may Apply

In some cases, we will not make all the funds that you deposit by check available at the times shown in this Policy.

Depending on the type of check you deposit, funds may not be available until the second (2nd) Business Day after the day of your deposit. The first \$200 of your deposit, however, will be available no later than the first (1st) Business Day after the day of your deposit. If we are not going to make all of the funds from your deposit available on the first (1st) Business Day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our

employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit. If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds deposited by check may be delayed for a longer period under the following circumstances:

- You deposit checks totaling more than \$5,000 on any one day (Note: the first \$200 will be available no later than the first (1st) Business Day after the day of your deposit);
- We believe a check you deposited will not be paid;
- You re-deposit a check that has been returned unpaid;
- You have overdrawn your Account repeatedly, or would have overdrawn your account if checks had been honored in the last six (6) months;
- There is an emergency, such as failure of communications or computer equipment. (Note: the first \$200 will be available no later than the first (1st) Business Day after the day of your deposit).

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh (7th) Business Day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules may apply during the first thirty (30) days your account is open.

Funds from in-Store cash deposits, electronic direct deposits and wire transfers to your account will be available on the day we receive the deposit. The first \$100 of your daily in-Store non-cash deposit will be available to you on the day we receive the deposit. Funds from the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first (1st) Business Day after the day of your deposit. The excess over \$5,000 will be available no later than the seventh (7th) Business Day after the day of your deposit. If your account has been opened for less than 90 days, cash deposits made at an ATM will be available to you on the first (1st) Business Day after the day of your deposit, including the first \$100.

Holds on Other Funds

If we accept for deposit or we cash a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately, but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another Account with us. The funds in the other Account would then not be available for withdrawal in accordance with the time periods that are described in this policy.

Non-U.S. Financial Institutions

We reserve the right to send any checks drawn on a foreign financial institution (including Canadian financial institutions) for collection. For each item sent, we will assess a collection charge plus any collection fees charged to us by other financial institutions which process the item as listed in our most recent Business Fee Schedule. While the funds represented by checks that are sent for collection are generally available within thirty (30) Calendar Days or subject to payment by the Drawee bank, items sent for collection will be credited to your Account in U.S. dollars, with the amount of U.S. dollars credited calculated using our applicable exchange rate that is in effect on the date when we credit the funds to your Account and not when the deposit is made. If we do not enter any item (Canadian only) for collection, the funds will be available no later than the third (3rd) Business Day after the day of deposit.

Checks or Other Items Returned Subsequent to Funds Being Made Available

If a check or other item you deposited to your Account is returned to us unpaid after the funds have been made available to you, the amount of the check or other item will be deducted from your Account. If there are insufficient funds in your Account, we reserve the right to demand payment directly from you and to charge you for the overdraft as posted in our most recent Business Fee Schedule.

Endorsements

Endorsements on items deposited to your Account are restricted, under federal law, to the first 1.5 inches of the back of the check. The remaining portion of the check is reserved for endorsements by banks. Your endorsement should contain your signature, the words "For Deposit Only," and your Account number. Improper endorsements may delay the check collection process and the subsequent crediting and availability of funds. While we may accept non-conforming endorsements, you agree to be responsible for any losses.

Part IV: Electronic Funds Transfers

Business Electronic Funds Transfers

The Electronic Funds Transfers ("EFT") we are capable of handling are indicated below. Some of these may not apply to your Account. Please read this information carefully and keep it with your records for future reference.

Use of your Visa® Debit Card may be restricted in certain countries due to security risks.

For security purposes, your card may be cancelled after 13 months of inactivity.

Direct Deposits

You may make arrangements for certain direct deposits to be accepted into your Checking, Savings or Money Market Deposit Accounts.

Pre-authorized Withdrawals

You may make arrangements to pay certain recurring bills from your Checking, Statement Savings, or Statement Money Market Deposit Accounts.

Telephone Transfers

You may make arrangements to have telephone transfers between eligible Checking, Statement Savings, or Statement Money Market Deposit Accounts through our telephone banking system.

Electronic Check Conversion

Some Point-of-Purchase terminals may provide you the option of initiating a one-time automatic debit from your Account by authorizing the merchant to obtain the necessary information from a check drawn on your deposit Account. A check used in this way is treated as an EFT and is not a negotiable instrument in its own right. The check cannot be subsequently used and should be voided.

You may authorize a merchant or other payee to make a one-time electronic payment from your Checking Account using information from your check to:

- (i) Pay for purchases
- (ii) Pay bills

ATM Transaction Types

You may access your Account(s) by ATM using your ATM card or Visa Debit Card and Personal Identification Number ("PIN") to:

- make envelope-free deposits to Checking, Statement Savings and Statement Money Market Accounts at TD Bank ATMs;
- get cash withdrawals and/or transfer funds from and between Checking, Statement Savings and Statement Money Market Accounts linked to your card;
- get information about the Account balance(s) in the Checking, Statement Savings and/or Statement Money Market Account(s) linked to your card.

Note: Some of these services may not be available at all terminals.

Visa Debit Card Transaction Types

In addition to the ATM transaction types listed above, with your Visa Debit Card, you may:

- purchase goods and services using your PIN at merchant point of sale terminals that accept Visa Debit Cards (POS transactions);

- purchase goods and services from merchants that accept Visa Debit Cards without a PIN (Visa signature transactions). In Visa signature transactions, the signature of the named cardholder may or may not be required (for example, no signature is required in Internet, telephone and other signatureless environments);
- get cash from a merchant, if the merchant permits, or from a participating financial institution.

Note: If a merchant receives authorization for a purchase, TD Bank cannot return that transaction unpaid even if your Account is not in good standing.

Visa Debit Card Limits

The standard daily limits (per card) are:

- ATM cash withdrawals – \$750;
- POS (PIN) transactions – \$2,000;
- Visa signature transactions and Visa cash advances – \$5,000 each.

ATM Card Limits

The standard daily limits (per card) are:

- ATM cash withdrawals – \$750.

Personal Identification Number (PIN)

The PIN issued to you is for your security purposes. The numbers are confidential and should not be disclosed to third parties or recorded on the card. You are responsible for safekeeping your PIN(s). You agree not to disclose or otherwise make your PIN(s) available to anyone.

Charges For Electronic Fund Transfers

We may impose a fee, as disclosed on the Business Fee Schedule, for account transactions you conduct at an ATM that we do not own or operate. Such transactions are referred to as "non-TD ATM" transactions. Any fees will be listed separately on your statement and will be applied at the end of the business day on which the transaction occurred.

Please note: For non-TD ATM transactions, the institution that owns the ATM (or the network) may assess a fee (surcharge) at the time of your transaction, including balance inquiry transactions.

International ATM Card or Visa Debit Card Transactions:

The exchange rate between the transaction currency and the billing currency used for processing international ATM Card or Visa Debit Card transactions is a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives, or the government mandated rate in effect for the applicable central processing date.

Documentation

Terminal Transactions: You can get a receipt at the time you conduct a transaction using automated teller machines or point-of-sale terminals. You may not receive a receipt for POS transactions totaling \$15.00 or less.

Direct Deposits: If you have arranged to have direct deposits made to your Account from the same person or company, you can call **1-888-751-9000** to find out whether the deposit has been made.

Stop Payment Procedures: Pre-authorized transfers from your Account(s) can be discontinued by calling us at **1-888-751-9000**, or by visiting one of our TD Bank Stores.

If we have not already paid an ACH debit from your Account, then at your request we may accept a stop payment order on it. Your stop payment request must be received at least three (3) Business Days prior to the regularly scheduled payment date, and must precisely identify the account number, date and amount of the payment, and the payee.

Your stop payment request will be effective after the request has been received by the Bank and the Bank has had a reasonable opportunity to act on it. If your request is made orally, we may require the completion of a form authorizing the order or otherwise require that your request be put in writing, or we may provide you with written confirmation of your request. It is your responsibility to ensure that all of the information supplied by you is correct and to promptly inform the Bank of any inaccuracies.

Unlike checks, you cannot place stop payments for purchases made by telephone, on the Internet, or with your Visa Debit Card.

Unauthorized Card Transfers

Security Procedures: Your ATM card and/or Visa Debit Card allows the cardholder to directly access your Account. We will issue ATM cards and/or Visa Debit Cards and PINs to you at your request. Each ATM card and/or Visa Debit Card we issue to you will identify your name as well as the name of a cardholder. You are responsible for providing the ATM card or Visa Debit Card and a copy of this Agreement to each cardholder. You agree that you and each cardholders will comply with the following security procedures (the "Security Procedures"):

- **Sign the Card:** Each cardholder must sign the ATM card or Visa Debit Card bearing his/her name before it may be used.
- **ATM Transactions:** Cardholders must use the ATM card or Visa Debit Card and PIN together to make withdrawals or balance inquiries at ATMs displaying the NYCE™, PLUS™, or VISA® logos. In addition to withdrawals or balance inquiries, cardholders may also use the ATM card or Visa Debit Card and PIN to make deposits to your Accounts at one of our ATMs.
- **POS Transactions:** Cardholders must use the Visa Debit Card together with a PIN to purchase goods or services (and

to receive cash back from participating merchants) from a third party merchant that accepts Visa Debit Cards at a POS terminal.

- **Signature Transactions.** Cardholders must use the Visa Debit Card together with the cardholder's signature or the security code found on the reverse of the card (for purchases made over the telephone or Internet) to purchase goods or services (and to receive cash back from participating merchants) from a third party merchant that accepts VISA® Debit Cards.

You acknowledge and agree that the use of the ATM card and/or Visa Debit Card along with the PIN, the security code that appears on the reverse of the card (if the card is used for a Visa signature transaction over the Internet or telephone), and/or a cardholder's signature provide you with a commercially reasonable degree of protection against the unauthorized use of the card, in light of your particular needs and circumstances. You further agree to require each cardholder to use the Security Procedures to transact all activity with the card. You agree that any election you or a cardholder may make to waive or change the Security Procedures are at your risk and that any loss resulting in whole or in part from such change or waiver will be allocated to you. You further acknowledge and agree that the Security Procedures are not intended, and that it is commercially reasonable that the Security Procedures are not intended, to detect any errors relating to or arising out of a card transaction. You also represent that each card number, PIN and security code on the reverse of the card shall be afforded the highest level of security by you and shall be known only to those persons who are on a "need to know" basis. We assume no duty to discover any breach of security, unauthorized disclosure of card numbers and/or PINs, or unauthorized use of cards and/or PINs.

Additional Security Measures: In addition to the Security Procedures discussed above, you also agree to adhere to the following rules to ensure that the card is used in a safe and sound manner:

- **Written Instructions:** You agree to provide written instructions to all cardholders about the importance of protecting the card, PIN and security code.
- **Review of Terminal Receipts and Deposit Account Statements:** You and/or cardholders will examine ATM and/or POS Transaction receipts and deposit account periodic statements in a timely manner. If you have any questions or concerns with a receipt or statement you should contact us to report unauthorized transactions.
- **No Transfer:** Once a card has been issued, it cannot be transferred to another person. You agree to immediately (a) notify us when you terminate a cardholder's rights to use the card and (b) return the terminated cardholder's card to us.

Your Liability for Unauthorized Transactions: Unless the Visa “Zero Liability Policy” applies (as discussed below), you are liable for ALL card transactions, including those you did not authorize, so long as we processed the transaction in accordance with the Security Procedures discussed above.

Tell us AT ONCE if you believe your card and/or PIN has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your Account(s) (plus your available overdraft line of credit). If your card and/or PIN is lost, stolen, or used without your permission, you agree to notify us immediately, and to promptly confirm such notice in writing.

Protections for Certain POS Transactions: Under Visa U.S.A., Inc.’s “Zero Liability Policy” you may not be liable for the unauthorized use of your card that results in a fraudulent POS transaction made over the Visa network. To take advantage of the Zero Liability Policy you must notify us within 60 days of the first statement containing the allegedly unauthorized POS Transactions. We will extend provisional credit to you for any such unauthorized charges or debits within five (5) days of your notification to us of such an unauthorized use. The Visa Zero Liability Policy does not apply to: (a) ATM transactions, (b) POS transactions made using a PIN that are not processed over the Visa network, (c) POS transactions that are directly or indirectly caused by your or your cardholder’s gross negligence (which may include not providing us notice in a timely manner) or fraud, and (d) POS transactions made by a cardholder that are in excess of his/her authority.

Disclaimer

Except as otherwise provided above, we disclaim all liability for losses and/or damages incurred by you for failure to complete a transfer on the correct date or in the right amount under any circumstances; provided, however, that upon notice of such failure we will take reasonable steps to correct the transaction.

Part V: Night Depository Agreement

This Agreement governs the use of the night depository service of TD Bank, N.A. after September 1, 2011. By using this service after September 1, 2011, you agree to the terms of this Agreement. In this Agreement, the terms “you” and “your” refer to the Depositor and the terms “we”, “us” and “our” refer to TD Bank, N.A.

Bags and Containers

- a) Disposable Bags – Effective September 1, 2011, all new Depositors using the night depository service must make deposits using the two-part disposable bags supplied by us or by our vendor. The bags must only be used for the deposit of currency, coin and negotiable instruments owned by you.
- b) Locking Bags, Zipper Bags, Envelopes and Other Containers – Existing Depositors using the night depository service may

continue to use their existing locking bags, envelopes or other containers.

- c) All Bags, Envelopes and Containers – You must record the contents of each bag, envelope or container on a deposit slip supplied or approved by us and place the deposit slip in the bag, envelope or container.

Method of Deposit

Deposits made pursuant to this Agreement are to be either (i) placed in a night depository facility (“night depository”) at one of our offices, or (ii) given directly to our employee at one of our offices during regular business hours without waiting for our employee to verify the amount of the deposit (“subject to count deposit”), or (iii) delivered to us via an armored carrier or by a courier service (a “Carrier”).

Receipt of Bags and Keys

You acknowledge receipt of any bank-supplied bags and any keys necessary to operate the exterior door of the night depository. Any lost keys must be reported to us immediately.

Third Party Carriers

We may arrange for and pay for a Carrier to collect deposits from you and deliver the deposits to us for processing. For any deposits made via a Carrier, you acknowledge and agree that (i) we do not own or control the Carrier, the Carrier’s employees or the Carrier’s facilities; (ii) the Carrier retains discretion to determine what customers and geographic areas it will serve and maintains the ultimate responsibility for scheduling, movement and routing; (iii) the Carrier acts as your exclusive agent when items are in transit and is responsible for the bags and their contents during transit; and (iv) the Carrier is responsible for maintaining adequate insurance covering theft, employee fidelity and other in-transit losses. The items transported by the Carrier are considered deposited only when actually received by us and verified and credited to your account.

Liability of Bank

You expressly agree that the use of the night depository service is at your own risk. We will not be responsible for any loss or damage sustained by you in the use of the night depository service resulting from any cause whatsoever, including mechanical defects or a malfunction of the night depository itself, unless such loss or damage is directly caused by our negligence or willful misconduct. In no event will we be liable for damages resulting from causes beyond our control or for consequential, special or punitive damages or for any lost profits.

Contents Not Insured

We do not insure the contents of any bag, envelope or container.

Processing Deposits

You give us authority to open the bags and process for deposit any coin, currency or negotiable instruments found in the bags. You acknowledge and agree that the deposit slip you provide is not conclusive as to the contents of the bags and the determination of our employee is conclusive as to the contents of the bags. Our Funds Availability Policy, as it may be amended from time to time, applies to all deposits. We may take up to two Business Days following the day the bag is received to count the cash in the bag and to credit your account based on our verified cash count. We will use ordinary care and adhere to the reasonable commercial standards of the banking business in connection with the receipt and processing of the contents of the bags.

Fees and Service Charges

You agree to pay all fees associated with this service as described in the Business Fee Schedule and Business Schedule of Charges. We may change those fees from time to time by giving you notice of such changes in the manner specified in the Deposit Account Agreement or as may be required by applicable law.

Termination

This Agreement may be terminated by either you or by us immediately by giving oral or written notice to the other. Upon termination of this Agreement, you agree to return any key(s) to the night depository facility.

Entire Agreement; Conflict of Terms: Governing Law

This Agreement constitutes the entire agreement between you and us with respect to the use of the night depository service. In the event of any conflict between any provision of this Agreement and any provision of the Deposit Account Agreement relative to the night depository service, the provision of this Agreement shall control. This Agreement shall be governed by the state laws that apply to your primary deposit account.

Part VI: Addendum to BDAA For Business Checking Accounts With Account Analysis Billing

This Addendum applies to Business Checking Accounts with Account Analysis billing. See the TD Bank Business Deposit Account Agreement ("Agreement") and the Business Fee Schedule and the Business Schedule of Charges for more information concerning what types of Accounts are Business Checking Accounts.

Processing Order for Payment of Check and Other Items.

Please see the section of the Agreement captioned "Processing Order for Payment of Checks and Other Items." Notwithstanding anything to the contrary stated in that section of the Agreement, for Business Checking Accounts using Account Analysis billing, pending ATM and Debit transactions are **not** deducted from your available Account balance. These transactions are posted to your Account on the date on which they are presented for payment. The available balance in your Account is the amount available for withdrawal under the terms of TD Bank's Funds Availability Policy.

Overdrafts for Account Analysis Customers

Please see the section of the Agreement captioned "Overdrafts." Notwithstanding anything to the contrary stated in that section of the Agreement, for Business Checking Accounts using Account Analysis billing, the following additional terms apply:

Uncollected Funds Fees. If you have a Business Checking Account that is subject to Account Analysis billing, an Overdraft may occur if the available balance in your Account is not sufficient to pay a check or other item presented to us for payment from your Account. If this happens because funds deposited to your Account are not yet available for withdrawal under TD Bank's Funds Availability Policy to cover the check or item, we may assess an Uncollected Funds (UNC) fee on your Account Analysis Statement, rather than an Overdraft fee. See the Business Fee Schedule and Business Schedule of Charges for additional information. UNC fees may be offset on the Account Analysis Statement by an Earnings Credit (see below).

Drawn Against Uncollected Funds Fees. When you use uncollected funds, including overdrawn funds, we may charge you interest on those funds in the form of a Drawn Against Uncollected (DAU) fee. When you deposit a check or other item drawn on another bank (the "paying bank"), it may take some time for us to receive (collect) the funds from the paying bank. We may allow you to use those funds before we receive them from the paying bank (see TD Bank's Funds Availability Policy for information concerning when such funds are made available to you). DAU fees are typically assessed in addition to other per-item fees that may apply, including Overdraft fees and UNC fees. The DAU fee is calculated each calendar month based on a daily interest rate (see the Business Fee Schedule and the Business Schedule of Charges for more information about the rate used to calculate the DAU fee). To determine the DAU fee, we multiply that rate by the average monthly negative collected balance of your Account for the month, and then multiply that result by the number of days in the calendar month. DAU fees are charged monthly and noted on your Account Analysis Statement. DAU fees may be offset on the Account Analysis Statement by an Earnings Credit (see below).

Earnings Credits. If your Business Checking Account is eligible, your Account may receive earnings credits each calendar month, based on the investable balance in your Account. Earnings credits are calculated by applying an Earnings Credit Rate (ECR) to the monthly average investable balance in your Account. The ECR is a variable rate. The ECR and Account balance available for services for which earnings credits are applicable may be changed at any time at our sole discretion.

The earnings credit is shown on your Account Analysis Statement, and may be used as an offset against many fees incurred during the current monthly cycle, including certain Overdraft fees and Uncollected Funds fees. The first five (5) Overdraft and/or Uncollected Funds fees you incur on any Business Day will be charged to your Account without any earnings credit offset. Any additional Overdraft fees and Uncollected Funds fees incurred on any Business Day will be included in the "Treasury Management" fees on your Account Analysis Statement and can be offset by using earnings credits.

To calculate your monthly average investable balance each calendar month, we take the average total amount of funds in your Account (also known as the average monthly Ledger Balance), then we subtract the average amount of your deposited funds that is not available for withdrawal under the terms of TD Bank's Funds Availability schedule (also known as Float), and then we subtract an amount equal to TD Bank's Reserve Requirement on your average monthly Account balance. Please note that TD Bank determines the reserves applicable to Accounts under the rules of government reserve policies, and we may change or increase the Reserve Requirement percentage at any time without prior notice. Please also note that for certain Treasury Management products, TD Bank may not subtract a Reserve Requirement amount.

Small Business Overdraft Protection. Small Business Overdraft Protection Line of Credit and Small Business Savings Overdraft Protection only cover Overdrafts that would trigger an Overdraft fee. These products do not cover Uncollected Funds transactions that would result in a UNC fee. These products also do not cover any DAU fees that may be associated with an Overdraft or Uncollected Funds transaction.

City of Sunny Isles Beach
Request for Proposals
No. 14-04-02
TD Bank, N.A.
Pricing and Fees

- Provide a schedule of proposed services and fees including earnings credit rate and, if applicable, interest rate on excess balances (amount that exceeds target minimum balance that produces a monthly earnings credit sufficient to pay/offset all service fees each month).

TD Bank has thoroughly examined the City of Sunny Isles Beach RFP for Banking Services. We are confident that we can provide all of the required services and exceed your expectations.

TD BANK OFFERS THE FOLLOWING TO THE CITY OF SUNNY ISLES BEACH:

TD Bank recommends to the City of Sunny Isles Beach our Municipal Non-Interest Checking Account which will obtain an Earnings Credit Rate on collected balances to offset fees. TD Bank will collateralize these funds in accordance with Florida State Statutes Chapter 280 governing Public Funds. For any additional funds not needed to cover service charges, TD Bank will offer our Municipal Interest Checking or Public Funds Money Market accounts to maximize the City's interest earnings. Funds within these account(s) are Fully Collateralized in Accordance with FL State Statutes governing Public Funds.

The following rates are proposed:

Earnings Credit Rate:

- **TD Bank will provide the City of Sunny Isles Beach an EARNINGS CREDIT RATE of 45 basis points on balances utilized to offset bank service charges. This rate will be bank managed, which will be determined by market conditions. The City's target balance will be \$2.53 MM (based on volume information provided) in a non-interest bearing account to offset the City's service charges.**
- **This option offers the highest ECR based on our review of your services and activity results, in the City's fees being covered. Maintenance of proper deposit levels in the Municipal Non-Interest Checking Account is determined by the City as you balance interest earned against potential fees. TD Bank will review the projected target balance periodically to ensure the City is optimizing the use of their balances for earnings credits and interest.**
- **Pricing is based on information provided to us for review and is subject to change if the relationship is materially different.**

Public Funds Money Market Interest Rate:

- **TD Bank will provide the City of Sunny Isles Beach an INTEREST RATE of 20 basis points on excess funds not needed to offset bank service fees. This rate will be bank managed, which will be determined by market conditions.**
- **We will conduct regular Relationship Reviews and TD Bank will inform the City of Sunny Isles Beach its options to maximize returns while providing safety and liquidity.**

Fees Waived:

- TD Bank will WAIVE THREE (3) MONTHS OF SERVICE CHARGES (after services are fully implemented) for the City of Sunny Isles Beach to help offset any transition costs.
- TD Bank will provide to the City of Sunny Isles Beach up to \$2,000.00 towards the initial order of banking supplies such as deposit tickets, checks, disposable night bags and endorsement stamps. TD Bank will provide the City unlimited coin wrappers and unlimited bill straps at NO COST. This will additionally aid the City with any transition cost.
- TD Bank will WAIVE ALL IMPLEMENTATION / SOFTWARE FEES for any treasury management products/services.
- TD Bank will NOT charge the City of Sunny Isles Beach ANY FDIC CHARGES providing the City an additional cost savings.

Technical Support:

- TD Bank will provide local technical support and staff training to the City of Sunny Isles Beach for services such as online banking (eTreasury) and other Treasury Management Services.

Explanation of Interest & Earnings Credit Rate Calculations:

TD Bank's ECR and Interest rates are not directly tied to any specific financial market rate at this time. We utilize a "managed" rate method of determining ECR and interest each month. In the management of these rates, a central leadership rate committee examines competitive data and various indices, including US Treasury Bill, short-term auction rates, monthly average short-term LIBOR, Fed Funds and other investment/economic barometers to determine when changes to TD Bank's ECR & Interest rate is required. Rates are established each month based on real-time positions in these indices and are tempered by historic and emerging trends or events. TD Bank reserves the right to change its rate and methodology from time to time in its sole and absolute discretion without regard to any external interest rate index or market conditions.

Note: Should the District have questions regarding the FDIC program described, please contact us or visit www.FDIC.GOV for additional information.

- The Proposer must complete ATTACHMENT A and submit with their proposal.

TD Bank has completed and submitted Attachment A within this pricing and fees section of the proposal.

ATTACHMENT A

RFP 2014-04-03

Banking Services

City of Sunny Isles Beach

Total Cost Proposal:

Note: Proposers are to complete the unit price and total monthly cost columns below. List any additional fees not referenced herein in the space provided, or in an attachment. Proposers may also submit their own file in hard copy excel format, along with a CD of the excel file to be included as part of the proposal submittal, as long as the analysis prepared, at a minimum includes the items below with unit price and monthly cost information.

| Service Provided | 3 Mth Avg Unit Volume | Unit Price | Monthly Cost | Comments |
|--|-----------------------|------------|--------------|---------------------------------|
| Balance Related Charges | | | | |
| FDIC Insurance Charge | 37,870,000 | \$0.00 | \$ - | |
| General Banking Services | | | | |
| Deposits and Other Credits | 86 | \$0.41 | \$ 35.26 | |
| Items deposited - BB&T | 81 | \$0.06 | \$ 4.86 | |
| Items Deposited - In State | 577 | \$0.06 | \$ 34.62 | |
| Items Deposited - Other | 275 | \$0.06 | \$ 16.50 | |
| Checks Paid and Other Debits | 357 | \$0.10 | \$ 35.70 | |
| Branch Check Image Access | 1 | \$0.00 | \$ - | |
| Coin and Currency Deposited | 36,528 | \$0.00 | \$ - | |
| Deposit Corrections | 0 | \$0.00 | \$ - | |
| Night Depository Services | 50 | \$0.00 | \$ - | |
| Easy Image Statement | 1 | \$0.00 | \$ - | |
| Returned Deposit/Cash Item | 3 | \$5.50 | \$ 16.50 | |
| Wire Transfer Services | | | | |
| CMOL Outgoing Repetitive Wires | 14 | \$6.60 | \$ 92.40 | |
| CMOL Outgoing Non-Repetitive Wires | 0 | \$6.60 | \$ - | |
| Incoming Wires | 1 | \$7.15 | \$ 7.15 | |
| ACH Services | | | | |
| ACH Received Credit | 82 | \$0.12 | \$ 9.84 | |
| ACH Received Debit | 21 | \$0.12 | \$ 2.52 | |
| ACH Monthly Maintenance | 1 | \$27.50 | \$ 27.50 | |
| Total ACH Originated Items | 2 | \$0.09 | \$ 0.18 | |
| ACH Acct Block Filter Service | 1 | \$2.75 | \$ 2.75 | Per Fitter |
| ACH Acct Block Reports | 1 | \$11.00 | \$ 11.00 | Per Account |
| CMOL ACH File | 0 | \$8.80 | \$ - | |
| Reconciliation Services | | | | |
| CD-Rom Maintenance | 1 | \$19.25 | \$ 19.25 | |
| CD-Rom Items | 304 | \$0.03 | \$ 9.12 | |
| CD-Rom Disk | 1 | \$2.75 | \$ 2.75 | Additional accounts on same CD |
| CD-Rom Multiple Acct Fee | 2 | \$0.00 | \$ - | |
| Information Services (Cash Manager Online) | | | | |
| CMOL CD Acct Maintenance | 1 | \$0.00 | \$ - | |
| CMOL Business Banking | 4 | \$6.60 | \$ 26.40 | online additional accounts |
| CMOL CD Acct Maintenance | 1 | \$0.00 | \$ - | |
| CMOL - CD Loaded Items | 84 | \$0.00 | \$ - | |
| CMOL Business Banking | 1 | \$49.50 | \$ 49.50 | Main online package maintenance |
| CMOL BusBank - PD Loaded Items (Fee for AP acct) | 88 | \$0.00 | \$ - | |
| CMOL BusBank - PD Loaded Items (No fee for Op/Payroll/Merch acct) | 527 | \$0.00 | \$ - | |

ATTACHMENT A

RFP 2014-04-03

Banking Services

City of Sunny Isles Beach

Total Cost Proposal:

Note: Proposers are to complete the unit price and total monthly cost columns below. List any additional fees not referenced herein in the space provided, or in an attachment. Proposers may also submit their own file in hard copy excel format, along with a CD of the excel file to be included as part of the proposal submittal, as long as the analysis prepared, at a minimum includes the items below with unit price and monthly cost information.

| Service Provided | 3 Mth Avg Unit Volume | Unit Price | Monthly Cost | Comments |
|---|-----------------------|------------|--------------|--------------------------------------|
| CMOL BusBank - Image Retrieved (Fee for Operating acct) | 3 | \$0.00 | \$ - | |
| CMOL BusBank - Image Retrieved (No fee for AP/Payroll/Merch acct) | 8 | \$0.00 | \$ - | |
| CMOL BusBank - Stop Pay 6 mth | 2 | \$13.75 | \$ 27.50 | stop payments effective for 365 days |
| Cash Management Services | | | | |
| ZBA + Master | 1 | \$40.00 | \$ 40.00 | |
| ZBA + Sub | 2 | \$25.00 | \$ 50.00 | |
| ZBA + Reporting | 3 | \$0.00 | \$ - | |
| International Services | | | | |
| Checks Drawn on Canadian Banks | 1 | \$0.06 | \$ 0.06 | |
| Other (newly added services) | | | | |
| Positive Pay | | \$30.25 | \$ - | |
| Remote Deposit Capture | | \$52.25 | \$ - | |
| Armored Car Service | | \$0.00 | \$ - | |
| List any Additional Fees not referenced above | | | | |
| Account Maintenance | 4 | \$9.35 | \$ 37.40 | |
| Online Transactions over 500 | 91 | \$0.06 | \$ 5.46 | |
| Online First 2 SecureID Tokens | 2 | \$1.65 | \$ 3.30 | |
| Online Additional SecureID Tokens | 8 | \$3.30 | \$ 26.40 | |
| Positive Pay File Transmissions | 2 | \$8.25 | \$ 16.50 | capped at 10 |
| Positive Pay checks paid per item | 357 | \$0.04 | \$ 14.28 | |
| Digital Express Additional Scanners | 0 | \$27.50 | \$ - | |
| Digital Express Checks Deposited | 933 | \$0.03 | \$ 27.99 | Digital Per Item |
| Returned Deposited Items- Final Presentment | | \$5.50 | | |
| ACH Positive Pay | 1 | \$8.25 | | |
| ACH Notification of Change (NOC) | | \$2.20 | | |



Commercial Plus Card Sample Rebate Schedule

Pricing Prepared for: **City of Sunny Isles Beach**

Rebate Program:

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

| Rebate Schedule - Level I, II and III Interchange | | | |
|--|--|--|------------|
| Annual Spend ¹ | Grace Period in Days | | |
| | 2 | 7 | 14 |
| | Rebate in Basis Points ² | | |
| > \$50,000,000 | 145 | 140 | 135 |
| \$25,000,000 - \$50,000,000 | 135 | 130 | 125 |
| \$20,000,000 - \$24,999,999 | 125 | 120 | 115 |
| \$15,000,000 - \$19,999,999 | 115 | 110 | 105 |
| \$10,000,000 - \$14,999,999 | 105 | 100 | 95 |
| \$7,500,000 - \$9,999,999 | 95 | 90 | 85 |
| \$5,000,000 - \$7,499,999 | 85 | 80 | 75 |
| \$2,500,000 - \$4,999,999 | 75 | 70 | 65 |
| \$1,000,000 - \$2,499,999 | 65 | 60 | 55 |
| Rebate Schedule - Specialized B2B Interchange | | | |
| Interchange Type | | Rebate in Basis Points ² | |
| Visa Purchasing Large Ticket (PLT) | | 35 | |
| Visa Large Purchase Advantage (LPA) | | 20 | |

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

² Rebates paid annually



Commercial Plus Card Sample Rebate Schedule

Applicable / Potential Fees:

| | |
|----------------------------------|---|
| Custom logo on cards | \$700.00 one-time implementation |
| Outbound reporting file: | |
| - Custom mapping and programming | \$150.00 per hour |
| - Data Transmission | \$200.00 per month (waived) |
| Special request items: | |
| - Express Card Delivery | \$25.00 per card |
| - Printed Statements | \$1.00 per statement |
| Cash Advance: | 3.00%. Minimum of \$5.00 / Maximum of \$50.00 |
| Foreign Transaction Fee | 1.00% |
| Finance Charge | 13.90% APR |

Client Acceptance:

| | | | |
|---------------|--|-------|--|
| Signature: | | | |
| Printed Name: | | | |
| Title: | | Date: | |

City of Sunny Isles Beach
Request for Proposals
No. 14-04-02
Banking Services



Request for Proposal

Banking Services



Banking Services

Request for Proposal No. 14-04-02

Publish Date:

04/24/2014

Bid Due and Bid Opening Date:

5/15/2014 at 2:30 PM

Pre-Bid Conference:

Intentionally Omitted

Where to Deliver Proposal

Sunny Isles Beach Government Center
18070 Collins Avenue
Sunny Isles Beach, Florida 33160



TABLE OF CONTENTS

| | | |
|--|-----------|-------------|
| Table of Contents | | Page 2 |
| Legal Advertisement/Notice to Bidder | | Page 3 |
| Instructions to Bidder / General Terms | Section 1 | Page 4 |
| Special Terms & Conditions | Section 2 | Page 10 |
| Scope of Work / Technical Specifications | Section 3 | Page 14 |
| Evaluation Process | Section 4 | Page 23 |
| Proposal Format | Section 5 | Page 25 |
| Bid Submittal Form | Section 6 | Page 28 |
| Affidavits | | |
| Non-Collusive Affidavit | | Page 1 of 7 |
| Public Entity Crimes | | Page 2 of 7 |
| Equal Opportunity / Affirmative Action Statement | | Page 4 of 7 |
| Conflict of Interest Statement | | Page 5 of 7 |
| Dispute Disclosure Form | | Page 6 of 7 |
| Anti-Kickback Affidavit | | Page 7 of 7 |
| Attachments | | |
| Attachment A Cost Proposal | | |
| Attachment B Bank Statement | | |
| Attachment C Account Analysis | | |
| Attachment D Reference Check | | |



LEGAL ADVERTISEMENT

NOTICE TO BIDDER

NOTICE IS HEREBY GIVEN that the City of Sunny Isles Beach is seeking sealed Bids for the following work as specified:

Banking Services Request for Proposal No. 14-04-02

The Bid Specifications for this Request for Proposal are available from DemandStar by calling (800) 711-1712 or by accessing their website at www.demandstar.com and Bidsync by calling (800) 990-9339 or by accessing their website at www.bidsync.com. The Bid Specifications may also be examined at the City of Sunny Isles Beach – Office of the City Clerk. Vendors who obtain the Bid Specifications from sources other than DemandStar, Bidsync or the City of Sunny Isles Beach are cautioned that their Bid response package may be incomplete. Addenda will be posted and disseminated by DemandStar and Bidsync at least five days prior to the submittal date to all vendors who are listed on the official list. The City may not accept incomplete Bids.

Bids shall be on a unit price basis; segregated Bids will not be accepted. Sealed Bids will be received by the City Clerk no later than **2:30 PM**, on **Thursday, 5/15/2014** at the Sunny Isles Beach Government Center located at 18070 Collins Avenue, 4th floor, Sunny Isles Beach, Florida, 33160. Bids received after this time will not be considered. The City is under no obligation to return Bids. Timely submitted Bids will be opened publicly and read aloud at this time.

The envelope containing the sealed Bid must be clearly marked:

"IMPORTANT, BID ENCLOSED"
Proposal No. 14-04-02
Banking Services
OPENING DATE AND TIME: Thursday, 5/15/2014 at 2:30 PM

The Owner reserves the right to reject any or all Bids, with or without cause, to waive technical errors and informalities, and to accept the Bid, which best serves the interest of, and represents the best value to, the Owner in conformity with the criteria set forth in Section 62-8 of the Code of Ordinances of the City of Sunny Isles Beach.

All questions regarding Request for Proposal No. 14-04-02 shall be directed in writing to Jane A. Hines, CMC, City Clerk, at least five (5) business days prior to the date of the Bid opening. Questions may be submitted via email to: JHines@sibfl.net or via facsimile (305) 792-1563 or via regular mail at: Jane A. Hines, CMC, City Clerk, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.

Jane Hines, CMC, City Clerk
City of Sunny Isles Beach



SECTION 1 INSTRUCTIONS TO BIDDER / GENERAL TERMS AND CONDITIONS

THESE INSTRUCTIONS ARE STANDARD FOR ALL BID COMMODITIES/SERVICES ISSUED BY THE CITY OF SUNNY ISLES BEACH. THE CITY OF SUNNY ISLES BEACH MAY DELETE, SUPERSEDE OR MODIFY ANY OF THESE STANDARD INSTRUCTIONS FOR A PARTICULAR CONTRACT BY INDICATING SUCH CHANGE IN SPECIAL INSTRUCTIONS TO BIDDERS OR IN THE BID SHEETS. ANY AND ALL SPECIAL CONDITIONS THAT MAY VARY FROM THE GENERAL CONDITIONS SHALL HAVE PRECEDENCE. BIDDER AGREES THAT THE PROVISIONS INCLUDED WITHIN THIS BID OR RFP SHALL PREVAIL OVER ANY CONFLICTING PROVISION WITHIN ANY STANDARD FORM CONTRACT OF THE BIDDER REGARDLESS OF ANY LANGUAGE IN BIDDER'S CONTRACT TO THE CONTRARY.

1.1 CLARIFICATION/EXPLANATION/QUESTIONS:

Any questions concerning the Bid Specifications or any required need for clarification must be made to Jane A. Hines, MMC, City Clerk via email to: JHines@sibfl.net or via facsimile (305) 792-1563 or via regular mail at: Jane A. Hines, MMC, City Clerk, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160. Such requests for clarification/explanation or questions must be made in writing to Jane A. Hines, MMC, City Clerk, at least five (5) business days prior to the date of the Bid opening. Interpretations or clarifications considered necessary by the City will be issued by addenda and posted/disseminated by DemandStar (www.demandstar.com) to all parties listed on the official plan holders' list as having received the Bid documents. Only questions answered by written addenda shall be binding. Oral interpretations or clarifications shall be without legal effect. No plea of ignorance or delay or required need of additional information shall exempt a Proposers from submitting their Bid on the required date and time as publicly noted.

1.2 PLAN HOLDER'S LIST:

As a convenience to vendors, the City of Sunny Isles Beach has made available via internet lists of all plan holders for each Request for Proposal, Request for Qualifications, and Invitation to Bid. The information is available via DemandStar by calling (800) 711-1712 or by accessing their website at www.demandstar.com and Bidsync by calling (800) 990-9339 or by accessing their website at www.bidsync.com or by calling the Office of the City Clerk at (305) 792-1703.

1.3 ADDENDA TO SPECIFICATIONS:

If any addenda are issued after the initial specifications are released, the City will post and disseminate the addenda through DemandStar. For those projects with separate plans, blue prints, or other materials that cannot be accessed through the internet, the Office of the City Clerk will make good faith effort to ensure that all registered proposers (those who have been registered as receiving a Bid package) receive the documents. It is the responsibility of the vendor prior to the submission of any Bid to check the above website or contact the Office of the City Clerk at (305) 792-1703 to verify any addenda issued. The receipt of all addenda must be acknowledged on the Bid Response Sheet.

1.4 SPECIAL ACCOMMODATIONS:

Any person requiring a special accommodation at a Pre-Bid Conference or Bid/RFP/RFP opening because of a disability should call the Office of the City Clerk at (305) 792-1703 at least five (5) days prior to the Pre-Bid Conference or Bid/RFP/RFP opening. If you are hearing or speech impaired, please contact the Office of the City Clerk by calling the City of Sunny Isles Beach using the Florida Relay Service which can be reached at 1(800) 955-8771 (TDD).

1.5 PUBLIC ENTITY CRIMES STATEMENT:

Pursuant to the provisions of paragraph (2) (a) of section 287.133, Florida statutes - "a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Bid on a contract to provide any goods or services to a public entity, may not submit a Bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public

entity, may not be awarded to perform work as a Contractor, supplier, sub-Contractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.107, for category two for a period of 36 months from the date of being placed on the convicted vendor list".

1.6 BID DEADLINE:

Bids must be submitted no later than the time and date shown within this document.

1.7 SEALED BID:

The entire Bid Response Package shall be placed in an opaque envelope (with all items listed on the Bid checklist form and all other items required within this Request for Proposal must be executed) and submitted in a sealed envelope.

1.8 BID EXECUTION, SIGNATURES, ERASURE/CORRECTION:

All Bids shall be signed in blue ink. All price quotes shall be typewritten or printed with ink. All corrections made by the proposers prior to the opening must be initialed and dated by the proposers. No changes or corrections will be allowed after Bids are opened. Bids must contain an original, manual signature of an authorized representative of the company.

1.9 WITHDRAWAL OF BIDS:

Proposers may withdraw Bids only by written request and shall forward the withdrawal request via "Certified U.S. Mail – Return Receipt Requested" prior to the Bid opening time. Negligence on the part of the Proposers in preparing the Bid confers no right for the withdrawal of the Bid after it has been opened.

1.10 BID OPENING:

Bids will be opened publicly at the time and place stated in the Notice to Bidder. It is the responsibility of the proposers to insure that the Bid reaches the Office of the City Clerk on or before the closing hour and date stated on the Request for Proposal. After the Bid opening, the contents of the Bid Form will be made public for the information of vendors and other interested parties who may be present either in person or by representative. Bids that are received after the Bid opening time will not be considered and will not be returned.

1.11 EVALUATION OF BIDS:

The City, at its sole discretion, reserves the right to inspect any/all Proposers facilities to determine their capability of meeting the requirements for the Contract. Also, price, responsibility, and responsiveness of the Proposers, the financial position, experience, staffing, equipment, materials, references, and past history of service to the City and/or with other units of state, and/or local governments in Florida, or comparable private entities, will be taken into consideration in the Award of the Contract.

1.11.1 **Hold Harmless:** All Proposer's shall hold the City, it's officials and employees harmless and covenant not to sue the City, it's officials and employees in reference to their decisions to reject, award, or not award a Bid, as applicable.



- 1.11.2 Cancellation: Failure on the part of the Proposers to comply with the conditions, specifications, requirements, and terms as determined by the City, shall be just cause for cancellation of the Award.
- 1.11.3 Disputes: If any dispute concerning a question of fact arises under the Contract, other than termination for default or convenience, the Contractor and the City department responsible for the administration of the Contract shall make a good faith effort to resolve the dispute. If the dispute cannot be resolved by agreement, then the department with the advice of the City Attorney shall resolve the dispute and send a written copy of its decision to the Contractor, which shall be binding on both parties.
- 1.12 AGREEMENT:**
- After the Bid award, the City will, at its option, prepare an Agreement specifying the terms and conditions resulting from the award of this Bid. The vendor will have ten (10) calendar days after notification of the award by the City to execute the Agreement and provide the required Performance Bond.
- The Proposers who has the Contract awarded to them and who fails to execute the Agreement and furnish the Performance Bond and Insurance Certificates within the specified time shall forfeit the Bid Security that accompanied their Bid, and the Bid Security shall be retained as liquidated damages by the City, and it is agreed that this sum is a fair estimate of the amount of damages the City will sustain in case the Proposers fails to enter into the Contract and furnish the Bonds as herein before provided. Bid Security deposited in the form of a cashier's check drawn on a local bank in good standing shall be subject to the same requirements as a Bid Bond.
- The performance of the City of Sunny Isles Beach of any of its obligations under the agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of the agreement for the current and any future periods provided for within the Bid specifications.
- 1.13 PAYMENTS:**
- Payment will be made after commodities/services have been received, accepted, and properly invoiced as indicated in the contract and/or purchase order. Invoices must bear the purchase order number.
- 1.14 BRAND NAMES:**
- If a brand name, make, of any "or equal" manufacturer trade name, or vendor catalog is mentioned whether or not followed by the words "approved equal" it is for the purpose of establishing a grade or quality of material only. Vendor may offer equals with appropriate identification, samples, and/or specifications on such item(s). The City shall be the sole judge concerning the merits of items Bid as equals.
- 1.15 MATERIAL:**
- Material(s) delivered to the City under this Bid shall remain the property of the seller until accepted to the satisfaction of the City. In the event materials supplied to City are found to be defective or do not conform to specifications, the City reserves the right to return the product(s) to the seller at the seller's expense.
- 1.16 SAMPLES:**
- Samples of items, when required, must be furnished by the Proposers free of charge to the City. Each individual sample must be labeled with the Proposers name and manufacturer's brand name and delivered by them within ten (10) calendar days of Proposers receipt of the "Notice to Proceed", unless schedule indicates a different time. If samples are requested subsequent to the Bid opening, they should be delivered within ten (10) calendar days of the request. The City will not be responsible for returning samples.
- 1.17 QUANTITY GUARANTY:**
- No guaranty or warranty is given or implied by the City as to the total amount that may or may not be purchased from any resulting Contract or Award. These quantities are for Bid purposes only and will be used for tabulation and presentation of the Bid. The City reserves the right to increase or decrease quantities as required, even significantly. The prices offered herein and the percentage rate of discount applies to other representative items not listed in this Bid.
- 1.18 GOVERNMENTAL RESTRICTIONS ON MATERIALS:**
- In the event any governmental restrictions may be imposed which would necessitate alteration of the material quality, workmanship, or performance of the items offered on this Bid prior to their delivery, it shall be the responsibility of the successful Proposers to notify the City at once, indicating in their letter the specific regulation which required an alteration. The City of Sunny Isles Beach reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel at no further expense to the City.
- 1.19 SAFETY STANDARDS:**
- The Proposers warrants that the product(s) supplied to the City conforms in all respects to the standards set forth in the occupational safety and health act (OSHA) and its amendments. Bids must be accompanied by a materials data safety sheet (MSDS) when applicable.
- 1.20 WARRANTIES:**
- Successful Proposers shall act as agent for the City in the follow-up and compliance of all items under Warranty/Guaranty and complete all forms for Warranty/Guarantee coverage under this Contract.
- 1.21 COPYRIGHTS/PATENT RIGHTS:**
- Proposers warrants that there has been no violation of copyrights or patent rights in manufacturing, producing or selling of goods shipped or ordered, as a result of this Bid. The seller agrees to indemnify City from any and all liability, loss, or expense occasioned by any such violation.
- 1.22 LOCAL BUSINESS TAX (OCCUPATIONAL LICENSE REGISTRATION):**
- The contractor shall be responsible for obtaining and maintaining throughout the contract period his or her city and county local business tax receipts. Each vendor submitting a Bid on this Request for Proposal shall include a copy of the company's local business tax/occupational license(s) with the Bid response. For information specific to City of Sunny Isles Beach local business tax/occupational licenses, please call Code Enforcement & Licensing at (305) 792-1705. If the contractor is operating under a fictitious name as defined in Section 865.059, Florida Statutes, proof of current registration with the Florida Secretary of State shall be submitted with the Bid. A business formed by an attorney actively licensed to practice law in this state, by a person actively licensed by the Department of Business and Professional Regulations or the Department of Health for the purpose of practicing his or her licensed profession, or by any corporation, partnership, or other commercial entity that is actively organized or registered with the Department of State shall submit a copy of the current licensing from the appropriate agency and/or proof of current active status with the Division of Corporations of the State of Florida.
- 1.23 LIABILITY, INSURANCE, PERMITS AND LICENSES:**
- Proposers shall assume the full duty, obligation, and expense of obtaining all necessary licenses, permits, inspections, and insurance required. The Proposers shall be liable for any damages or loss to the City occasioned by negligence of the Proposers (or their agent) or any person the Proposers has designated in the completion of their contract as a result of the Bid. Contractor shall be required to furnish a copy of all licenses, certificates of competency or other licenser requirements necessary to practice their profession as required by Florida State Statute, Miami-Dade County, and City of Sunny Isles Beach Code. Contractors shall include current Miami-Dade County Certificates of Competency. These documents shall be



- furnished to the City along with the Bid response. Failure to furnish these documents or to have required licenser will be grounds for rejecting the Bid.
- 1.24** **CERTIFICATE(S) OF INSURANCE:**
- Proposers shall furnish to the Office of the City Clerk, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, Florida 33160, certificate(s) of insurance which indicate that insurance coverage has been obtained from an insurance company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the City, for those coverage types and amounts listed in this document, in an amount equal to 100% of the requirements and shall be presented to the City prior to issuance of any Contract(s) or Award(s) Document(s). The City of Sunny Isles Beach shall be named as "additional insured" with respect to this coverage. The required certificates of insurance shall not only name the types of policies provided, but shall also refer specifically to this Bid and section. At the time of Bid submission the Proposers must submit certificates of insurance as outlined in the General Conditions section. All required insurances shall name the City of Sunny Isles Beach as additional insured and such insurance shall be issued by companies authorized to issue insurance in the State of Florida. It shall be the responsibility of the Proposers and insurer to notify the City Manager of the City of Sunny Isles Beach of cancellation, lapse, or material modification of any insurance policies insuring the Proposers, which relate to the activities of such vendor and the City of Sunny Isles Beach. Such notification shall be in writing, and shall be submitted to the City finance support service director thirty (30) days prior to cancellation of such policies. This requirement shall be reflected on the certificate of insurance. Failure to fully and satisfactorily comply with the city's insurance and bonding requirements set forth herein will authorize the City Manager to implement a rescission of the Bid award without further City Commission action. The Proposers hereby holds the City harmless and agrees to indemnify City and covenants not to sue the City by virtue of such rescission.
- 1.25** **ASSIGNMENT:**
- The Contractor shall not transfer or assign the performance required by this Bid without prior written consent of the City Manager. Any award issued pursuant to the Request for Proposal and monies which may be due hereunder are not assignable except with prior written approval of the City Manager. Further, in the event that the majority ownership or control of the Contractor changes hands subsequent to the award of this contract, Contractor shall promptly notify City in writing (via United States Postal Service – Certified Mail, Return Receipt Requested) of such change in ownership or control at least thirty (30) days prior to such change and City shall have the right to terminate the contract upon sixty (60) days written notice, at City's sole discretion.
- 1.26** **HOLD HARMLESS/INDEMNIFICATION:**
- The Contractor shall indemnify, hold harmless, and defend the City of Sunny Isles Beach, it's officers, agents and employees from and against any claims, demands or causes of action of whatsoever kind or nature arising out of error, omission, negligent act, conduct, or misconduct of the Contractor, their agents, servants or employees in the provision of goods or the performance of services pursuant to this Bid and / or from any procurement decision of the City including without limitation, awarding the Contract to the Contractor.
- 1.27** **NON-CONFORMANCE TO CONTRACT:**
- The City of Sunny Isles Beach may withhold acceptance of, or reject items which are found upon examination, not to meet the specification requirements. Upon written notification of rejection, items shall be removed within (5) calendar days by the vendor at their own expense and redelivered at their expense. Rejected goods left longer than thirty (30) calendar days will be regarded as abandoned and the City shall have the right to dispose of them as its own property. Rejection for non-conformance or failure to meet delivery schedules may result in the Contractor being found in default.
- 1.28** **DEFAULT PROVISION:**
- In case of default by the Proposers, the City of Sunny Isles Beach may procure the articles or services from other sources and hold the Proposers responsible for any excess costs occasioned or incurred thereby.
- 1.29** **SECONDARY/OTHER VENDORS:**
- The City reserves the right in the event the primary vendor cannot provide an item(s) or service(s) in a timely manner as requested, to seek other sources without violating the intent of the Contract.
- 1.30** **DEFINITIONS:**
- Wherever used in these General Conditions or in the other Contract Documents, the following terms shall have the meaning indicated which shall be applicable to both the singular and plural thereof:
- Acceptance:** Acceptance by the City of the Work as being fully complete in accordance with the Contract Documents subject to waiver of claims.
- Agreement:** The written Agreement between the City and the Contractor covering the Work to be performed, which includes the Contract Documents.
- Addenda:** Written or graphic instruments issued prior to the Bid Opening which modify or interpret the Contract Documents, Drawings and Specifications, by addition, deletions, clarifications or corrections.
- Approved:** Means approved by the City.
- Bid:** The offer of the Proposers submitted on the prescribed form setting forth the prices for the Work to be performed.
- Proposers:** Any person, firm or corporation submitting a Bid for Work.
- Bonds:** Bid, performance bond and other instruments of security, furnished by the Contractor and their surety in accordance with the Contract Documents and in accordance with the law of the State of Florida.
- Change Order:** A written order to the Contractor signed by the City authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.
- City:** City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, Florida 33160.
- Contract Documents:** Contract Documents shall include, Instructions to Proposers, Contractor's Bid, the Bonds, the Notice of Award, the Agreement between the City and Contractor as well as any addenda thereto, these General Conditions, Special Conditions, the Technical Specifications, Drawings and Modifications, Notice to Proceed, Request for Proposal, Insurance Certificates, Change Orders and Acknowledgment of Conformance with the City of Sunny Isles Beach.



Contract Price: The total monies payable to the Contractor under the Contract Documents.

Contract Time: The number of calendar days stated in the Agreement for the completion of the Work.

Contracting Officer: The individual who is authorized to sign the contract documents on behalf of the City's governing body.

Contractor: The person, firm or corporation with whom the City has executed this Agreement.

Day: A calendar day of twenty-four hours measured from midnight to the next midnight.

Field Order: A written order issued by the City which clarifies or interprets the Contract Documents or orders minor changes in the Work.

Modification: Modification means any one of the following: (a) a written amendment of the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation if issued by the City, or (d) a written order for minor change or alteration in the Work issued by the City. A modification may only be issued after execution of the Agreement.

Notice of Award: The written notice by City to the apparent successful Proposers stating that upon compliance with the conditions precedent to be fulfilled by him within the time specified, City will execute and deliver the Agreement to him.

Samples: Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Specifications: Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work.

Statement of Services: The form furnished by the City which is to be used by the Contractor in requesting progress payments.

Supplier: Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

Work: Any and all obligations, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by Contractor under the Contract Documents, including all labor, materials, equipment and other incidentals, and the furnishing thereof.

Written Notice: The term "Notice" as used herein shall mean and include all written notices, demands, instructions, claims, approvals and disapproval's required to obtain compliance with Contract requirements.

Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or to an authorized representative or such individual, firm, or corporation, or if delivered at or sent by registered mail to the last business address known to them who gives the notice. Unless otherwise stated in writing, any notice to or demand upon the City under this Contract shall be delivered to the City.

1.31 BID AWARD:

The City reserves the right to reject any and all Bids at its sole discretion. Bids shall be awarded by the City after the City performs all necessary searches, inquiries, exploration, and analysis of the Bids. The Bid shall be awarded to the lowest responsible and responsive proposer whose Bid best serves the interests of and represents the best value to the City in conformity with the criteria set forth in Section 62-8 of the City Code. No Notice of Award will be given until the City has concluded any investigation(s) as they deem necessary to establish the Proposer's capability to perform the Services as described in this RFP, ITB, RFP or ITQ, as substantiated by the required professional experience, client references, technical knowledge and qualifications; and sufficient labor and equipment to comply with the City's established standards, as well as the financial capability of the Proposer to perform the Work in accordance with the Contract Documents to the satisfaction of the City within the time prescribed. The City reserves the right to reject the Bid of any Proposers on the basis of these queries and investigations and who does not meet the City's satisfaction, even though the firm may be the lowest dollars and cents Bid. In analyzing Bids, the City will also take into consideration client references, past work experience and work product, proven ability to satisfactorily perform. If the Contract is awarded, the City will issue the Notice of Award and give the successful Proposers a Contract for execution within ninety (90) days after opening of Bids. The City specifically reserves the right to award the contract to a proposer who is not necessarily the lowest dollars and cents proposers on the basis of the results of these queries and investigation(s).

1.32 EXECUTION OF AGREEMENT:

At least four counterparts of the Agreement, the Performance Bond, the Certificates of Insurance and such other Documents as required by the Contract Documents shall be executed and delivered by Contractor to the City within ten (10) calendar days of receipt of the Notice of Award.

1.33 LAWS AND REGULATIONS:

The Contractor will give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the Contractor observes that the Specifications are at variance therewith, they will give the City prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the City, they will bear all costs arising wherefrom.

1.34 TAXES:

The City of Sunny Isles Beach is exempt from sales tax imposed by the State and/or Federal Government. Florida Sales Tax Exemption No. 23-00-477131-54C appears on each purchase order. Exemption certificates are available upon request.

1.35 DUTY TO DEFEND, INDEMNIFY AND SAVE HARMLESS:

In consideration of the separate sum of twenty-five dollars (\$25.00) and other valuable consideration, the Contractor shall defend, indemnify and hold harmless the City, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any



operations connected with the Work described in the Contract Documents, or by or in consequence of any negligence in connection with the same; or by use of any improper materials or by or on account of any act or omission of the said Contractor or his Sub-Contractor, agents, servants or employees. The Contractor will defend, indemnify and hold harmless the City and their agents or employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Work itself) including the loss of use resulting wherefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, Sub-Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder. In the event that a court of competent jurisdiction determines that Sec. 725.06 (2), F.S. is applicable to this Work, then in lieu of the above provisions of this section the parties agree that Contractor shall indemnify, defend and hold harmless the City, their officers and employees, to the fullest extent authorized by Sec. 725.06 (2) F.S., which statutory provisions shall be deemed to be incorporated herein by reference as if fully set forth herein. In the event that any action or proceeding is brought against City by reason of any such claim or demand, Contractor, upon written notice from City shall defend such action or proceeding by counsel satisfactory to City. The indemnification provided above shall obligate Contractor to defend at its own expense or to provide for such defense, at City's option, any and all claims of liability and all suits and actions of every name and description that may be brought against City, excluding only those which allege that the injuries arose out of the sole negligence of City, which may result from the operations and activities under this Contract whether the Work be performed by Contractor, its Sub-Contractors, or by anyone directly or indirectly employed by either.

1.36 DECISIONS ON DISAGREEMENTS:

The City will be the initial interpreter of the Technical Specifications.

1.37 CITY MAY TERMINATE:

If the Contractor is adjudged bankrupt or insolvent, or if they make a general assignment for the benefit of their creditors, or if a trustee or receiver is appointed for the Contractor or for any of their property, or if they file a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws, or if they repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if they repeatedly fail to make prompt payments to Sub-Contractors or for labor, materials or equipment or they disregard laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if they disregard the authority of the City, or if they otherwise violate any provision of, the Contract Documents, then the City may, without prejudice to any other right or remedy and after giving the Contractor and the surety ten (10) days written notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method they may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the City. Such costs incurred by the City will be determined by the City and incorporated in a Change Order. If after termination of the Contractor under this Section, it is determined by a court of competent jurisdiction for any reason that the Contractor was not in default, the rights and obligations of the City and the Contractor shall be the same as if the termination had been issued pursuant to this document.

1.37.1 Where the Contractor's services have been so terminated by the City said termination shall not affect any rights of the City against the Contractor then existing or which may thereafter accrue. Any retention

or payment of moneys by the City due the Contractor will not release the Contractor from liability.

1.37.2 Upon ten (10) days written notice to the Contractor, the City may, without cause and without prejudice to any other right or remedy, elect to terminate the Agreement. In such case, the Contractor shall be paid for all Work executed and accepted by the City as of the date of the termination. No payment shall be made for profit for Work which has not been performed.

1.38 MISCELLANEOUS:

Proposers acknowledge the following miscellaneous conditions:

1.38.1 Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to them who gives the notice.

1.38.2 The Contract Documents shall remain the property of the City. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project.

1.38.3 The duties and obligations imposed by these General Conditions, Special Conditions and Supplemental Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor and those in the Special Conditions and the rights and remedies available to the City, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available by law, by special guarantee or by other provisions of the Contract Documents.

1.38.4 Should the City or the Contractor suffer injury or damage to its person or property because of any error, omission, or act of the other or of any of their employees or agents or others for whose acts they are legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such in jury or damage.

1.39 WAIVER OF JURY TRIAL:

City and Contractor knowingly, irrevocably voluntarily and intentionally waive any right either may have to a trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract Documents or the performance of the Work there under.

1.40 GOVERNING LAW:

The Contract shall be construed in accordance with and governed by the law of the State of Florida.

1.41 VENUE:

Venue of any action to enforce the Contract Documents shall be in Miami-Dade County, Florida.

1.42 ARBITRATION:

It is the intention of the parties that whenever possible, if a dispute or controversy arises hereunder then such dispute or controversy shall be settled by arbitration in accordance with the procedures, rules and regulations of the American Arbitration Association. The decision rendered by the Arbitrator shall be final and binding upon the parties and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Arbitration shall be held in Miami-Dade County, Florida. All costs of arbitration and



attorneys' fees incurred by the parties shall be paid by the non-prevailing party or, if neither party prevails on the whole, each party shall be responsible for a portion of the costs of arbitration and their respective attorneys' fees as may be determined by the court on confirmation.

1.43 **PROJECT RECORDS:**

City shall have right to inspect and copy during regular business hours at City's expense, the books and records and accounts of Contractor which relate in any way to the Project, and to any claim for additional compensation made by Contractor, and to conduct an audit of the financial and accounting records of Contractor which relate to the Project. Contractor shall retain and make available to City all such books and records and accounts, financial or otherwise, which relate to the Project and to any claim for a period of three years following final completion of the Project. During the Project and the three year period following final completion of the Project, Contractor shall provide City access to its books and records upon five days written notice.

1.44 **SEVERABILITY:**

If any provision of the Contract or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of the Contract, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

1.45 **INDEPENDENT CONTRACTOR:**

The Contractor is an independent Contractor under the Contract. Services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to services rendered under the Contract shall be those of the Contractor.

End of Section



Section 2 Special Terms and Conditions

A. **PURPOSE OF BID**

The purpose of this solicitation is to select a financial institution (herein, "bank") to provide full banking services for the City of Sunny Isles Beach, in conjunction with the City's needs. The objectives are to obtain the best banking services while minimizing costs to the City, maximizing earnings and avoiding unreasonable risks.

2.2 **TERM**

This contract will commence on the first calendar day of the month succeeding approval of the contract by the City Commission, or designee, unless otherwise stipulated in the Notice of Award letter, which is distributed by the City's Purchasing Agent; and contingent upon the completion and submittal of all required proposal documents. The projected start date is July, 1, 2014, after commission approval. The contract shall remain in effect for an initial term of five (5) years; provided that the services rendered by the successful Proposer during the contract period are satisfactory.

In the event services are scheduled to end because of the expiration of this contract, the Vendor shall continue the service upon the request of the City. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The successful Proposer shall be compensated for the service at the rate(s) in effect when the City invokes this extension clause.

2.3 **OPTIONS TO RENEW**

Prior to, or upon completion, of that initial term, the City shall have the option at its sole discretion to renew this contract for an additional five (5) year period. Prior to completion of each exercised contract term, the City may consider an adjustment to price based on changes in the following pricing index: Consumer Price Index for "All Urban Consumers for Miami-Fort Lauderdale, FL" as published by the U.S. Department of Labor Statistics for the twelve (12) months ending July of each year to be effective for the next contract period.

It is the successful Proposer's responsibility to request any pricing adjustment under this provision. For any adjustment to commence on the first day of any exercised option period, the vendor's request for adjustment should be submitted 90 days prior to expiration of the then current contract term. The successful Proposer's adjustment request should not be in excess of the relevant pricing index change. If no adjustment request is received from the successful Proposer, the City will assume that the bank has agreed that the optional term may be exercised without pricing adjustment. Any adjustment request received after the commencement of a new option period may not be considered.

The City reserves the right to negotiate lower pricing for the additional term(s) based on market research information or other factors that influence price. The City reserves the right to apply any



reduction in pricing for the additional term(s) based on the downward movement of the applicable index.

The City reserves the right to reject any price adjustments submitted by the successful Proposer and/or to not exercise any otherwise available option period based on such price adjustments. Continuation of the contract beyond the initial period, and any option subsequently exercised, is a City prerogative, and not a right of the bank. This prerogative will be exercised only when such continuation is clearly in the best interest of the City.

Should the successful bank decline the City's right to exercise the option period, the City may consider the bank in default which may affect that bank's eligibility for future contracts.

2.4 PRICE

Prices shall remain fixed and firm through the term of the contract.

2.5 PERFORMANCE AND PAYMENT BOND

Intentionally Omitted

2.6 DELIVERY

Intentionally Omitted

2.7 INSURANCE

2.7.1 Comprehensive General Liability

Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Premises and Operation
- Workers Compensation (Statutory)
- Independent Contractors
- Products and/or Completed Operations Hazard
- Broad Form Property Damage
- Broad Form Contractual Coverage applicable to this specific Contract
- Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.
- Professional Liability (Errors and Omissions)



2.7.2 Business Automobile Liability

Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Owned Vehicles;
- Hired and Non-Owned Vehicles;
- Employers' Non-Ownership.

Before the contract period commences, the successful Proposer will file and make sure that all certificates of insurance required by this document and by the Contract are in the City's possession. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the City by certified mail. The City shall be named as an additional insured on the above-referenced policies.

2.7.3 Worker's Compensation Insurance

Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and 00/100 dollars (\$100,000.00) per accident. Contractor agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

2.7.4 Cancellation and Re-Insurance:

If any insurance should be canceled or changed by the insurance company or should any insurance expire during the period of this contract, the successful Proposer shall be responsible for securing other acceptable insurance to provide the coverage specified in this section to maintain coverage during the life of this Contract. All deductibles must be declared by the successful Proposer and must be approved by the City. At the option of the City, either the bank shall eliminate or reduce such deductible or it shall procure a Bond, in a form satisfactory to the City, covering the same.

2.8 FEDERAL, STATE AND LOCAL REGULATIONS

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



associated with regulatory requirements shall be included in the project cost whether depicted specifically or not within the body of the proposal.

END OF SECTION



Section 3 Scope of Services / Technical Specifications

3.1 **BACKGROUND**

The City of Sunny Isles Beach is located on a barrier island in the northeast corner of Miami-Dade County, bounded by the Atlantic Ocean on the east and the Intracoastal Waterway on the west. The City is experiencing a major redevelopment renaissance on the east side of Collins Avenue, the main thoroughfare. To the west of Collins Avenue, the City is building parks, improving the infrastructure and laying the groundwork for future redevelopment. The City has a diverse population of approximately 21,000 residents and almost one million vacationers visit Sunny Isles Beach annually.

3.2 **SCOPE OF SERVICES**

There are several services which are required as part of this RFP. All services must be included in the proposal in order for it to be considered. It is the intent of the City to select one financial institution to provide full banking services for all City funds. The list below is a general overview and may not be all inclusive of the City's banking services required.

General Overview of Banking Services

| | |
|--|---|
| Operating Account | Automated Clearing House (ACH) |
| Accounts Payable Account (ZBA) | Wire / Funds Transfers |
| Payroll Account (ZBA) | Information Reporting |
| Merchant Services Account | Account Reconciliation |
| Flexible Spending Account | Stop Payment |
| Money Market Account | Return Items |
| Online Banking/Treasury Management | Positive Pay |
| Online Retrieval of Check and Deposit Images | Remote Deposit Capture |
| Business credit cards | Electronic vendor payments (e-payables) |

A. General Requirements

1. Treasury Management System

The bank must be able to provide daily reporting for all transactions on the City's



accounts in order for the City to record transaction information in a timely manner to the general ledger and maintain a positive daily cash position. The City currently utilizes an internet-based treasury management system to receive daily balances and detailed transactions for its accounts. The City wishes to continue utilizing this type of treasury management system to receive daily account information. The treasury management system will allow for user security levels set up by a system administrator in order to access its features.

2. Other

1. The City will be implementing Edmunds & Associates MCSJ financial systems management software package on October 1, 2014. The successful bank shall demonstrate past experience with integrating with the Edmunds system or a comparable system in the following ways:
 - i. Electronic processing of Positive Pay files
 - ii. Electronic processing of check reconciliation files
 - iii. Export and import of ACH electronic payment files
2. The demonstrated experience must include accepted Edmunds MCSJ accepted file layouts, statement showing banking systems accept standard Edmunds exports, and listing of previous customers using banking services with Edmunds MCSJ system or a comparable system in each instance.

B. Account Information

The City currently maintains one operating account (depository), two (2) secondary accounts and two (2) zero balance (ZBA) accounts.

1. Operating Account

- i. This account is used for check and cash deposits and other activity to include, but not limited to, incoming and outgoing wire transfers, incoming and outgoing ACH transactions, and other electronic credits and debits. It's also used for any return item charge backs. This is the main account to which the zero balance accounts are linked.
- ii. The proposer will provide the interest rate offer for this account as well as discuss any other options (money market account, etc.) to gain a higher yield with limitations governing those options as to maximum monthly withdrawals, minimum balances to be maintained, etc.
- iii. The proposer will describe its process for FDIC charges and whether the bank plans on passing these fees to the City.



2. Secondary account – Merchant

This account is used for credit card deposits only. The City currently has four (4) merchant accounts. Two merchant accounts are with John Hancock, one with EMPS and one with our current bank, BB&T.

3. Secondary account – Flexible Spending (cafeteria)

This account is used for employees' flexible spending and is maintained by a third party administrator.

4. Zero balance account – Accounts Payable

This account is used for all check payments to vendors. The funds are swept into or out of this account to or from the Operating account.

5. Zero balance account – Payroll

This account is used for payroll. The funds are swept into or out of this account to or from the Operating account.

The City reserves the right to open additional accounts during the contract period. Proposers must indicate documents required to open a new account.

C. Deposit Processing and Remote Deposit Capture

1. The bank will provide the ability to deposit checks using remote deposit capture. A check scanner and appropriate software will be provided to the City to digitally capture the check images for deposit. The deposit will be balanced and an electronic deposit slip created. The file would then be transmitted to the bank through a secure website for posting to the City's operating account. Proposer shall describe its remote deposit capture services to include related costs to the City.
2. The Proposer will specify the requirements for depositing checks and currency along with its availability schedule for deposited items: cash, in-state checks, out-of-state checks, foreign checks, etc. The bank will allow deposits with an attached breakdown of individual checks rather than itemizing each check on the deposit slip.

D. Information Reporting

1. The Proposer shall describe the types of information reporting their internet based treasury management system provides (i.e. cash balances, ACH debits and credits, wire transfers, reconciliation, positive pay decisions, stop payments, account activity, etc.).



2. The Proposer will provide details regarding how far back data is warehoused, how many business days the data is stored in the reporting system and available for City access for the types of data listed above.
3. The Proposer will provide a sample of their daily online reporting.

E. Account Statements

Bank statements for all City accounts will be provided monthly at the end of each calendar month. Statements shall be delivered no later than seven (7) banking days after the end of each calendar month. Statements will contain images of the front and back of the cleared checks. All the information shown on the statement will be accessible through an internet based treasury management system and be able to be downloaded into an Excel or csv format.

F. Overdraft

If the total amount of checks and/or other payments exceeds the available balance of the Operating Account or any other non-linked City account, the Proposer agrees to pay all checks presented for payment. The Proposer will notify the Finance Director or City Manager immediately so that corrective action may be taken. Proposers must provide information regarding overdraft protection as well as any assessment of fees.

G. Stop Payments

1. The bank agrees to accept stop payment orders online utilizing an internet based treasury management system. If the respective check is unpaid, the bank will provide online confirmation of the stop payment order as well as follow up with written confirmation. The Bank shall be responsible for any item cashed if the item was confirmed as a stop payment as of a specific date and is subsequently cashed by the bank.
2. A cancellation of a stop payment order will be handled in the same manner.
3. Proposers will indicate to the City in their proposals the time period a stop payment order remains in effect.
4. Each Proposer will also indicate whether a cost-effective electronic online process is available for stop payment orders.

H. Deposit Returned Items

All returned checks due to insufficient funds or other reasons will **NOT** be automatically re-deposited a second time. Instead, these checks will be returned to the City's Finance Department. The bank will provide the ability to access online return checks for the Operating account to include an image of the check returned. The bank will also provide the



ability to retrieve a history of returned items.

I. Wire Transfers

The bank will provide the City same day wire transfer service for outgoing transfers and accept incoming transfers into the account for immediate credit. The City transfers money via wire transfer using both repetitive and non-repetitive wires. Both repetitive and non-repetitive wire transfers will be done utilizing an internet based treasury management system. The Proposer will provide its cut-off deadline for same day outgoing wire transfers.

J. ACH Files/Transfers

1. The bank will provide the City the ability to receive and send Automated Clearing House (ACH) transfers / files utilizing an internet based treasury management system. The Proposer will provide the timeline for ACH transfers, including deadlines, timing of receiving deposits and withdrawals from disbursement accounts using the ACH system.
2. Payroll Direct Deposit - The City is on a bi-weekly payroll basis, covering an average of 250 employees every other Friday. The net payroll amounts to approximately \$500,000 (\$350,000 net payroll / \$150,000 tax liability). Of this amount, approximately 96% or 240 employees have direct deposit. The Proposer will provide details of how their bank administers a direct deposit payroll program, including, but not limited to:
 - i. Procedures for receiving electronic payroll, including transmission deadlines for direct deposit ACH files and description of when funds are debited from the City's account.
 - ii. Details on how to handle a void and reversal of an individual direct deposit item.
 - iii. Details on whether it is possible to reverse or cancel an ACH file and the appropriate procedures that apply.
3. Electronic Vendor Payments - The City will be implementing electronic payments to its vendors for their outstanding invoices. The Proposer shall include a description of the system and bank's process used to accommodate this feature and the associated costs, indicating any requirements and initial and ongoing marketing efforts provided by the bank to encourage sign up by vendors.

K. Banking Supplies

The bank will provide all necessary banking supplies, including but not limited to, tamper-proof disposal style deposit bags, deposit slips (two-part carbonless), deposit stamps, coin wrappers and envelopes. The City reserves the right to obtain supplies from a vendor other



than the depository bank. The Proposer shall provide a list of any fees assessed for these items.

L. Bank Collateralization of City Funds

Deposits are to be collateralized as required by Chapter 280, Florida State Statutes. Florida State law requires that banks must pledge to the State certain acceptable types of securities having a market value equal to fifty percent (50%) to one hundred twenty-five percent (125%) of the highest account balance which the City may have on deposit at any one time reduced by the amount of FDIC insurance available. Each proposing bank shall provide their specific collateralization guidelines, if they vary from the statutory requirements or require additional explanation.

M. Disaster Recovery

The bank shall provide information regarding their disaster recovery plan including a specific plan related to serving the City in the event of disaster. A contact name and phone number is to be provided for service 24 hours a day and 7 days a week.

N. Positive Pay

The bank will provide Positive Pay to ensure the City's protection and security against fraud and theft. The City will transmit files bi-weekly on Fridays for payroll disbursements and weekly on Fridays or Mondays for accounts payable disbursements. The bank shall have the capability to accept an uploaded file from the City's accounting system as well as manual entries into the Positive Pay software for checks issued during interim periods. The Proposer shall provide details of the bank's process as it relates to this system and also discuss alternative procedures should the City be unable to transmit the file electronically (i.e. during a disaster). The bank will contact the City via phone or email if the City has not provided instruction to pay or return a check prior to the Positive Pay cut-off deadline.

O. Credit Cards Processing

The City will provide a separate RFP for merchant services in the near future.

P. Armored Car Service

1. The bank will provide services necessary for the City to utilize an Armored Courier Service for pick-up of the City's deposits for same day deposit. Pick-up will be daily at one location within the City, as follows:
 - City Hall, Finance Department, 4th Floor, 18070 Collins Avenue – Deposits from this location are to be picked up for same day credit on select days in which the City is open for business. Frequency of pick-ups has not been determined yet. Proposer shall provide the latest time each day deposits can be picked up for same day credit and the fee structure based upon every day, every other day



and intermittent frequencies.

2. Each and every deposit pick-up will be receipted for by signature in a City maintained log book.
3. The armored courier service company will service the pick-up location and keep current photo identification and signature samples of each and every person assigned to pick up such deposits from the designated City location. This provided documentation will be relied upon by the City for turnover of such deposits.
4. The Proposer must state in the proposal if there are additional charges assessed to the City for deposits greater than a certain dollar amount.
5. A credit will be applied to the City's charges on the analysis statement in the event that the courier fails to pick up at the designated time and location.

Q. Business Credit Cards

The City uses business credit cards for every day purchases. There are currently five (5) active credit card accounts assigned to departments. Proposer shall submit a description of the credit card programs it offers along with the respective program stipulations, any card incentives/rebates (i.e. rewards program, etc.) and any minimum spend requirements for other card programs provided.

R. Costs of Account Maintenance

The City will pay for banking services using an **Account Analysis** calculation, whereby the bank will bill for the quantity of services provided multiplied by a specific unit cost less an **Earnings Credit**. The bank will provide the City with a monthly account analysis statement for each account detailing activity volume versus associated unit costs, cost extensions and a summary analysis for all accounts combined.

1. Proposer shall provide a sample monthly analysis statement based upon the City's Bank statement and Account Analysis statement for the most recent month. See **ATTACHMENT B** and **ATTACHMENT C**. The sample account analysis should include, at a minimum:
 - i. Description of Service
 - ii. Target Average Collected Balance – minimum target daily balance which produces a monthly earnings credit sufficient to pay/offset monthly bank service fees
 - iii. Earnings Credit Rate – the proposer will identify the index used
 - iv. Monthly Earnings Credit



- v. Net Service Charge – total bank service fees less the Earnings credit
- vi. Interest earnings rate on excess balances over minimum target balance

S. Fee Structure

Proposer is to complete ATTACHMENT A to include a comprehensive list of all fees associated with the services being requested in this Request for Proposal (RFP). All per item charges will remain fixed for the life of the contract and all optional renewal periods. However, in the event that any customer of the Bank, having comparable deposits and transaction volumes, negotiates a lower fee structure for these requested services or similar services, the Bank shall notify the Finance Director within thirty (30) days and shall extend the lower negotiated rate to the City retroactively to the first date the lower rate was offered to another customer. Should the Bank fail to provide the City the lower negotiated rate within ninety (90) days, the Bank shall be required to reimburse the City the difference between the amount the City was charged under its original contract and the amount the City would have been charged under the lower negotiated rate.

T. Confirmations

The bank must agree to respond to audit confirmations and requests for data, at no charge, as needed from the Finance Department or its auditors. Proposer will provide a name and address for the audit confirmation letter.

U. Continuous Service

The bank will maintain sufficient staff to support the City's requirements on a continuing basis without interruption of service. Severe or repeated breakdowns of service for this reason will be cause for termination of the contract. The City requires that the bank designate one of its cash management services personnel who will act as liaison with the City for matters regarding its accounts.

V. Audit and Inspection of Records

1. The bank shall permit the authorized representatives of the City to inspect and audit all data and records of the bank, if any, relating to the performance under the contract. Such data and records shall be preserved by the bank as required by applicable regulatory bodies.
2. In addition, the City will be provided information in order to access electronic quarterly and annual financial reports which indicate the financial soundness of the institution.

W. Transition Plan



Proposer shall describe their conversion plan to transfer assets of the City to their bank. Include information regarding lead-time necessary before the contracts can be implemented, and include plan details for educating and training City employees in the use of the bank's systems. Proposer shall provide a timeline schedule for full implementation, of which, should be at no cost to the City.

X. Employee Benefits

1. The bank will cash payroll checks for City employees at no cost whether they have an account with the bank or with another financial institution.
2. Proposer shall describe incentives it would provide to City employees who have accounts with their bank and/or participate in payroll direct deposit or who wish to open a new account with their bank (i.e. free checking) and other programs offered that may be beneficial to City employees.

END OF SECTION



Section 4 Evaluation Process

4.1 Review of Proposals For Responsiveness

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in the solicitation. A responsive proposal is one which follows the requirements of this solicitation that includes all documentation, is submitted in the format outlined in this solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive. The contract will be awarded to the lowest responsible and responsive Proposer whose proposal best serves the interest of and represents the best values to the City in conformity with section 62-8 of the City code.

4.2 Qualifications

The City will consider the following factors below in evaluating the qualifications of the proposers:

| | |
|----|--|
| 1. | Pricing, Fees and Interest Earnings/Earnings Credit Rate |
| 2. | Scope of Services - Bank's ability to provide the type and quality of services requested |
| 3. | Banking Experience, References and Financial Stability |
| 4. | State of the Art Technology – On-line Services/Information Reporting Capabilities |
| 5. | Transition Plan - Approach and Methodology from contract commencement to full implementation |

4.3 Price Evaluation

The price proposal should include all components of specifications provided. It shall be evaluated subjectively in combination with the qualifications provided, including an evaluation of how well it matches Proposer's understanding of the City's needs described in this solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process. The City reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the City.

4.4 Negotiations

The City may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.



Notwithstanding the foregoing, if the City and said Proposer(s) cannot reach agreement on a contract, the City reserves the right to terminate negotiations and may, at the City Manager's or designee's discretion, begin negotiations with the next lowest responsible and responsive Proposer. This process may continue until a contract acceptable to the City has been executed or all proposals are rejected. No Proposer shall have any rights against the City arising from such negotiations or termination thereof.

Any Proposer recommended for negotiations must provide to the City:

- a) Its most recent audited financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period. A copy of the most recent business income tax return will be accepted if audited financial statements are unavailable.
- b) Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three years.

END OF SECTION



Section 5 Proposal Format

5.0 FORMAT

Proposers must submit (1) original and four (4) copies of the Proposal. The original Proposal must contain an original signature. Be sure that the individual signing the Proposal is authorized to commit the Proposer's organization to the Proposal as submitted. Each page of the Proposal should state the name of the Proposer, the RFP number, and the page number. The City reserves the right to request additional data or material to support Proposals. All material submitted in response to the RFP will become the property of the City.

LABEL EACH SECTION AS NUMBERED

In response to this proposal, the proposal must be in the following format and provide the following information:

1. Title Page
 - The name of the Proposer's firm, address, telephone number, name of contact person and the date.
2. Table of Contents
 - Include a clear identification of the material by section and by page.
3. Transmittal Letter
 - A letter of transmittal, signed by an authorized officer of your company, briefly stating the Proposer's understanding of the services to be performed and a positive commitment to perform the services described herein. Provide the name(s) of the person(s) who will be authorized to make representations for the Proposer, their titles, office and E-mail addresses and telephone numbers.
4. Company Information
 - Name of Financial Institution (including any "Doing Business As" names)
 - Headquarters and local Branch Locations
 - Internet Web Site Address (if any)
 - Details of Entity Business Structure (Corporation, Partnership, LLC)
 - Date Founded
 - Headquarters address and telephone number, and local branch address and phone number
 - Proof of insurance
 - Indication of how long it would take to implement service after authorized to begin



- List of any outstanding litigation that would threaten the viability of the firm or the performance of this contract
- Financial Stability of the Bank along with audited financial statements

5. Qualifications and Requirements

In order to be considered responsive, Proposers shall, at a minimum, demonstrate compliance with the following Pre-Qualification Criteria in their proposal. All requested documentation and/or information shall be provided in the Proposal to confirm that the Proposer has satisfied the Prequalification Criteria in order to be properly evaluated as listed herein. Proposers failing to meet these requirements shall be deemed non-responsive. The Proposer shall, at the time of Proposal submittal, time of award, and throughout the duration of the Contract, continue to meet the following Pre-qualification Criteria requirements as stated in the Solicitation Documents.

Each Proposer must:

- Be a Federal or Florida chartered bank with a principal Branch office located within a ten (10) mile radius of the city of Sunny Isles Beach, Florida, from the zip code 33160. Preference may be given to proposing banks with a principal Branch office within the city limits of Sunny Isles, Beach.
- Be a member of the Federal Reserve System;
- Be an approved public depository by the Treasurer of the State of the Florida set forth in Chapter 280, Florida Statutes, and the Florida Security for Public Deposits Act and maintain this status throughout the life of the contract. A proposing bank shall provide evidence of its status as a qualified public depository.
- Have at least five (5) years' experience having provided the scope of services as outlined in the RFP and provide details of this experience. The City will review the bank's incorporation date filed on Sunbiz.org by month and year. The submittal due date is the period of time counted for the three year experience.
- Provide an explanation of why the Proposer is the best qualified to perform the contract and demonstrate its qualifications including an item-by-item disclosure outlining how the firm meets or exceeds the requirements of this RFP.

6. References

- The Proposer must provide five (5) verifiable references, preferably, a minimum of three (3) municipalities/local governments, for projects of similar scope as outlined in this RFP. Please ensure the contact information provided is up to date and accessible. The information provided for the references must include:
 - Name of the firm for which services were/or are being provided
 - Name of reference (project manager)



- Type of account and services provided, the year services started and, if applicable, ended.
- Phone number and updated e-mail address for reference (project manager).
- Proposer must complete the top portion of the Reference Check Form (see Attachment D) and submit with their proposal. The references provided will be sent, via email, this Reference Check Form. Please ensure that the references your firm provides are aware they will be receiving a Reference Form from the City of Sunny Isles Beach to complete by a specified due date.

7. Personnel Experience and Qualifications

- Provide relevant experience and qualifications of key personnel (i.e. designated representative, project manager, etc.), including key personnel of subcontractors, that will be assigned to the City's accounts and experience and qualifications of subcontractors, if applicable
- The composition of the team should include:
 - The names of the employees in the area responsible for this contract
 - Their function in the company
 - The name of the person who will be responsible for the coordination of work through to implementation

8. Pricing and Fees

- Provide a schedule of proposed services and fees including earnings credit rate and, if applicable, interest rate on excess balances (amount that exceeds target minimum balance that produces a monthly earnings credit sufficient to pay/offset all service fees each month).
- The Proposer must complete ATTACHMENT A and submit with their proposal.

END OF SECTION



DELIVER TO:

City of Sunny Isles Beach
City Clerk
18070 Collins Avenue
Sunny Isles Beach, FL 33160

**REQUEST FOR PROPOSAL
SECTION 6
BID SUBMITTAL FORMS**

**OPENING: 2:30 P.M.
Thursday, 5/15/2014**

PLEASE QUOTE PRICES, LESS TAXES, FOR THE
CITY OF SUNNY ISLES BEACH, FLORIDA

NOTE: City of Sunny Isles Beach is exempt from all taxes (Federal, State, and Local). Bid price should be less all taxes. Tax Exemption Certificate furnished upon request.

| | | | |
|------------|------------------|--------------|-----------------------------------|
| Issued by: | Purchasing Agent | Date Issued: | This Bid Submittal Consists of |
| | | 04/24/2014 | Pages 28 through 31 |

Sealed bids are subject to the Terms and Conditions of this Request for Proposal and the accompanying Bid Submittal. Such other contract provisions, specifications, drawings or other data as are attached or incorporated by reference in the Bid Submittal, will be received at the office of the City Clerk at the address shown above until the above stated time and date, and at that time, publicly opened for furnishing the supplies or services described in the accompanying Bid Submittal Requirement.

**RFP 14-04-02
Banking Services**

A Financial Institution Fidelity Bond for employee dishonesty on a Blanket Basis with a minimum limit of **\$37,000,000** will be required upon execution of the contract by the successful bidder and City of Sunny Isles Beach. The bond shall be endorsed to cover "Third Party" liability including a third party beneficiary clause in favor of the City of Sunny Isles Beach. The bond shall include a minimum of twelve (12) month Discovery Period when written on a Loss Sustained Basis.

Procurement Agent:
Andrew Rozwadowski

Firm Name:

Commodity Code(s):
SRV-946-25 (Demandstar)
946-25 (Bidsync)

RETURN ONE ORIGINAL AND FOUR COPIES OF BID SUBMITTAL PAGES AND AFFIDAVITS

FAILURE TO SIGN PAGE 31 OF SECTION 4 BID SUBMITTAL WILL RENDER YOUR BID NON-RESPONSIVE



**SECTION 6
BID SUBMITTAL FOR:**

ACKNOWLEDGEMENT OF ADDENDA

INSTRUCTIONS: COMPLETE PART I OR PART II, WHICHEVER APPLIES

PART I:

LIST BELOW ARE THE DATES OF ISSUE FOR EACH ADDENDUM RECEIVED IN CONNECTION WITH THIS BID

Addendum #1, Dated _____

Addendum #2, Dated _____

Addendum #3, Dated _____

Addendum #4, Dated _____

Addendum #5, Dated _____

Addendum #6, Dated _____

Addendum #7, Dated _____

Addendum #8, Dated _____

PART II:

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS BID

FIRM NAME: _____

AUTHORIZED SIGNATURE: _____ **DATE:** _____

TITLE OF OFFICER: _____



BID SUBMITTAL FORM

Bid Title: Banking Services

The undersigned Proposers proposes and agrees, if this Bid is accepted, to enter into an agreement with The City of Sunny Isles Beach to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

The Proposers accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Proposers, including without limitation those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for 90 days after the day of Bid opening. The Proposers agrees to sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within ten days after the date of the City's Notice of Award.

In submitting this Bid, the Proposer represents, as more fully set forth in the Agreement, that:

- The Proposer has familiarized himself/herself with the nature and extent of the Contract Documents, Work, locality, and all local conditions and Law and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- The Proposer has studied carefully all specifications and requirements.
- The Proposer has given the City written notice of all conflicts, errors, discrepancies that it has discovered in the Contract Documents and the written resolution thereof by City is acceptable to the Proposer.
- This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; the Proposer has not directly or indirectly induced or solicited any other Proposers to submit a false or sham Bid; the Proposer has not solicited or induced any person, firm or corporation to refrain from Bidding; and Proposer has not sought by collusion to obtain for itself any advantage over any other Proposers or over the City.

The City and the successful Proposer will establish completion times for each individual Work Item and the successful Proposer agrees that the work will be completed within the time frames agreed upon and stipulated in the individual Purchase Orders and/or Notice to Proceed.



Firm Name: _____

Street Address: _____

Mailing Address (if different): _____

Telephone No. _____ Fax No. _____

Email Address: _____ FEIN No. ___/___-___/___/___/___/___/___

**** "By signing this document the bidder agrees to all Terms***

Signature:

(Signature of authorized agent)

Print Name: _____

Title: _____

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS OFFER.



AFFIDAVITS





PUBLIC ENTITY CRIMES

City of Sunny Isles Beach
18070 Collins Avenue
Sunny Isles Beach, FL 33160
Telephone: (305) 947-0606 Fax: (305) 949-3113

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a) FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

PUBLIC ENTITY CRIMES

Pursuant to the provisions of paragraph (2) (a) of Section 287.133, Florida State Statutes - "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Bid on a Contract to provide any goods or services to a public entity, may not submit a Bid on a Contract with a public entity for the construction or repair of a public building or public Work, may not submit Bids on leases of real property to a public entity, may not be awarded to perform Work as a Contractor, supplier, Sub-Contractor, or Consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount Category Two of Sec. 287.017, FS for thirty six months from the date of being placed on the convicted vendor list".

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

11.1. This sworn statement is submitted to City of Sunny Isles Beach

by _____
[print individual's name and title]

for _____
[print name of entity submitting sworn statement]

whose business address is:

and (if applicable) its Federal Employer Identification number (FEIN) is _____.
(If the entity had no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.)

11.2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any Bid or Contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

11.3. I understand that "convicted" or "conviction" as defined in Para. 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

11.4. I understand that an "affiliate" as defined in Para. 287.133(1)(a), Florida Statutes, means:

- a.) predecessor or successor of a person convicted of a public entity crime; or
- b.) Any entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executors, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair

market value under an arm's length agreement, shall be a prime facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

11.5. I understand that a "person" as defined in Para. 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding Contract and which Bids or applies to Bid on Contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "persons" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of any entity.

11.6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

_____ Neither the entity submitting this sworn statement, nor any of it's officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order.)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 11.1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY, CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

By:

(Signature)

(Printed Name)

(Title)

Sworn to and subscribed before me this _____ day of _____, 20____, by

(AFFIX NOTARY STAMP HERE)

Signature: **Notary Public – State of Florida**

Print or Type Commissioned Name

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____



EQUAL OPPORTUNITY /
AFFIRMATIVE ACTION

City of Sunny Isles Beach
18070 Collins Avenue
Sunny Isles Beach, FL 33160
Telephone: (305) 947-0606 Fax: (305) 949-3113

EQUAL OPPORTUNITY/AFFIRMATIVE ACTION STATEMENT

The contractors and all subcontractors hereby agree to a commitment to the principles and practices of equal opportunity in employment and to comply with the letter and spirit of federal, state, and local laws and regulations prohibiting discrimination based on race, color, religion, national region, sex, age, handicap, marital status, and political affiliation or belief.

Signed: _____

Title: _____

Firm: _____

Address: _____



CONFLICT OF INTEREST

City of Sunny Isles Beach
18070 Collins Avenue
Sunny Isles Beach, FL 33160
Telephone: (305) 947-0606 Fax: (305) 949-3113

CONFLICT OF INTEREST STATEMENT

The award of any contract hereunder is subject to the provisions of Chapter 112, Florida State Statutes. Proposers must disclose with their Bids, the name of any officer, director, partner, associate or agent who is also an officer or employee of the City of Sunny Isles Beach or its agencies.

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who was duly sworn, deposes, and states:

18.1. I am the _____ of _____ with a local office in _____ and principal office in _____.

18.2. The above named entity is submitting a Bid for the City of Sunny Isles Beach, Bid No. _____ described as: Landscape Maintenance Services. The Affiant has made diligent inquiry and provides the information contained in this Affidavit based upon his own knowledge.

18.3 The Affiant states that only one submittal for the above Bid is being submitted and that the above named entity has no financial interest in other entities submitting Bids for the same project.

18.4 Neither the Affiant nor the above named entity has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraints of free competitive pricing in connection with the entity's submittal for the above Bid. This statement restricts the discussion of pricing data until the completion of negotiations if necessary and execution of the Contract for this project.

18.5 Neither the entity nor its affiliates, nor any one associated with them, is presently suspended or otherwise ineligible from participation in contract letting by any local, State, or Federal Agency.

18.6 Neither the entity, nor its affiliates, nor any one associated with them have any potential conflict of interest due to any other clients, contracts, or property interests for this project.

18.7 I certify that no member of the entity's ownership or management is presently applying for any employee position or actively seeking an elected position with the City of Sunny Isles Beach.

18.8 I certify that no member of the entity's ownership or management, or staff has a vested interest in any aspect of the City of Sunny Isles Beach.

18.9 In the event that a conflict of interest is identified in the provision of services, I, on behalf of the above named entity, will immediately notify the City of Sunny Isles Beach.

Dated this _____ day of _____, 2010.

AFFIANT

Print or Type Name and Title

Sworn to and subscribed before me this _____ day of _____, 2010.

Personally Known _____ OR
 Produced Identification _____; Type of Identification _____

NOTARY PUBLIC STATE OF FLORIDA



DISPUTE DISCLOSURE

City of Sunny Isles Beach
18070 Collins Avenue
Sunny Isles Beach, FL 33160
Telephone: (305) 947-0606 Fax: (305) 949-3113

DISPUTE DISCLOSURE FORM

Answer the following questions by placing a "X" after "Yes" or "No". If you answer "Yes", please explain in the space provided, or on a separate sheet attached to this form.

19.1. Has your firm or any of its officers, received a reprimand of any nature or been suspended by the Department of Professional Regulations or any other regulatory agency or professional associations within the last five (5) years?

YES _____ NO _____

19.2. Has your firm, or any member of your firm, been declared in default, terminated or removed from a contract or job related to the services your firm provides in the regular course of business within the last five (5) years?

YES _____ NO _____

19.3. Has your firm had against it or filed any requests for equitable adjustment, contract claims, Bid protests, or litigation in the past five (5) years that is related to the services your firm provides in the regular course of business?

YES _____ NO _____ If yes, state the nature of the request for equitable adjustment, contract claim, litigation, or protest, and state a brief description of the case, the outcome or status of the suit and the monetary amounts of extended contract time involved.

I hereby certify that all statements made are true and agree and understand that any misstatement or misrepresentation or falsification of facts shall be cause for forfeiture of rights for further consideration of this Bid for the City of Sunny Isles Beach.

Firm

Date

Authorized Signature

Print or Type Name and Title



ANTI-KICKBACK

City of Sunny Isles Beach
18070 Collins Avenue
Sunny Isles Beach, FL 33160
Telephone: (305) 947-0606 Fax: (305) 949-3113

ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF _____)

I, the undersigned, hereby duly sworn and deposed say that no portion of this sum herein Bid will be paid to any employees of the City of Sunny Isles Beach or its elected officials as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Title: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ [name of person], as _____ [type of authority], for _____ [name of party on behalf of whom instrument was executed].

AFFIX NOTARY STAMP HERE:

Notary Public – State of Florida

Print or Type Commissioned Name

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

ATTACHMENT A

RFP 2014-04-03

Banking Services

City of Sunny Isles Beach

Total Cost Proposal:

Note: Proposers are to complete the unit price and total monthly cost columns below. List any additional fees not referenced herein in the space provided, or in an attachment. Proposers may also submit their own file in hard copy excel format, along with a CD of the excel file to be included as part of the proposal submittal, as long as the analysis prepared, at a minimum includes the items below with unit price and monthly cost information.

| Service Provided | 3 Mth Avg Unit Volume | Unit Price | Monthly Cost | Comments |
|---|----------------------------------|-------------------|---------------------|-----------------|
| Balance Related Charges | | | | |
| FDIC insurance Charge | 37,870,000 | | | |
| General Banking Services | | | | |
| Deposits and Other Credits | 86 | | \$ - | |
| Items deposited - BB&T | 81 | | \$ - | |
| Items Deposited - In State | 577 | | \$ - | |
| Items Deposited - Other | 275 | | \$ - | |
| Checks Paid and Other Debits | 357 | | \$ - | |
| Branch Check Image Access | 1 | | \$ - | |
| Coin and Currency Deposited | 36,528 | | \$ - | |
| Deposit Corrections | 0 | | \$ - | |
| Night Depository Services | 50 | | \$ - | |
| Easy Image Statement | 1 | | \$ - | |
| Returned Deposit/Cash Item | 3 | | \$ - | |
| Wire Transfer Services | | | | |
| CMOL Outgoing Repetitive Wires | 14 | | \$ - | |
| CMOL Outgoing Non-Repetitive Wires | 0 | | \$ - | |
| Incoming Wires | 1 | | \$ - | |
| ACH Services | | | | |
| ACH Received Credit | 82 | | \$ - | |
| ACH Received Debit | 21 | | \$ - | |
| ACH Monthly Maintenance | 1 | | \$ - | |
| Total ACH Originated Items | 2 | | \$ - | |
| ACH Acct Block Filter Service | 1 | | \$ - | |
| ACH Acct Block Reports | 1 | | \$ - | |
| CMOL ACH File | 0 | | \$ - | |
| Reconciliation Services | | | | |
| CD -Rom Maintenance | 1 | | \$ - | |
| CD-Rom Items | 304 | | \$ - | |
| CD-Rom Disk | 1 | | \$ - | |
| CD-Rom Multiple Acct Fee | 2 | | \$ - | |
| Information Services (Cash Manager Online) | | | | |
| CMOL CD Acct Maintenance | 1 | | \$ - | |
| CMOL Business Banking | 4 | | \$ - | |
| CMOL CD Acct Maintenance | 1 | | \$ - | |
| CMOL - CD Loaded Items | 84 | | \$ - | |
| CMOL Business Banking | 1 | | \$ - | |
| CMOL BusBank - PD Loaded Items (Fee for AP acct) | 88 | | \$ - | |
| CMOL BusBank - PD Loaded Items (No fee for Op/Payroll/Merch acct) | 527 | | \$ - | |

ATTACHMENT A

RFP 2014-04-03

Banking Services

City of Sunny Isles Beach

Total Cost Proposal:

Note: Proposers are to complete the unit price and total monthly cost columns below. List any additional fees not referenced herein in the space provided, or in an attachment. Proposers may also submit their own file in hard copy excel format, along with a CD of the excel file to be included as part of the proposal submittal, as long as the analysis prepared, at a minimum includes the items below with unit price and monthly cost information.

| Service Provided | 3 Mth Avg Unit Volume | Unit Price | Monthly Cost | Comments |
|---|----------------------------------|-------------------|---------------------|-----------------|
| CMOL BusBank - Image Retrieved (Fee for Operating acct) | 3 | | \$ - | |
| CMOL BusBank - Image Retrieved (No fee for AP/Payroll/Merch acct) | 8 | | \$ - | |
| CMOL BusBank - Stop Pay 6 mth | 2 | | \$ - | |
| Cash Management Services | | | | |
| ZBA + Master | 1 | | \$ - | |
| ZBA + Sub | 2 | | \$ - | |
| ZBA + Reporting | 3 | | \$ - | |
| International Services | | | | |
| Checks Drawn on Canadian Banks | 1 | | | |
| Other (newly added services) | | | | |
| Positive Pay | | | | |
| Remote Deposit Capture | | | | |
| Armored Car Service | | | | |
| List any Additional Fees not referenced above | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

ATTACHMENT B

(continued)

| DATE | DESCRIPTION | AMOUNT(\$) |
|-------|--|--------------|
| 03/04 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 61,399.07 |
| 03/05 | CHECK CHRG HARLAND CLARKE THE CITY OF SUNNY ISLE | 101.45 |
| 03/05 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 171,518.70 |
| 03/06 | ACH CORP DEBIT CRC FLA DEPT REVENUE THE CITY OF SUNNY ISLE | 131,167.98 |
| 03/06 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 14,293.57 |
| 03/06 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 339,036.64 |
| 03/07 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140307-00009454 | 158.94 |
| 03/07 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140307-00010187 | 2,700.35 |
| 03/07 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140307-00010186 | 6,079.96 |
| 03/07 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140307-00010189 | 10,448.36 |
| 03/07 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140307-00010380 | 872.24 |
| 03/07 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140307-00010381 | 2,043.83 |
| 03/07 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140307-00010379 | 3,483.20 |
| 03/07 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 7,693.82 |
| 03/07 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 141,239.65 |
| 03/10 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 1,438.26 |
| 03/10 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 3,875.44 |
| 03/11 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 774.98 |
| 03/11 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 51,908.40 |
| 03/12 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 76.15 |
| 03/12 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 32,737.23 |
| 03/13 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 1,191,186.36 |
| 03/14 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 374.54 |
| 03/14 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 3,743.33 |
| 03/17 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 227.50 |
| 03/17 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 181,132.11 |
| 03/18 | Return Deposit Item 9999 99000271 | 100.00 |
| 03/18 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 89,983.54 |
| 03/19 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 1,222.00 |
| 03/19 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 41,424.98 |
| 03/20 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 106,842.11 |
| 03/20 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 341,796.51 |
| 03/21 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140321-00010043 | 158.94 |
| 03/21 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140321-00010037 | 872.24 |
| 03/21 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140321-00010038 | 2,043.83 |
| 03/21 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140321-00010041 | 2,700.35 |
| 03/21 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140321-00010035 | 3,631.05 |
| 03/21 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140321-00010040 | 4,621.36 |
| 03/21 | REPETITIVE PC WIRE TRANSFER WIRE REF# 20140321-00010042 | 10,847.23 |
| 03/21 | SERVICE CHARGES - PRIOR PERIOD | 7.50 |
| 03/21 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 24,569.43 |
| 03/21 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 140,434.58 |
| 03/24 | DEPOSIT CORRECTION | 5.00 |
| 03/24 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 2,750.47 |
| 03/24 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 41,340.33 |
| 03/25 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 474.60 |
| 03/25 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 3,660.00 |
| 03/26 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 2,712.50 |
| 03/27 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 2,620.59 |
| 03/27 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 84,494.87 |
| 03/28 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 1,248.00 |
| 03/28 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 81,329.37 |
| 03/31 | AUTOMATIC ACCOUNT TRANSFER [REDACTED] | 29,262.03 |

Total other withdrawals, debits and service charges = \$3,396,338.98

Deposits, credits and interest

| DATE | DESCRIPTION | AMOUNT(\$) |
|-------|---|------------|
| 03/03 | VENDOR PAY MIAMI-DADE COUNT 0002OF SUNNY ISLES BE | 25,687.69 |
| 03/05 | PAYMENTS STATE OF FLORIDA 0007CITY OF SUNNY IS | 1,169.40 |
| 03/05 | DEPOSIT | 1,338.00 |
| 03/05 | DEPOSIT | 1,725.00 |

continued

ATTACHMENT B

[REDACTED] continued)

| DATE | DESCRIPTION | AMOUNT(\$) |
|-------|--|------------|
| 03/05 | DEPOSIT | 6,445.13 |
| 03/05 | DEPOSIT | 12,456.00 |
| 03/05 | DEPOSIT | 14,187.98 |
| 03/05 | DEPOSIT | 38,196.16 |
| 03/05 | DEPOSIT | 40,825.83 |
| 03/07 | VENDOR PAY MIAMI-DADE COUNT 0002OF SUNNY ISLES BE | 599.61 |
| 03/07 | DEPOSIT | 1,000.00 |
| 03/07 | DEPOSIT | 1,740.00 |
| 03/07 | DEPOSIT | 4,174.00 |
| 03/07 | DEPOSIT | 8,237.69 |
| 03/07 | DEPOSIT | 12,657.67 |
| 03/07 | DEPOSIT | 20,000.00 |
| 03/07 | DEPOSIT | 51,068.40 |
| 03/07 | DEPOSIT | 177,166.07 |
| 03/10 | MISC PAY DOJ TREAS 310 SUNNY ISLES BEACH PD | 755.10 |
| 03/11 | VENDOR PAY MIAMI-DADE COUNT 0002OF SUNNY ISLES BE | 264.90 |
| 03/12 | VENDOR PAY MIAMI-DADE COUNT 0004OF SUNNY ISLES BE | 1,881.07 |
| 03/13 | PAYMENTS STATE OF FLORIDA 0007CITY OF SUNNY IS | 35,170.37 |
| 03/14 | TRIALCREDIT BANK OF AMERICA 4936 THE CITY OF SUNN | 0.01 |
| 03/14 | DEPOSIT | 115.00 |
| 03/14 | DEPOSIT | 415.00 |
| 03/14 | DEPOSIT | 2,418.00 |
| 03/14 | DEPOSIT | 4,187.00 |
| 03/14 | DEPOSIT | 6,931.05 |
| 03/14 | DEPOSIT | 12,237.15 |
| 03/14 | DEPOSIT | 12,305.30 |
| 03/14 | DEPOSIT | 21,765.55 |
| 03/17 | CREDIT MEMO | 0.30 |
| 03/17 | DEPOSIT | 9,288.94 |
| 03/17 | DEPOSIT | 11,752.99 |
| 03/17 | DEPOSIT | 44,931.28 |
| 03/17 | VENDOR PAY MIAMI-DADE COUNT 0002OF SUNNY ISLES BE | 496,847.85 |
| 03/18 | INCOMING WIRE TRANSFER WIRE REF# 20140318-00005983 | 1,500.00 |
| 03/19 | DEPOSIT | 238.00 |
| 03/19 | DEPOSIT | 856.00 |
| 03/19 | DEPOSIT | 1,835.57 |
| 03/19 | DEPOSIT | 30,825.00 |
| 03/20 | MISC PAY DOJ TREAS 310 SUNNY ISLES BEACH PD | 1,879.29 |
| 03/20 | CORP PYMNT FLORIDA POWER & 0007CITY OF SUNNY IS | 176,022.27 |
| 03/21 | DEPOSIT | 370.00 |
| 03/21 | DEPOSIT | 2,803.00 |
| 03/21 | DEPOSIT | 6,525.01 |
| 03/21 | DEPOSIT | 11,496.30 |
| 03/21 | DEPOSIT | 11,989.54 |
| 03/21 | INTEREST PAYMENT | 12,774.56 |
| 03/21 | PAYMENTS STATE OF FLORIDA 0007CITY OF SUNNY IS | 90,427.24 |
| 03/24 | MISC PAY DOJ TREAS 310 SUNNY ISLES BEACH PD | 302.04 |
| 03/24 | DEPOSIT | 2,000.00 |
| 03/24 | DEPOSIT | 2,683.00 |
| 03/24 | VENDOR PAY MIAMI-DADE COUNT 0002OF SUNNY ISLES BE | 88,100.00 |
| 03/25 | PAYMENTS STATE OF FLORIDA 0007CITY OF SUNNY IS | 6,970.68 |
| 03/25 | PAYMENTS STATE OF FLORIDA 0007CITY OF SUNNY IS | 16,777.31 |
| 03/26 | PAYMENTS STATE OF FLORIDA 0007CITY OF SUNNY IS | 125,444.24 |
| 03/28 | VENDOR PAY MIAMI-DADE COUNT 0002OF SUNNY ISLES BE | 1.58 |
| 03/28 | DEPOSIT | 10.00 |

continued

ATTACHMENT B

(continued)

| DATE | DESCRIPTION | AMOUNT(\$) |
|--------------------------------------|-------------|------------------|
| 03/28 | DEPOSIT | 10.00 |
| 03/28 | DEPOSIT | 100.00 |
| 03/28 | DEPOSIT | 235.00 |
| 03/28 | DEPOSIT | 2,000.00 |
| 03/28 | DEPOSIT | 4,451.00 |
| 03/28 | DEPOSIT | 5,184.66 |
| 03/28 | DEPOSIT | 7,081.17 |
| 03/28 | DEPOSIT | 7,661.48 |
| 03/28 | DEPOSIT | 8,169.91 |
| 03/28 | DEPOSIT | 8,356.76 |
| 03/28 | DEPOSIT | 9,864.54 |
| 03/28 | DEPOSIT | 11,222.39 |
| 03/28 | DEPOSIT | 14,651.46 |
| 03/28 | DEPOSIT | 16,493.99 |
| 03/28 | DEPOSIT | 18,300.61 |
| 03/28 | DEPOSIT | 21,957.42 |
| 03/28 | DEPOSIT | 24,405.88 |
| 03/28 | DEPOSIT | 32,269.14 |
| Total deposits, credits and interest | | = \$1,864,187.53 |

ATTACHMENT C

THE CITY OF SUNNY ISLES BEACH
[REDACTED]

AASTMT
As Of Dates: 2014-04-05
Printed On: Apr 17, 2014 9:49:36 AM

GROUP ACCOUNT USD

As of 2014-04-05
Feed Name: ACCTS

04-04-2014

THE CITY OF [REDACTED]
 C/O FINANCE DEPARTMENT
 18070 COLLINS AVE
 SUNNY ISLES BEACH FL 33160-2723

FROM 03-01-2014
 TO 03-31-2014

PAGE 1

COMBINED ANALYSIS

| ACCOUNTS INCLUDED IN ANALYSIS | | | | |
|--|--------|--|--------|--|
| DEPOSITS | 01 | [REDACTED] | 01 | [REDACTED] |
| | 01 | [REDACTED] | 01 | [REDACTED] |
| AVERAGE BALANCE | | | | 37,937,729.20 |
| LESS: AVERAGE FLOAT | | | | 57,554.26 |
| AVERAGE COLLECTED BALANCE | | | | 37,880,174.94 |
| AVG POSITIVE COLLECTED BAL | | | | 37,880,174.94 |
| LESS: REQUIRED RESERVES | | | | .00 |
| AVG POSITIVE AVAILABLE BAL | | | | 37,880,174.94 |
| LESS: BALANCE REQUIRED | | | | 1,603,959.13- |
| NET AVAILABLE BALANCE | | | | 36,276,215.81 |
| APPLICABLE RATES: | | | | |
| EARNINGS CREDIT | .450 | INTEREST | .450 | |
| ***INTEREST AMOUNT | | ACCOUNT | 01 | [REDACTED] 13,864.47 |
| ***SERVICE CHARGE AMOUNT | | | | 22.50 |
| BANK SERVICES SECTION | | | | |
| | UNITS | RATE | AMOUNT | BAL REQUIRED |
| ** GENERAL BANKING SERVICES ** | | | | |
| DEPOSITS AND OTHER CREDITS | 95 | .000 | .00 | |
| ITEMS DEPOSITED - [REDACTED] | 96 | .000 | .00 | |
| ITEMS DEPOSITED - IN STATE | 759 | .000 | .00 | |
| ITEMS DEPOSITED - OTHER | 330 | .000 | .00 | |
| CHECKS PAID AND OTHER DEBITS | 351 | .000 | .00 | |
| BRANCH CHECK IMAGE ACCESS | 2 | 5.000 | 10.00 | |
| | | **NO CHARGE | | |
| CHECK CHARGES | 1 | 101.450 | 101.45 | |
| | | **BILLED SEPARATELY | | |
| COIN AND CURRENCY DEPOSITED | 38,563 | .00175 | 67.49 | 176,586.73 |
| DEPOSIT CORRECTIONS | 1 | 6.000 | 6.00 | 15,698.92 |
| NIGHT DEPOSITORY SERVICES | 58 | 2.000 | 116.00 | 303,512.54 |
| EASY IMAGE STATEMENT | 1 | 3.000 | 3.00 | 7,849.46 |
| RETURNED DEPOSIT/CASH ITEM FEE | 1 | .000 | .00 | |

ATTACHMENT C

** SUBTOTAL **

303.94

503,647.65

ATTACHMENT C

USD

GROUP ACCOUNT

**As of 2014-04-05
Feed Name: ACCTS**

04-04-2014

THE CITY OF SUNNY ISLES BEACH
C/O FINANCE DEPARTMENT
18070 COLLINS AVE
SUNNY ISLES BEACH FL 33160-2723

FROM 03-01-2014
TO 03-31-2014

PAGE 2

GROUP NO.

COMBINED ANALYSIS

| BANK SERVICES SECTION | UNITS | RATE | AMOUNT | BAL REQUIRED |
|---------------------------------------|-------|--------|--------|--------------|
| ** WIRE TRANSFER SERVICES ** | | | | |
| INCOMING WIRE | 1 | 7.000 | 7.00 | 18,315.41 |
| CMOL REPETITIVE WIRE | 14 | 9.000 | 126.00 | 329,677.41 |
| ** SUBTOTAL ** | | | 133.00 | 347,992.82 |
| ** ACH SERVICES ** | | | | |
| ACH RECEIVED CREDIT | 85 | .250 | 21.25 | 55,600.35 |
| ACH RECEIVED DEBIT | 19 | .080 | 1.52 | 3,977.06 |
| ACH MONTHLY MAINTENANCE | 1 | 45.000 | 45.00 | 117,741.93 |
| ACH ACCT BLOCK FILTER SERVICE | 1 | 10.000 | 10.00 | 26,164.87 |
| ACH ACCOUNT BLOCK REPORT(S) | 1 | 10.000 | 10.00 | 26,164.87 |
| ** SUBTOTAL ** | | | 87.77 | 229,649.08 |
| ** RECONCILIATION SERVICES ** | | | | |
| CD-ROM MAINTENANCE | 1 | 22.500 | 22.50 | 58,870.96 |
| CD-ROM ITEMS | 298 | .050 | 14.90 | 38,985.66 |
| CD-ROM DISK | 1 | 15.000 | 15.00 | 39,247.31 |
| CD-ROM MULTIPLE ACCOUNT FEE | 2 | 10.000 | 20.00 | 52,329.74 |
| ** SUBTOTAL ** | | | 72.40 | 189,433.67 |
| ** INFORMATION SERVICES ** | | | | |
| CMOL CD ACCT MAINT | 1 | 7.500 | 7.50 | 19,623.65 |
| CMOL BUSINESS BANKING | 4 | 7.500 | 30.00 | 78,494.62 |
| CMOL CD ACCT MAINT | 1 | 7.500 | 7.50 | 19,623.65 |
| CMOL - CD LOADED ITEMS | 92 | .080 | 7.36 | 19,257.34 |
| CMOL BUSINESS BANKING | 1 | 7.500 | 7.50 | 19,623.65 |
| CMOL BUSBANK - PD LOADED ITEMS | 70 | .350 | 17.50 | 45,788.53 |
| CMOL BUSBANK - PD LOADED ITEMS | 538 | .000 | .00 | |
| CMOL BUSBANK - IMAGE RETRIEVED | 1 | 2.000 | 2.00 | 5,232.97 |
| CMOL BUSBANK - IMAGE RETRIEVED | 9 | .000 | .00 | |
| CMOL BUSBANK - STOP PAY-6 MTH | 3 | .000 | .00 | |
| ** SUBTOTAL ** | | | 79.36 | 207,644.41 |
| ** CASH MANAGEMENT SERVICES ** | | | | |
| ZBA + MASTER | 1 | 20.000 | 20.00 | 52,329.74 |
| ZBA + SUB | 2 | 5.000 | 10.00 | 26,164.87 |

ATTACHMENT C

| GROUP ACCOUNT | | | | | USD |
|---|-------|-------|--------|-----------------|-----|
| As of 2014-04-05 | | | | | |
| Feed Name: ACCTS | | | | | |
| | | | | 04-04-2014 | |
| THE CITY OF SUNNY ISLES BEACH C/O FINANCE DEPARTMENT 18070 COLLINS AVE SUNNY ISLES BEACH FL 33160-2723 | | | | FROM 03-01-2014 | |
| | | | | TO 03-31-2014 | |
| | | | | PAGE | 3 |
| GROUP NO. [REDACTED] | | | | | |
| COMBINED ANALYSIS | | | | | |
| BANK SERVICES SECTION | UNITS | RATE | AMOUNT | BAL REQUIRED | |
| ZBA + REPORTING | 3 | 6.000 | 18.00 | 47,096.77 | |
| ** SUBTOTAL ** | | | 48.00 | 125,591.38 | |
| ** INTERNATIONAL SERVICES ** | | | | | |
| CHECKS DRAWN ON CANADIAN BANKS | 3 | 7.500 | 22.50 | | |
| **EXPLICIT CHARGE | | | | | |
| ** SUBTOTAL ** | | | 22.50 | .00 | |
| BANK SERVICES | | | 613.02 | 1,603,959.13 | |
| BANK SERVICES:EXPLICIT | | | 22.50 | | |
| BANK SERVICES:BILL SEPARATE | | | 101.45 | | |
| BANK SERVICES:NO CHARGE | | | 10.00 | | |

ATTACHMENT C

| GROUP ACCOUNT | | | | | USD |
|--|------------|------------|----------------------------------|--------------|-----|
| As of 2014-04-05 | | | | | |
| Feed Name: ACCTS | | | | | |
| | | | | 04-04-2014 | |
| THE CITY OF SUNNY ISLES BEACH ACCOUNTS PAYABLE ACCT 18070 COLLINS AVE SUNNY ISLES BEACH FL 33160-2723 | | | FROM 03-01-2014 TO 03-31-2014 | | |
| | | | | PAGE | 5 |
| [REDACTED] [REDACTED] [REDACTED] | | | | | |
| GROUP NO. | [REDACTED] | [REDACTED] | COMBINED ANALYSIS | | |
| ACCOUNT NO. | [REDACTED] | [REDACTED] | CONTINUED | | |
| BANK SERVICES SECTION | UNITS | RATE | AMOUNT | BAL REQUIRED | |
| ** CASH MANAGEMENT SERVICES ** | | | | | |
| ZBA + SUB | 1 | 5.000 | 5.00 | 13,082.43 | |
| ZBA + REPORTING | 1 | 6.000 | 6.00 | 15,698.92 | |
| ** SUBTOTAL ** | | | 11.00 | 28,781.35 | |
| BANK SERVICES | | | 59.55 | 155,811.80 | |

ATTACHMENT C

GROUP ACCOUNT

As of 2014-04-05
Feed Name: ACCTS

04-04-2014

THE CITY OF SUNNY ISLES BEACH
OPERATING ACCT
18070 COLLINS AVE
SUNNY ISLES BEACH FL 33160-2723

FROM 03-01-2014
TO 03-31-2014

PAGE 6

GROUP NO.
ACCOUNT NO.

COMBINED ANALYSIS

| | |
|----------------------------|---------------|
| AVERAGE BALANCE | 36,857,944.78 |
| LESS: AVERAGE FLOAT | 57,554.25 |
| AVERAGE COLLECTED BALANCE | 36,800,390.53 |
| AVG POSITIVE COLLECTED BAL | 36,800,390.53 |
| LESS: REQUIRED RESERVES | .00 |
| AVG POSITIVE AVAILABLE BAL | 36,800,390.53 |
| LESS: BALANCE REQUIRED | 1,250,497.75 |
| NET AVAILABLE BALANCE | 35,549,892.78 |

APPLICABLE RATES:

EARNINGS CREDIT .450 INTEREST .450

***INTEREST AMOUNT 13,586.87

***SERVICE CHARGE AMOUNT 22.50

| BANK SERVICES SECTION | UNITS | RATE | AMOUNT | BAL REQUIRED |
|--------------------------------|--------|---------|--------|--------------|
| ** GENERAL BANKING SERVICES ** | | | | |
| DEPOSITS AND OTHER CREDITS | 58 | .000 | .00 | |
| ITEMS DEPOSITED - [REDACTED] | 96 | .000 | .00 | |
| ITEMS DEPOSITED - IN STATE | 759 | .000 | .00 | |
| ITEMS DEPOSITED - OTHER | 330 | .000 | .00 | |
| CHECKS PAID AND OTHER DEBITS | 53 | .000 | .00 | |
| BRANCH CHECK IMAGE ACCESS | 2 | 5.000 | 10.00 | |
| **NO CHARGE | | | | |
| CHECK CHARGES | 1 | 101.450 | 101.45 | |
| **BILLED SEPARATELY | | | | |
| COIN AND CURRENCY DEPOSITED | 38,563 | .00175 | 67.49 | 176,586.73 |
| DEPOSIT CORRECTIONS | 1 | 6.000 | 6.00 | 15,698.92 |
| NIGHT DEPOSITORY SERVICES | 58 | 2.000 | 116.00 | 303,512.54 |
| RETURNED DEPOSIT/CASH ITEM FEE | 1 | .000 | .00 | |
| ** SUBTOTAL ** | | | 300.94 | 495,798.19 |
| ** WIRE TRANSFER SERVICES ** | | | | |
| INCOMING WIRE | 1 | 7.000 | 7.00 | 18,315.41 |
| CMOL REPETITIVE WIRE | 14 | 9.000 | 126.00 | 329,677.41 |
| ** SUBTOTAL ** | | | 133.00 | 347,992.82 |

ATTACHMENT C

USD

GROUP ACCOUNT

As of 2014-04-05
Feed Name: ACCTS

04-04-2014

THE CITY OF SUNNY ISLES BEACH
OPERATING ACCT
18070 COLLINS AVE
SUNNY ISLES BEACH FL 33160-2723

FROM 03-01-2014
TO 03-31-2014

PAGE 7

GROUP NO.
ACCOUNT NO.

COMBINED ANALYSIS
CONTINUED

| BANK SERVICES SECTION | UNITS | RATE | AMOUNT | BAL REQUIRED |
|---|-------|--------|--------|--------------|
| ** ACH SERVICES ** | | | | |
| ACH RECEIVED CREDIT | 18 | .250 | 4.50 | 11,774.19 |
| ACH RECEIVED DEBIT | 1 | .080 | .08 | 209.31 |
| ACH MONTHLY MAINTENANCE | 1 | 45.000 | 45.00 | 117,741.93 |
| ACH ACCT BLOCK FILTER SERVICE | 1 | 10.000 | 10.00 | 26,164.87 |
| ACH ACCOUNT BLOCK REPORT(S) | 1 | 10.000 | 10.00 | 26,164.87 |
| ** SUBTOTAL ** | | | 69.58 | 182,055.17 |
| ** RECONCILIATION SERVICES ** | | | | |
| CD-ROM MAINTENANCE | 1 | 22.500 | 22.50 | 58,870.96 |
| CD-ROM DISK | 1 | 15.000 | 15.00 | 39,247.31 |
| ** SUBTOTAL ** | | | 37.50 | 98,118.27 |
| ** INFORMATION SERVICES ** | | | | |
| CMOL CD ACCT MAINT | 1 | 7.500 | 7.50 | 19,623.65 |
| CMOL BUSINESS BANKING | 1 | 7.500 | 7.50 | 19,623.65 |
| CMOL - CD LOADED ITEMS | 92 | .080 | 7.36 | 19,257.34 |
| CMOL BUSBANK - PD LOADED ITEMS | 138 | .000 | .00 | |
| CMOL BUSBANK - IMAGE RETRIEVED | 3 | .000 | .00 | |
| ** SUBTOTAL ** | | | 22.36 | 58,504.64 |
| ** CASH MANAGEMENT SERVICES ** | | | | |
| ZBA + MASTER | 1 | 20.000 | 20.00 | 52,329.74 |
| ZBA + REPORTING | 1 | 6.000 | 6.00 | 15,698.92 |
| ** SUBTOTAL ** | | | 26.00 | 68,028.66 |
| ** INTERNATIONAL SERVICES ** | | | | |
| CHECKS DRAWN ON CANADIAN BANKS **EXPLICIT CHARGE | 3 | 7.500 | 22.50 | |
| ** SUBTOTAL ** | | | 22.50 | .00 |
| BANK SERVICES | | | 477.93 | 1,250,497.75 |
| BANK SERVICES:EXPLICIT | | | 22.50 | |
| BANK SERVICES:BILL SEPARATE | | | 101.45 | |
| BANK SERVICES:NO CHARGE | | | 10.00 | |

ATTACHMENT C

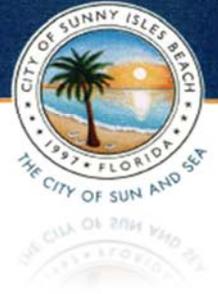
| GROUP ACCOUNT | | USD |
|--|-------|-----------------|
| As of 2014-04-05 | | |
| Feed Name: ACCTS | | |
| AA 889-23-01-00 | | 04-04-2014 |
| THE CITY OF SUNNY ISLES BEACH | | |
| PAYROLL ACCT | | FROM 03-01-2014 |
| 18070 COLLINS AVE | | TO 03-31-2014 |
| SUNNY ISLES BEACH FL 33160-2723 | | |
| | PAGE | 8 |
| <div style="display: flex; justify-content: space-around; margin-top: 20px;"> GROUP NO. [REDACTED] ACCOUNT NO. [REDACTED] COMBINED ANALYSIS [REDACTED] </div> | | |
| AVERAGE BALANCE | | .00 |
| LESS: AVERAGE FLOAT | | .00 |
| | | ----- |
| AVERAGE COLLECTED BALANCE | | .00 |
| AVG POSITIVE COLLECTED BAL | | .00 |
| LESS: REQUIRED RESERVES | | .00 |
| | | ----- |
| AVG POSITIVE AVAILABLE BAL | | .00 |
| LESS: BALANCE REQUIRED | | 85,009.64- |
| | | ----- |
| NET AVAILABLE BALANCE | | 85,009.64- |
| APPLICABLE RATES: | | |
| EARNINGS CREDIT | .450 | INTEREST .450 |
| ***SERVICE CHARGE AMOUNT | | 32.48 |
| BANK SERVICES SECTION | | |
| | UNITS | RATE |
| | | AMOUNT |
| | | BAL REQUIRED |
| ** GENERAL BANKING SERVICES ** | | |
| DEPOSITS AND OTHER CREDITS | 16 | .000 |
| CHECKS PAID AND OTHER DEBITS | 27 | .000 |
| | | ----- |
| ** SUBTOTAL ** | | .00 |
| ** ACH SERVICES ** | | |
| ACH RECEIVED DEBIT | 8 | .080 |
| | | ----- |
| ** SUBTOTAL ** | | .64 |
| ** RECONCILIATION SERVICES ** | | |
| CD-ROM ITEMS | 27 | .050 |
| CD-ROM MULTIPLE ACCOUNT FEE | 1 | 10.000 |
| | | ----- |
| ** SUBTOTAL ** | | 11.35 |
| ** INFORMATION SERVICES ** | | |
| CMOL BUSINESS BANKING | 1 | 7.500 |
| CMOL BUSBANK - PD LOADED ITEMS | 54 | .000 |
| CMOL BUSBANK - IMAGE RETRIEVED | 1 | 2.000 |

ATTACHMENT C

| GROUP ACCOUNT | | | | | USD |
|---|------------|------------|----------------------------------|--------------|-----|
| As of 2014-04-05 | | | | | |
| Feed Name: ACCTS | | | | | |
| | | | | 04-04-2014 | |
| THE CITY OF SUNNY ISLES BEACH PAYROLL ACCT 18070 COLLINS AVE SUNNY ISLES BEACH FL 33160-2723 | | | FROM 03-01-2014 TO 03-31-2014 | | |
| | | | | PAGE | 9 |
| [REDACTED] [REDACTED] [REDACTED] | | | | | |
| GROUP NO. | [REDACTED] | [REDACTED] | COMBINED ANALYSIS | | |
| ACCOUNT NO. | [REDACTED] | [REDACTED] | CONTINUED | | |
| BANK SERVICES SECTION | UNITS | RATE | AMOUNT | BAL REQUIRED | |
| CMOL BUSBANK - IMAGE RETRIEVED | 5 | .000 | .00 | | |
| ** SUBTOTAL ** | | | 9.50 | 24,856.62 | |
| ** CASH MANAGEMENT SERVICES ** | | | | | |
| ZBA + SUB | 1 | 5.000 | 5.00 | 13,082.43 | |
| ZBA + REPORTING | 1 | 6.000 | 6.00 | 15,698.92 | |
| ** SUBTOTAL ** | | | 11.00 | 28,781.35 | |
| BANK SERVICES | | | 32.49 | 85,009.64 | |

ATTACHMENT C

| GROUP ACCOUNT | | USD |
|---|------------|----------------------------------|
| As of 2014-04-05 | | |
| Feed Name: ACCTS | | |
| | | 04-04-2014 |
| THE CITY OF SUNNY ISLES BEACH C/O FINANCE DEPARTMENT 18070 COLLINS AVE SUNNY ISLES BEACH FL 33160-2723 | | FROM 03-01-2014 TO 03-31-2014 |
| | | PAGE 10 |
| [REDACTED] [REDACTED] [REDACTED] | | |
| GROUP NO. | [REDACTED] | COMBINED ANALYSIS |
| ACCOUNT NO. | [REDACTED] | [REDACTED] |
| AVERAGE BALANCE | | 1,079,784.41 |
| LESS: AVERAGE FLOAT | | .00 |
| AVERAGE COLLECTED BALANCE | | 1,079,784.41 |
| AVG POSITIVE COLLECTED BAL | | 1,079,784.41 |
| LESS: REQUIRED RESERVES | | .00 |
| AVG POSITIVE AVAILABLE BAL | | 1,079,784.41 |
| LESS: BALANCE REQUIRED | | 112,639.75- |
| NET AVAILABLE BALANCE | | 967,144.66 |
| APPLICABLE RATES: | | |
| EARNINGS CREDIT | .450 | INTEREST .450 |
| ***INTEREST AMOUNT | | 369.63 |
| BANK SERVICES SECTION | UNITS | RATE |
| ** GENERAL BANKING SERVICES ** | | |
| EASY IMAGE STATEMENT | 1 | 3.000 |
| | | 3.00 |
| ** SUBTOTAL ** | | 3.00 |
| ** ACH SERVICES ** | | |
| ACH RECEIVED CREDIT | 67 | .250 |
| | | 16.75 |
| ACH RECEIVED DEBIT | 10 | .080 |
| | | .80 |
| ** SUBTOTAL ** | | 17.55 |
| ** INFORMATION SERVICES ** | | |
| CMOL BUSINESS BANKING | 1 | 7.500 |
| | | 7.50 |
| CMOL CD ACCT MAINT | 1 | 7.500 |
| | | 7.50 |
| CMOL BUSINESS BANKING | 1 | 7.500 |
| | | 7.50 |
| CMOL BUSBANK - PD LOADED ITEMS | 146 | .000 |
| | | .00 |
| ** SUBTOTAL ** | | 22.50 |
| BANK SERVICES | | 43.05 |
| | | 112,639.75 |



ATTACHMENT D **Reference Check Form**

Proposer's Instructions: Fill out top portion in the box only.

| | |
|----------------------------|--------------------------------|
| Bid/RFP Number: 2014-04-03 | |
| Title: Banking Services | |
| Proposer/Respondent: _____ | |
| Reference (Firm): _____ | |
| Fax#: _____ | Email: _____ Telephone#: _____ |
| Person to contact: _____ | Title: _____ |

(Please print or type)

Reference Instructions: The above Proposer has given your name to the City of Sunny Isles Beach as a reference. Please complete the information below and fax to 305-792-1639 or email to Purchasing@sibfl.net within five (5) days.

Describe the scope of work of the contract awarded by your firm to this Vendor.

What problems were encountered (claims)?

How would you rate the contract on a scale of low (1) to high (10) for the following?

| | |
|-----------------------|---------------------|
| Professionalism _____ | Final Product _____ |
| Qualifications _____ | Cooperation _____ |
| Budget Control _____ | Reliability _____ |

Would you contract with this Vendor again? Yes [] No [] Maybe []

Comments:

Thank you.