



# OPENEDGE CHECK SERVICES MERCHANT APPLICATION

Merchant's DBA Name/Outlet Name:		Merchant's Legal Name:	
City of Pembroke Pines		City of Pembroke Pines	
Contact Name at this Address:		Contact Name at this Address:	
Lisa Chong		Lisa Chong	
Email:		Email:	
lchong@ppines.com		lchong@ppines.com	
Physical Street Address (No Po Box):		Legal Address:	
601 City Center Way		601 City Center Way	
City, State, Zip:		City, State, Zip:	
Pembroke Pines, FL, 33025		Pembroke Pines, FL, 33025	
DBA Phone:	Fax:	Corp Phone:	Fax:
(954) 450-1090		(954) 450-1090	
Company Stock Ticker (If Publicly Traded):		Website Address (Required for Internet Merchants):	
		https://www.ppines.com/	
Customer Service Phone (Required for Moto and Internet Merchants Only):		Federal Tax ID #:	Years in Business (Current Owner):
(954) 450-1090			60
<b>Merchant Profile</b>			
Type of Ownership: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Professional Assoc <input type="checkbox"/> Other <input type="checkbox"/> Tax Exempt Org (510c)			SIC/MCC Code: 9   3   9   9
Description of Products or Services Sold:			
Municipal Services			

<b>Account Deposit and Funds Information</b>			
Transaction Funding Bank Routing/Transit Number:		Transaction - Bank Account Number:	Transaction Type of Account:
			<input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings
Billing Bank Routing/Transit Number (If different from Funding Account):		Billing Bank - Bank Account Number:	Billing Type of Account:
			<input type="checkbox"/> Checking <input type="checkbox"/> Savings

<b>Requested Activity Transaction Processing Information</b>	
Annual Check Sales	Average Transaction
8,142,402	187
Please provide accurate estimates of your expected ACH and/or Check21 activity. This information will be used during underwriting as a guide to establish your transaction limits. Requested amounts below are subject to approval by OpenEdge Risk Management	
Highest Single Monthly Amount \$	Highest Single Transaction Amount \$
819,798	33,192

<b>OpenEdge Check Services Requested - Please select all that apply. Estimate volume % for each selection (Must total 100%)</b>			
<b>Paper Check Conversion - Remote Deposit Capture: Please Note: Hardware is required for these Transaction Types</b>			
<input type="checkbox"/>	I receive paper checks through the mail or in a lockbox.	ARC	0%
<input type="checkbox"/>	I receive paper checks at the time of the sale. I later process and convert them to an electronic payment.	BOC	0%
<input type="checkbox"/>	I receive paper checks at the time of the sale and I process and convert them at the same time to an electronic payment.	POP	0%
<b>Electronic Check (a paper check is not presented)</b>			
<input checked="" type="checkbox"/>	I have written pre-arranged agreements with my consumers to debit or credit their personal bank account for the goods or service I sell.	PPD	1%
<input checked="" type="checkbox"/>	I take transactions on a phone call from my consumers.	TEL	20%
<input checked="" type="checkbox"/>	Payments are submitted to me via a website, shopping cart or similar method.	WEB	79%
<input type="checkbox"/>	We have pre-arranged written agreements with our Corporate Partner authorizing us to debit or credit their bank accounts.	CCD	0%

<b>Additional Services Available</b>	
<input type="checkbox"/> Check Verification Services	<input type="checkbox"/> Check 21 (AIR)

**EMAIL NOTIFICATION**☒ Please send email notifications of returned items

Primary Email Address lchong@ppines.com

Secondary Email Address

**AUTO RE-PRESENTMENT**

Would you like OpenEdge to automatically re-present ACH and/or Check21 NFS returns?

☐ Yes ☒ No If yes, please complete Re-Presentation Options below.**ACH RE-PRESENTMENT OPTIONS**Face Amount - Maximum Number of Re-Presentments (select one): ☐ 2 ☒ 1

Timing of Re-Presentation: of Days (0=immediately)

**CHECK21 RE-PRESENTMENT OPTIONS**Face Amount - Maximum Number of Re-Presentments (select one): ☐ 2 ☒ 1

Timing of Re-Presentation: of Days (0=immediately)

**Corporate Officers or Principal** (A Principal is an Owner, or, If a Public Corporation Senior Officers Starting With CTO, CEO or President.)

Name of Principal:	Title of Principal:	% Owned:	Phone Number:	Residential Address, City, State, Zip:
Lisa Chong	Finance Director	0%	(954) 450-1090	601 City Center Way, Pembroke Pines, FL, 33025
		%		, , ,
		%		, , ,

**Personal Guarantee**

As a primary inducement to OpenEdge Payments LLC ("OpenEdge") to enter into this Agreement, the persons indicated and signing below (the "Guarantor(s)") do jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to OpenEdge pursuant to this Agreement, as it now exists or amended from time to time, with or without notice. Guarantor(s) understands that OpenEdge may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by OpenEdge or Merchant. This guarantee will not be discharged or affected by the death of Guarantor(s), will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of OpenEdge. Guarantor(s) understand that the inducement to OpenEdge to enter into this Agreement is consideration for the guarantee, and that this guarantee remains in full force and affect even if the Guarantor(s) receive no additional benefit from the guarantee. This guarantee shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variations of terms of this Agreement. Guarantor(s) agree to promptly provide to OpenEdge or its agents any information requested by any of them from time to time concerning its financial conditions(s), business relationships, business history, and employment information. Guarantor(s) have read, understand, and agree to be bound by the terms and conditions set forth in this Merchant Application as well as the OpenEdge Check Services Agreement, and certifies that all information provided in these applications is true and correct and complete. Guarantor(s) authorize OpenEdge or any credit reporting agency employed by OpenEdge or any agent of OpenEdge, to make whatever inquiries OpenEdge deems appropriate to investigate, verify or research references, statements or data obtained for the purpose of this Merchant Application.

Print Name:	Social Security #:	Date of Birth:
Street Address:	City/State/Zip:	Years at Address:
Home Phone:	Email Address:	
Signature:		Date:
Print Name:	Social Security #:	Date of Birth:
Street Address:	City/State/Zip:	Years at Address:
Home Phone:	Email Address:	
Signature:		Date:

**Signature**

The undersigned is duly authorized to sign on behalf of the Merchant and to bind the Merchant to the terms and conditions set forth in this Merchant Application and the OpenEdge Check Services Agreement ("Agreement"), which terms and conditions are acknowledged and agreed to by the Merchant, and certifies that all information provided in this Merchant Application is true, correct and complete. The undersigned signing on behalf of the Merchant is a legal resident of the United States of America, is at least 18 years of age, and authorizes OpenEdge or any credit reporting agency employed by OpenEdge or any agent of OpenEdge, to make whatever inquiries OpenEdge deems appropriate to investigate, verify or research references, statements or data obtained from Merchant for the purpose of this Merchant Application. The undersigned, on behalf of the Merchant, authorizes OpenEdge to initiate automated deposit or debit (ACH) entries to the Merchant's bank account as indicated on this Merchant Application or subsequently provided by Merchant.

Print Name of Authorized Signer: Lisa Chong	Title of Authorized Signer: Finance Director
Signature:	Date:



## **OpenEdge Check Services Agreement**

As set forth in the attached Merchant Application, between OpenEdge Payments LLC and the City of Pembroke Pines, Florida ("Merchant"), this OpenEdge Check Services Agreement ("Agreement") governs Merchant's use of OpenEdge Payments LLC's ("OpenEdge") OpenEdge Check services. OpenEdge and Merchant may be collectively referred to herein as "Parties". The Parties agree to be bound by these terms. Capitalized terms are defined on Exhibit A attached to this Agreement.

### **I. OpenEdge Responsibilities**

**1.1 The Services.** OpenEdge, in conjunction with its Professional Service Providers, will make available to Merchant the following Services:

**A. Accelerated Intelligent Routing.** OpenEdge will utilize its Intelligent Routing Services in processing Merchant's check-present transactions. Intelligent Routing Services will first attempt to route the transaction using the ACH Services, and if that fails, OpenEdge will then attempt to route the transaction using the Check21 Services ("Routing Services") providing that an image of the check is presented for processing.

**B. ACH Services.** OpenEdge will process and settle the ACH transactions presented by Merchant as the originator, including, but not limited to: (i) processing checks via ACH (categorized as POP, ARC, BOC, TEL, WEB, PPD, and CCD under the NACHA Rules; (ii) customer activation and approval, (iii) security and recovery; (iv) customer and other "back office" services; (v) check return services; and (vi) transmission of files to the ODFI. OpenEdge will provide Merchant with Software which provides the capability to process recurring transactions for WEB, PPD and CCD transaction types. Collectively, the above are referred to as "ACH Services".

**C. Check21.** OpenEdge will deliver to Merchant Software which provides the capability to interface with hardware that scans checks and associated paper-remittances to: (i) create an electronic image of the front and back of the check and any associated paper remittance items; (ii) provide the ability to validate the CAR/LAR payment amount and other information on the items; (iii) create an account receivable interface output file; (iv) create a transmission file that will ultimately be converted into ACH and/or x9 file format or its successors, and transmit such file to the ODFI; (v) create image archives of all items scanned; (vi) provide intranet and internet-based archive access; and (vii) provide a web-based gateway portal that allows for other capabilities such as electronic checks (collectively, "Check21 Services").

**D. Check Verification.** OpenEdge will match checks provided by Merchant's customers to the customer's checking account and compare the account to a database of accounts that have a history of returns ("Check Verification Services").

**1.2 Software and Support.** "Software" means software used in connection with the Services to enable remote capture, deposits and check verification through the ACH and other methods. OpenEdge will make available to Merchant an adequate amount of initial materials and supplies necessary for Merchant to complete initial customer transactions. OpenEdge Payments LLC will train Merchant on the procedures and rules applicable to the Services and the operation of appropriate terminals. OpenEdge will receive

and respond to Merchant's inquiries regarding the Services via E-mail and telephone. Merchant may obtain support by using the appropriate number(s) and E-mail addresses found at [www.openedgepayment.com/en/support](http://www.openedgepayment.com/en/support).

**1.3 Merchant Data.** OpenEdge will provide the Professional Service Providers with information about Merchant ("Merchant Data") in order to enable Merchant to access the Services. Merchant authorizes OpenEdge to provide the data derived pursuant to Merchant's use of the Services and Merchant Data to Professional Service Providers. Data derived pursuant to Merchant's use of the Services and Merchant Data shall be held in strict confidence by the Professional Services Providers and the Parties hereto, and shall not be disclosed to any unauthorized third-party. In the event of an unauthorized disclosure, OpenEdge shall provide written notice of such breach to Merchant, unless OpenEdge is prohibited from doing so by its sponsor bank, the card brands, or law enforcement. Data derived pursuant to Merchant's use of the Services and Merchant Data shall be protected and secured in accordance to the applicable Federal and State regulations regarding data security.

**1.4 Optional Additional Service.** From time to time, OpenEdge may make available to Merchant additional services and any such services accepted by Merchant shall be described in addenda to this Agreement reflecting the details of and any Fees associated with such service. Notwithstanding the foregoing, Merchant shall not be responsible for payment for additional services unless authorized in an amendment or addendum signed by the Parties hereto.

**1.5 Disclaimer of Warranties.** OpenEdge does not make, and hereby expressly disclaims, any express or implied warranties or conditions with respect to the Software, the Services, or any authorization provided under this Agreement, including but not limited to the implied warranties of merchantability, suitability, satisfactory quality, or fitness for a particular purpose. Further, OpenEdge does not warrant: (A) the Software will be error-free or uninterrupted; (B) the Software will be compatible with any hardware except the hardware supplied by or otherwise approved by OpenEdge; or (C) the Software will integrate with any other computer system. All Services and deliverables described in this Agreement are on an "as is" basis.

## **II. Merchant Responsibilities**

**2.1 Hardware and Software.** Merchant will provide and maintain all computer hardware, peripherals, device drivers, third party operating systems, and other third party software which may be required to operate the software and/or receive the Services. Merchant will ensure the compatibility of Merchant's computer hardware, peripherals, device drivers, third party operating systems, and other third party software with the Software. Merchant will provide a safe and suitable location for installation, use, and operation of the Software in accordance with any instructions that may be reasonably specified by OpenEdge. Merchant will be responsible for distributing, maintaining and protecting login usernames and passwords provided to Merchant's employees, contractors and agents, and will be liable for such individuals' misuse.

**2.2 Cooperation.** Merchant will cooperate with OpenEdge by providing access to Merchant's information, resources and personnel as reasonably requested. OpenEdge shall have the right from time to time, upon reasonable prior notice, to review Merchant's use of the Software to verify compliance with this Agreement. Merchant shall allow OpenEdge to perform a site survey at Merchant's location within five (5) days of its request. Merchant will provide OpenEdge financial statements and other financial information as requested from time to time. If requested, Merchant will furnish to OpenEdge upon request a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

**2.3 Software Restrictions.** Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with OpenEdge. Merchant will not use the Software except as specifically provided in this Agreement. Merchant shall not copy, decompile, disassemble or otherwise reverse-engineer or reproduce, or knowingly allow others, including without limitation,

customers, resellers or others, to perform such reverse-engineering of the Software.

**2.4 Representations and Warranties.** Merchant represents and warrants to OpenEdge that: (A) Merchant is (i) a municipal corporation organized pursuant to the laws of Florida, validly existing and in good standing under the laws of the United States and in Florida; (B) Merchant has full authority and corporate power to enter into this Agreement and to perform the obligations of this Agreement; (C) Merchant's performance of the terms of this Agreement will not violate any applicable law or regulation or any agreement to which Merchant may now or hereafter be bound; (D) this Agreement represents a valid obligation of Merchant and is fully enforceable against Merchant; and (E) Merchant will comply with the terms of this Agreement. Further, Merchant will be responsible for complying with all applicable federal and state laws and regulations relating to transactions with Merchant's customers and this Agreement. All transactions submitted to OpenEdge will be for bona fide transactions with Merchant's customers.

**2.5 Compliance With Laws.** Merchant agrees to comply with all policies and procedures provided by OpenEdge, all payment network rules and regulations and all applicable state, federal and local laws, rules and regulations, as amended from time to time. Merchant will assist OpenEdge in complying with all laws which are applicable to any transaction or this Agreement. Merchant will execute and deliver to OpenEdge all instruments OpenEdge may from time to time reasonably deem necessary. Merchant understands that Merchant may not rely on, and OpenEdge will not be liable for, any advice OpenEdge may provide to Merchant about compliance with various laws.

**2.6 Returns.** Merchant is fully liable for all transactions returned for whatever reason. Merchant will pay on demand the value of all Returns and Chargebacks. Merchant authorizes OpenEdge to recoup from incoming transactions and to debit Merchant's Bank Settlement Account and the Reserve Account for the amount of all Returns and Chargebacks.

**2.7 Merchant Application.** Merchant represents and warrants to OpenEdge that all information in the Merchant Application is correct and complete. Merchant must notify OpenEdge in writing of any changes to the information in the Merchant Application, including but not limited to: any additional location or new business (the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership, etc.)), type of goods and services provided and how sales are completed (i.e. by telephone, mail, or in person at Merchant's place of business). OpenEdge must receive the notice within ten (10) business days of the change. Merchant will provide other updated information to OpenEdge within a reasonable time upon request. Merchant is liable to OpenEdge for all losses and expenses OpenEdge incur arising out of Merchant's failure to report changes to OpenEdge. OpenEdge may immediately terminate this Agreement upon notification by Merchant of a change to the information in the Merchant Application.

**2.8** *[Intentionally omitted]*

**2.9 Authorizations.** Merchant authorizes OpenEdge to audit Merchant's records, systems, processes or procedures to confirm compliance with this Agreement. Merchant will obtain, and will submit a copy of, an audit of Merchant's business when requested by OpenEdge. Merchant authorizes OpenEdge to make any credit inquiries OpenEdge consider necessary to review the acceptance and continuation of this Agreement. Merchant also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to OpenEdge.

**2.10 Third Party Services.** Merchant may be using special services or software provided by a third party to assist Merchant in providing the Services, including, but not limited to, authorizations and settlements, or accounting functions. OpenEdge has no responsibility for any transaction until that point in time OpenEdge receives data about the transaction.



### III. Fees, Settlement, and Recoupment

**3.1 Authorization.** Merchant authorizes OpenEdge to present ACH debits and credits to Merchant's Settlement Account in the amount of fees and other payments due by Merchant under the Agreement. Merchant agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association ("NACHA"), as amended from time to time. This ACH authorization will remain in effect after termination of this Agreement, and until such time as OpenEdge has received written notice terminating this authorization and all Merchant's obligations to OpenEdge have been paid in full. Merchant is solely liable for all fees and charges assessed by its financial institution, including all overdraft and NSF charges, and Merchant irrevocably releases OpenEdge and holds OpenEdge harmless from the same fees and charges, regardless of cause. OpenEdge is not liable for any delays in receipt of funds or errors in debit and credit entries caused by unaffiliated third parties including but not limited to a clearing house or Merchant's financial institution.

**3.2 Fees.** Merchant will pay OpenEdge fees ("Fees") for the Services and equipment in accordance with the rates set forth on Exhibit B. OpenEdge reserves the right to adjust the Fees at any time. Merchant's continued use of the applicable Services beyond the effective date of the price change will be deemed Merchant's consent to such price change. Prices do not include applicable state and local sales, use and related taxes. The Merchant is exempt from state and local sales and use taxes and shall not be invoiced for the same. Upon request Merchant will provide OpenEdge with proof of tax-exempt status.

**3.3 Other Amounts Owed.** Merchant will immediately pay to OpenEdge any amount incurred by OpenEdge attributable to this Agreement including but not limited to returns, unauthorized Returns, Chargebacks, non-sufficient fund fees, and ACH debits that overdraw the Settlement Account, Reserve Account (defined below) or are otherwise dishonored, if applicable. OpenEdge will debit via ACH the Settlement Account, Reserve Account, or any other account Merchant has at any financial institution, for any amount Merchant owes OpenEdge under this Agreement or under any other contract, note, or guaranty, now existing or later entered into between Merchant and OpenEdge, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. If such debit does not fully reimburse OpenEdge for the amount owed, Merchant will immediately pay OpenEdge such amount.

#### 3.4 Charges and Settlement Procedures, Settlement Account.

A. Settlement. Merchant will designate and maintain a settlement account ("Settlement Account") with a balance of available funds sufficient to cover Merchant's obligations under this Agreement. OpenEdge will debit the Fees from the Settlement Account once each business day for the previous business day's activity, once each month for the previous month's activity, or will set off the Fees from the funds due to Merchant attributable to transactions presented to OpenEdge, in its discretion.

B. Authorization. Merchant irrevocably authorizes OpenEdge to credit and debit the amounts Merchant owes OpenEdge for Fees and for amounts OpenEdge owes Merchant from and to the Settlement Account. This authority will remain in full force and effect for two (2) years after termination of this Agreement whether or not Merchant has notified OpenEdge of a change to the Settlement Account. Merchant must obtain OpenEdge's prior written consent to make any change to the Merchant's Settlement Account. If Merchant changes the Settlement Account without receiving prior consent, OpenEdge

may immediately terminate this Agreement and may take other action OpenEdge deems necessary, in its sole discretion. Merchant also authorizes the financial institution(s) at which Merchant maintains its Settlement Account to act in accordance with instructions from OpenEdge regarding funds in the Settlement Account, including transferring funds in the Settlement Account to OpenEdge. To the extent permitted by applicable law, Merchant will indemnify and hold harmless the financial institution(s) at which Merchant maintains Merchant's Settlement Account for acting in accordance with any instruction from OpenEdge regarding the Settlement Account.

**C. Withholding.** Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C § 365 as amended from time to time. OpenEdge will deposit into the Settlement Account funds processed by Merchant and will provide Merchant provisional credit for such funds (less recoupment of any credits, adjustments, fines, Returns, Chargebacks, Fees or other costs). Final credit for those provisional funds will be granted in OpenEdge's sole discretion. OpenEdge, and not Merchant, owns all provisional funds, and title to such funds does not pass to Merchant until all amounts owed to OpenEdge is paid or recouped and OpenEdge deems such provisional credit final, in its reasonable discretion. Merchant understands and agrees that OpenEdge may withhold deposit and payment to Merchant without notice if OpenEdge determines, in its sole discretion, that a transaction or batch of transactions poses a risk of loss. OpenEdge is not responsible for any losses Merchant may incur, including but not limited to non-sufficient fund fees, due to such delayed deposit of funds. Merchant acknowledges that Merchant's obligation to OpenEdge for all amounts owed under this Agreement arise out of the same transactions as its obligation to deposit funds into the Settlement Account.

**D. Deposits.** OpenEdge will initiate a deposit to the Settlement Account upon receipt of funds. The deposit will be initiated the next business day following the funding hold period. The funding hold is determined during the underwriting process. Business days shall include any Monday through Friday, excluding holidays observed by the Federal Reserve. Merchant authorizes OpenEdge to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry.

**E. Reports and Asserted Errors.** A statement detailing the Fees will be made available to Merchant at [www.myxcheckonline.com](http://www.myxcheckonline.com). Merchant must promptly examine all statements, and immediately notify OpenEdge in writing of any errors. Merchant's written notice must include: (1) Merchant's name and account number; (2) the dollar amount of the asserted error; (3) a description of the asserted error; and (4) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by OpenEdge within ninety (90) calendar days after the applicable statement containing the asserted error was made available to Merchant. Merchant waives all rights to make any claim against OpenEdge or any other party for any loss or expense relating to any asserted error after such 30 day period.

### **3.5 Reserve Account, Recoupment and Set-Off.**

**A. Security Interests.** To the extent permitted by applicable law, this Agreement is a security agreement under the Uniform Commercial Code. Merchant grants to OpenEdge a security interest in and lien upon: (1) all funds at any time in the Settlement Account, regardless of the source of such funds; (2) all funds at any time in the Reserve Account, regardless of the source of such funds; and (3) any and all amounts which may be due to Merchant under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). To the extent permitted by applicable law, Merchant agrees to provide other collateral or security to OpenEdge to secure

Merchant's obligations under this Agreement upon its request. These security interests and liens will secure all of Merchant's obligations under this Agreement and any other agreements now existing or later entered into between Merchant and OpenEdge. This security interest may be exercised by OpenEdge without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets.

B. Perfection To the extent permitted by applicable law, and upon request by OpenEdge, Merchant will execute one or more financing statements, security agreements, account control agreements, or other documents to evidence this security interest. Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets. Merchant will obtain OpenEdge's written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and OpenEdge is not required to file a motion for relief from a bankruptcy automatic stay in order for OpenEdge to foreclose on, collect or sell any of the collateral (including any Settlement Account and/or Reserve Account). Nevertheless Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by OpenEdge. Merchant authorizes OpenEdge and appoints OpenEdge as Merchant's attorney in fact to sign Merchant's name to any financing statement used for the perfection of any security interest or lien granted hereunder.

C. Reserve Account. OpenEdge may establish and maintain a non-interest bearing deposit account on Merchant's behalf ("Reserve Account") at a financial institution OpenEdge chooses, initially or at any time in the future, and may fund the Reserve Account with sums sufficient to satisfy Merchant's current and future obligations as determined by OpenEdge. Merchant authorizes OpenEdge to debit the Settlement Account or any other account Merchant has at any financial institution in order to establish or maintain funds in the Reserve Account. OpenEdge may deposit into the Reserve Account funds OpenEdge would otherwise be obligated to pay Merchant for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section if OpenEdge determines such action is reasonably necessary to protect its interests. OpenEdge may, without prior notice to Merchant, apply deposits in the Reserve Account against any outstanding amounts Merchant owes under this Agreement or any other agreement between Merchant and OpenEdge. Notwithstanding the foregoing, OpenEdge will provide Merchant notice of the creation of a Merchant Reserve Account after such account is created, if applicable. Also, OpenEdge may exercise its rights under this Agreement against the Reserve Account to collect any amounts due to OpenEdge including, without limitation, rights of set-off and recoupment.

D. Funds in the Reserve Account. Merchant agrees that Merchant will not use any funds in the Reserve Account for any purpose, including but not limited to paying Chargebacks, Fees, fines or other amounts Merchant owes OpenEdge under this Agreement. OpenEdge controls all funds in the Reserve Account, and OpenEdge (and not Merchant) shall have sole control of the Reserve Account.

E. Recoupment and Set Off. OpenEdge has the right of recoupment and set-off. This means that OpenEdge may offset or recoup any outstanding/uncollected amounts owed by Merchant from: (1) any amounts OpenEdge would otherwise be obligated to deposit into the Settlement Account or Reserve Account; (2) any other amounts OpenEdge may owe Merchant under this Agreement or any other agreement; and (3) any funds in the Settlement Account or Reserve Account. Merchant acknowledges that in the event of a bankruptcy proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code § 362 and/or 365 to OpenEdge, Merchant must create or maintain the Reserve Account as required by OpenEdge, and OpenEdge must have the right to offset and recoup against the Reserve Account for any and all obligations which Merchant may owe to OpenEdge, without regard to whether the obligations relate to transactions initiated or created before or after the filing of the bankruptcy petition.

F. Remedies Cumulative. The rights and remedies conferred upon OpenEdge in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of ours under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.



## IV. Third Party Requirements

**4.1 NACHA Requirements.** Merchant authorizes OpenEdge, as a third party sender (as defined in the NACHA Rules), to act as Merchant's agent in processing ACH entries or check image deposits for Merchant, and acknowledges its understanding that OpenEdge will establish one or more clearing accounts with, and submit ACH entries or deposits on Merchant's behalf, to an ODFI selected by OpenEdge.

**4.2 Originator Rules.** Merchant: (A) assumes the responsibilities of and makes the warranties of an Originator (as defined in the NACHA Rules) and agrees to reimburse OpenEdge and the ODFI for returns, reversals, adjustments, reclamations and warranty claims and responsibilities related to Merchant's ACH entries or check image deposits; (B) agrees to comply with the NACHA Rules, including but not limited to the requirements of Article Three (Obligations of Originators), Article Five (Obligations of Third-Party Senders) and if international ACH entries are initiated by Merchant, the NACHA Rules applicable to IAT ACH entries, all of which are available at [www.nacha.org](http://www.nacha.org); (C) agrees to comply with all applicable state and federal laws, rules and regulations, including but not limited to sanction laws administered by the Office of Foreign Assets Control, the Electronic Funds Transfer Act, the Unlawful Internet Gambling Enforcement Act, the Check Clearing for the 21st Century Act, and Federal Reserve Board Regulation E (the foregoing and the ACH Rules are, collectively, the "Applicable Rules"); and (D) acknowledges that ACH entries may not be initiated or deposits made that violate the laws of the United States, including but not limited to the sanctions laws, regulations and orders administered by OFAC, laws, regulations, rules and orders administered by FinCEN, and any state laws, regulations or orders applicable to the providers of ACH payment services.

**4.3 Entries and Authorizations.** Merchant represents and warrants as to each ACH entry that Merchant has obtained the necessary authorizations under the NACHA Rules and Applicable Rules and that Merchant shall not initiate any funds transfer after the authorization for the same has been revoked (or the agreement between Merchant and OpenEdge has been terminated).

With respect to each entry OpenEdge sends to the ODFI on Merchant's behalf, Merchant represents and warrants to OpenEdge and the ODFI that such entry is in compliance with United States law, including, but not limited to, rules promulgated and programs administered by OFAC and FinCEN, that no such entry violates United States law, including, but not limited to, rules promulgated and programs administered by OFAC and FinCEN, that Merchant is not acting on behalf of or transmitting funds to any party subject to OFAC sanctions and that such entry complies with the laws and payment system rules of the receiving country.

Merchant acknowledges that OpenEdge, the ODFI and other parties must comply with the NACHA Rules, Applicable Rules and United States law. The performance by each of these parties, including the ODFI, of obligations with respect to such entries may cause delays in processing, settlement and/or availability of the entries. Merchant waives and releases OpenEdge and the ODFI from any liability or obligation, including, but not limited to, funds availability obligations, caused by or arising out of any such delay associated with such entries.

**4.4 Review.** Merchant understands that OpenEdge and the ODFI have the right to: (A) review, monitor and audit Merchant's ACH transactions, processes and procedures for compliance with this Agreement and the NACHA Rules; (B) limit the amount of ACH entries processed for Merchant; and (C) suspend, discontinue or terminate processing based on their assessment of the risk posed to OpenEdge, the ODFI and/or the breach or termination of Merchant's agreements with OpenEdge.

**4.5 Accuracy of Information and Errors.** Merchant is responsible for the results of using OpenEdge, the Services, and for the accuracy and adequacy of the data Merchant or OpenEdge provides to the ODFI. Merchant authorizes the ODFI to act on any

instruction which has been or reasonably appears to have been sent by OpenEdge or Merchant, including but not limited to funds transfer instructions. The ODFI is not obliged to take any further steps to confirm or authenticate such instructions and will act on them without getting further confirmation. Merchant understands that if Merchant or OpenEdge provides the ODFI with incorrect information or if there is any error in the instruction Merchant accepts full responsibility for losses resulting from any of the errors, duplication, ambiguities or fraud in the information that was provided to the ODFI. Neither OpenEdge nor the ODFI is responsible to third parties (such as, but not limited to, third party service providers and the third parties to whom wire or ACH debit or credits are transmitted and Merchant shall defend, indemnify and hold the ODFI harmless from, the actions or omissions of OpenEdge, and Merchant shall defend, indemnify and hold both OpenEdge and the ODFI harmless from any claim made against OpenEdge or the ODFI arising out of Merchant's use of the Services, breach of this Agreement, or breach of any warranty under the NACHA Rules. IN NO EVENT WILL OpenEdge OR THE ODFI BE LIABLE OR RESPONSIBLE FOR, AND MERCHANT BEARS ALL RISK ASSOCIATED WITH, FOREIGN EXCHANGE CONVERSION AND ANY GAINS AND LOSSES RESULTING FROM THE CONVERSION OF CURRENCIES IN CONNECTION WITH ANY ENTRY.

**4.6 Survival of Article IV.** This Article IV shall survive the termination of the agreement between OpenEdge and the ODFI. Notwithstanding anything to the contrary elsewhere in the Agreement, the ODFI shall be considered an intended beneficiary of this Article IV and is entitled to enforce its terms. This Article IV is agreed to in consideration of the ODFI's agreement to serve as the ODFI. Merchant waives notice of the ODFI's acceptance of this Article IV.

## **V. Confidential Information**

**5.1 Information.** For purposes of this Agreement "Confidential Information" means information belonging or relating to OpenEdge's business, including without limitation, the Software, its technology, the method of processing transactions, computer programs, software, message formats, procedures, forms, related materials, this Agreement, client lists, client information and pricing information. Merchant acknowledges that the Confidential Information has been developed through the expenditure of a significant amount of effort and resources. Merchant will not use for Merchant's own purposes, will not disclose to any third party, and will retain in strictest confidence all Confidential Information. Merchant will safeguard the Confidential Information by using the same degree of care and discretion that Merchant uses to protect Merchant's own confidential information.

**5.2 Remedy.** Merchant agrees that the Confidential Information constitutes trade secrets and that disclosures to others may result in loss or irreparable damage. Thus, if Merchant breaches this Section 5, OpenEdge will be entitled to injunctive relief in addition to any other rights to which OpenEdge may be entitled, without the necessity of proof of actual damages.

## **VI. Term and Termination**

**6.1 Term.** This Agreement will have an initial term of one year. After the initial term of this Agreement, this Agreement will be automatically extended for successive 1 year periods on the same terms, unless Merchant gives OpenEdge written notice of termination at least thirty (30) days prior to the expiration of the then current term.

**6.2 Termination.** The parties will have the following rights:

**A. Termination by OpenEdge.** OpenEdge may terminate this Agreement for any reason upon providing Merchant with thirty (30) days prior written notice, which termination may be effective immediately.

**B. Termination by Merchant.** In addition to termination as provided in Section 6.1 herein, Merchant may terminate Agreement for cause if OpenEdge fails to perform its obligations under this Agreement. If Merchant desires to terminate this Agreement, then Merchant must give written notice to OpenEdge stating such intent, identifying the nonperformance, and giving OpenEdge the opportunity to remedy such nonperformance for a period of sixty (60) days following the date notice is given. Upon expiration of such sixty (60) day cure period, if the performance has not been remedied, Merchant may terminate this Agreement. Upon termination, OpenEdge shall retain and transfer all records, content, or data to Merchant as required by Florida's Public Records Law, Ch. 119, Florida Statutes, and more particularly described in Section 18 herein.

**6.3 Early Termination.** If Merchant terminates this Agreement before the end of the initial term or before the expiration of a renewal term, Merchant will immediately pay OpenEdge, as a deconversion cost, an early termination fee equal to \$99.00. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. Other remedies OpenEdge may have under this Agreement still apply.

**6.4 Effect of Termination.** The obligations of the Parties regarding transactions and OpenEdge processes under this Agreement will survive termination. Merchant must maintain in the Settlement Account and Reserve Account enough funds to cover all Chargebacks, deposit charges, obligations, refunds and fees incurred by Merchant for two (2) years after termination of this Agreement. Merchant authorizes OpenEdge to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Settlement Account or Reserve Account is not adequate, Merchant will pay OpenEdge the amount Merchant owes OpenEdge upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees. After the expiration of such two (2) year period Merchant must provide OpenEdge with written notification indicating Merchant desires a release of any funds remaining in the Reserve Account, and OpenEdge shall release such funds to Merchant within thirty (30) days of receipt of such notice.

## **VII. Indemnification and Limitation of Liability**

**7.1 Indemnification.** Merchant will hold OpenEdge harmless from and Merchant shall remain responsible for: (A) all claims by third parties arising out of this Agreement; (B) attorneys' fees, collection costs, and other costs and expenses paid or incurred by OpenEdge in the enforcement of this Agreement which shall be limited to those expenses resulting from any breach by Merchant of this Agreement and those related to any bankruptcy proceeding; (C) any action OpenEdge takes against the Settlement Account, Reserve Account, or any other account, pursuant to this Agreement; (D) any failure by Merchant or Merchant's employees, agents, or officers to comply with the terms of this Agreement; and (E) any damage due to equipment or software not purchased or leased from OpenEdge. This indemnification section shall survive termination of this Agreement. Merchant is responsible and liable for the acts and omissions of Merchant's employees, agents and representatives. Nothing contained herein or in a subsequent agreement between the Parties shall be considered nor construed as waiving Merchant's rights and immunities under the common law or Section 786.29, Florida Statutes.

**7.2 Limitation of Liability.** Any liability of ours under this Agreement, whether to Merchant or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (A) the amount of Fees paid by Merchant to OpenEdge during the month in which the transaction out of which the liability arose occurred; and (B) assessments, Chargebacks, and offsets against such Fees which arose during such month. In the event more than one month is involved, the aggregate amount of its liability shall not exceed the lowest amount determined in accordance with the foregoing calculation for any one month involved. Neither

OpenEdge, nor any of its agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages, even if advised of the possibility of such damages. Any liability of Merchant pursuant to this Agreement is limited to the extent and amounts set forth in Section 768.28, Florida Statutes.

**7.3** OpenEdge shall indemnify and hold harmless the Merchant, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees at trial and appellate levels) related to any gross negligence, intentional wrong doing or recklessness by OpenEdge, its owners, agents, and employees, during performance of Agreement. This provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof. Merchant reserves the right to select its own legal counsel to conduct any defense in any such proceeding.

## **VIII. General**

**8.1 Assignment.** Merchant may not assign this Agreement or the rights under this Agreement without the other party's prior written consent and any purported assignment without such consent shall be void. This Agreement will be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties. OpenEdge may use third parties to deliver the Services to Merchant and shall provide Merchant written notice of such third parties. OpenEdge may assign this Agreement to any third party upon providing prior written notice to Merchant.

**8.2 Governing Law and Jurisdiction.** Pursuant to Merchant's common law home rule privilege, Agreement shall be exclusively governed by and construed according to the laws of the State of Florida. The parties irrevocably submit to the exclusive jurisdiction of any state court in State of Florida (and any federal court having jurisdiction in Broward County, Florida), in any action, suit or proceeding brought under this Agreement and waive, to the fullest extent it may do so, the defense of forum non convenience.

**8.3 Relationship of the Parties.** Merchant and OpenEdge will be deemed to be independent contractors and will not be considered to be agent, servant, joint venturer or partner of the other. This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that OpenEdge is an independent contractor under this Agreement and not an employee of Merchant for any purpose, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. OpenEdge shall retain sole and absolute discretion in the judgment of the manner and means of carrying out OpenEdge's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of OpenEdge, which policies of OpenEdge shall not conflict with city, state, or federal policies, rules or regulations relating to the use of Merchant's funds provided for herein. This Agreement shall not be construed as creating any joint employment relationship between OpenEdge and Merchant and the Merchant will not be liable for any obligation incurred by OpenEdge, including but not limited to unpaid minimum wages and/or overtime premiums.

**8.4 Entire Agreement.** The terms of the Merchant Application, the Schedule and the Exhibit are incorporated into the Agreement by reference. The terms of the Merchant Application and this Agreement set forth the entire understanding between OpenEdge and Merchant relating to its subject matter, and all other understandings, written or oral, are superseded.

**8.6. No Waiver of Rights.** No failure or delay by OpenEdge in exercising any power, right or remedy under this Agreement shall

operate as a waiver. All waivers by OpenEdge must be in writing and signed by OpenEdge.

**8.7 Voidness.** If for any reason any court of competent jurisdiction finds any provision of this Agreement to be void or voidable, OpenEdge and Merchant agrees that the court may reform such provision(s) to render the provision(s) enforceable ensuring that the restrictions and prohibitions contained in this Agreement shall be effective to the fullest extent allowed under applicable law.

**8.8 Construction of Terms.** The captions used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Section 1.3, Sections 2.2 through 2.8, Article III, Article IV, Article V, Sections 6.3 and 6.4, Article VII and Article VIII of this Agreement shall survive its termination.

**8.9 Non Discrimination.** During the performance of the Agreement, OpenEdge and its sub-consultants shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability if qualified. OpenEdge will take affirmative action to ensure that employees and those of its sub-consultants are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity or expression, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. OpenEdge and its sub-consultants shall agree to post in conspicuous places, available to its employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. OpenEdge will endeavor to ensure that all sub-consultants, if any, are made aware of and comply with this nondiscrimination clause.

**8.10 Florida Information Protection Act.** OpenEdge agrees and understands that the services to be provided pursuant to this Agreement consist, at least in part, of “customer records” that contain “personal information,” as defined in the Florida Information Protection Act, Section 501.171, Florida Statutes (the “Act”). Accordingly, as required by the Act, OpenEdge agrees to implement safeguards to protect customer records containing personal information, in whatever form retained and stored, from a breach of security. If customer records in OpenEdge’s possession are breached in the manner set forth in the Act, OpenEdge shall immediately notify Merchant as required by law, unless OpenEdge is prohibited from doing so by its sponsor bank, the card brands, or law enforcement, and OpenEdge shall work with Merchant as required by the Act to assist in any of the following actions:

**8.10.1** Investigate the alleged breach and determine if an actual breach has occurred, which may include the use of law enforcement officials as needed and as determined by Merchant;

**8.10.2** Provide notice to any and all consumers whose personal information has been breached;

**8.10.3** Provide any and all other notices to governmental agencies that may be applicable under the Act, if a breach has reached a particular threshold, as defined in the Act, which may include but is not limited to: credit reporting agencies and the Florida Department of Legal Affairs;

**8.10.4** Ensure that OpenEdge’s third-party agents are made aware of the Act and any requirement to comply with the Act, and require that those third-party agents that store customer records of Merchant who experience a breach notify Merchant immediately, and work with Merchant as outlined in this section of the Agreement.

**8.10.5** The procedures specified herein shall not supersede any requirement specified by the Act. The provisions of the Act, as may be amended from time to time, shall prevail in the event of any conflict.

**8.11 Copies.** A facsimile of the Merchant Application or this Agreement bearing a party's signature or a printed copy of the original, signed document scanned in .pdf or .tiff format shall have the same legal force and effect as an original of such signature and shall be treated as an original document for evidentiary purposes.

**8.12 Force Majeure.** The parties shall be released from liability under this Agreement for failure to perform any of the obligations where such failure to perform occurs by reason of any force majeure event, including, without limitation, act of God, fire, flood, storm, earthquake, tidal wave, pandemic, epidemic, communication failure, sabotage, war, military or terrorist operation, national emergency, mechanical or electronic breakdown, civil commotion, or the order requisition, request or recommendation of any government agency or acting governmental authority or either party's compliance therewith, or governmental regulation or priority or any other cause beyond either party's reasonable control whether similar or dissimilar to such causes.

**8.13 Electronic Statements.** By executing this Agreement, Merchant consents to the electronic delivery of statements, required notices and other OpenEdge related documents.

**8.14 Notice.** Any notice required to be sent pursuant to this Agreement will be effective when sent by registered or certified mail or a nationally recognized overnight courier to the following address:

OpenEdge: OpenEdge Payments LLC,  
Attention: General Counsel  
2578 West 600  
North Lindon, Utah 84042

Merchant: City of Pembroke Pines  
Attn: Charles F. Dodge, City Manager  
601 City Center Way, 4th Floor  
Pembroke Pines, Florida 33025  
Telephone No. (954) 450-1040

Merchant Copy: Samuel S. Goren, City Attorney  
Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone No. (954) 771-4500

**8.15 Amendments to this Agreement, Merchant Application and Additional Services.** OpenEdge shall have the right to modify or amend this Agreement, including, without limitation, the right to modify, amend, or supplement applicable fees, charges, and/or discounts. Modifications and amendments related to changes to the NACHA Rules, changes to the fees charged by third parties, or in response to changes in the Applicable Laws and Rules (collectively, a "Third Party Change") may be made effective immediately, with or without notice. Modifications or amendments unrelated to a Third Party Change shall be effective upon the date specified in a notice to the Merchant (the "Change Notice"), provided that the date shall not be fewer than five (5) business days after the date of such Change Notice. Following the effective date of the Agreement, in the event of any modification or amendment not related to a Third Party Change, Merchant shall have the right to terminate this Agreement, without liability for premature termination pursuant to section 6.3, by providing written notice thereof to OpenEdge; provided that such notice must be given within five (5) business days following the date of the Change Notice. Other than the amendments set forth above, this Agreement may be amended only in writing signed by OpenEdge and Merchant.

**8.16 Scrutinized Companies.** OpenEdge, its principals or owners, certify that they are not listed on the Scrutinized Companies that



Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of: Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or one million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company: is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or is engaged in business operations in Syria. If at any time Global Direct changes position or practice with respect to the foregoing, Merchant shall be entitled to terminate the Card Services Agreement upon written notice with immediate effect, and without any early termination penalty.

**8.17 Public Records.** Merchant is a public agency subject to Chapter 119, Florida Statutes. OpenEdge shall comply with Florida's Public Records Law. Specifically, OpenEdge shall:

**18.17.1** Keep and maintain public records required by the Merchant to perform the service;

**18.17.2** Upon request from the Merchant's custodian of public records, provide the Merchant with a copy of the public records which pertain to this Agreement or allow such records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

**18.17.3** Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, OpenEdge shall destroy all copies of such confidential and exempt records remaining in its possession after the Term of the Agreement; and

**18.17.4** Upon completion of the Agreement, OpenEdge shall transfer to the Merchant, at no cost to OpenEdge, all public records in OpenEdge's possession. All records stored electronically by OpenEdge must be provided to the Merchant, upon request from the Merchant's custodian of public records, in a format that is compatible with the information technology systems of the Merchant.

**18.17.5** The failure of Merchant to comply with the provisions set forth in this section shall constitute a default and breach of this Agreement, for which, the Merchant may terminate the Agreement.

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

**CITY CLERK  
601 CITY CENTER WAY, 4<sup>th</sup> FLOOR  
PEMBROKE PINES, FL 33025  
(954) 450-1050  
[mgraham@ppines.com](mailto:mgraham@ppines.com)**

**8.18 Access to Records.** During the Term, Merchant shall have reasonable access and the right to examine OpenEdge's financial records that directly pertain to the Services provided under this Agreement. Such audit is subject to the following conditions: (i) it may only be done with good cause; (ii) it may not be done more than once in any rolling 12-month period; (iii) it must be done during OpenEdge's business hours and at a location specified by OpenEdge. As required by Ch. 119, Florida Statutes records related to this agreement are public records open for inspection, unless an applicable exception applies, and must be retained pursuant to the State

of Florida General Records Schedule GS1-SL.

**8.19 Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

**8.20 Insurance.** OpenEdge agrees to maintain commercially reasonable levels of insurance coverage during the term of the Agreement consistent with the scope and nature of its business and applicable industry best practices. OpenEdge shall deliver its certificate(s) of insurance reflecting its then-current policy coverage and carriers to Merchant upon request.

**8.21 Agreement Subject to Funding.** This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by Merchant's City Commission in the annual budget for each fiscal year of this Agreement, and is subject to termination by Merchant based on lack of funding.

**IN WITNESS OF THE FOREGOING,** the Parties have set their hands and seals the day and year first written above.

**CITY:**

\_\_\_\_\_  
CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

\_\_\_\_\_  
MARLENE D. GRAHAM, CITY CLERK

By: \_\_\_\_\_  
CHARLES F. DODGE, CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: \_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

OPENEDGE:

OPENEDGE PAYMENTS LLC

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

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

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

## EXHIBIT A

### Definitions

- 1. ACH:** means the Automated Clearing House financial network.
- 2. Agreement:** means the OpenEdge Check Services Agreement, together with all of its exhibits and the Merchant Application.
- 3. OpenEdge:** means OpenEdge Payments LLC, a Delaware corporation, with offices at 2436 West 700 South Pleasant Grove, Utah 84062.
- 4. Chargeback:** means a type of Return that occurs when a bank account holder claims they did not authorize a transaction, when the account holder and the customer are not the same person (i.e., identity theft), when the authorization was not properly obtained from Merchant's customer or when a customer does not recognize a transaction.
- 5. Fees:** shall have the meaning ascribed to it in Section 3.2 of the Agreement.
- 6. FinCEN:** means the United States' government's Financial Crimes Enforcement Network.
- 7. Merchant:** means the City of Pembroke Pines, Florida, a municipal corporation, with a business address of 601 City Center Way, Pembroke Pines, Florida 33025 as more particularly set forth on the Merchant Application, including its elected and appointed officials, agents, and employees.
- 8. Merchant Application:** means the merchant application attached to this Agreement.
- 9. Merchant Data:** means information in OpenEdge's possession, including that information provided on the Merchant Application as it may be updated and corrected from time to time, and the information derived during the performance of Agreement or related to Merchant's use of Services.
- 10. NACHA Rules:** means the Operating Rules promulgated by the electronic transactions association NACHA, which are available at <http://www.nacha.org>.
- 11. ODFI:** means the originating depository financial institution that receives and processes electronic checks submitted by Merchant to OpenEdge under this Agreement.
- 12. OFAC:** means the United States government's Office of Foreign Assets Control.
- 13. Reserve Account:** shall have the meaning ascribed to it in Section 3.5 (C) of the Agreement.
- 14. Return:** means an ACH transaction rejected before being completely processed by the customer's bank (e.g., NSF, invalid account number, account closed, etc.).
- 15. Secured Assets:** shall have the meaning ascribed to it in Section 3.5 (A) of the Agreement.
- 16. Services:** means the electronic check processing and related services provided by OpenEdge to Merchant under this Agreement, including any or all of the following:
  - a. ACH Services:** shall have the meaning ascribed to it in Section 1.1 (B) of the Agreement.
  - b. Check21 Services:** shall have the meaning ascribed to it in Section 1.1 (C) of the Agreement.
  - c. Check Verification Services:** shall have the meaning ascribed to it in Section 1.1 (D) of the Agreement.
  - d. Routing Services:** shall have the meaning ascribed to it in Section 1.1 (A) of the Agreement.
- 17. Settlement Account:** shall have the meaning ascribed to it in Section 3.4 (A) of the Agreement.
- 18. Software:** shall have the meaning ascribed to it in Section 1.1 (G) of the Agreement.
- 19. Professional Service Providers:** means third-party service providers engaged by OpenEdge to provide services to Merchant or OpenEdge related to Merchant's use of the Services.

EXHIBIT B

Fees

Summary of Fees		ACH		AIR(Check21)	
Remote Deposit Capture (ARC, BOC, POP)		Discount Fee	Per Item Fee	Discount Fee	Per Item Fee
Monthly Volume					
Tier 1	\$ .01 - 5,000	0.00%	\$ 1.49	0.00%	\$ 1.49
Tier 2	\$ 5,001 - 20,000	0.00%	\$ 1.49	0.00%	\$ 1.49
Tier 3	\$ 20,001 - 50,000	0.00%	\$ 1.49	0.00%	\$ 1.49
Tier 4	> \$50,001	0.00%	\$ 1.49	0.00%	\$ 1.49
Check Not Present (WEB, TEL, PPD, CCD)		Discount Fee	Per Item Fee	Discount Fee	Per Item Fee
Monthly Volume					
Tier 1	\$ .01 - 5,000	0.00%	\$ 1.49	-	-
Tier 2	\$ 5,001 - 20,000	0.00%	\$ 1.49	-	-
Tier 3	\$ 20,001 - 50,000	0.00%	\$ 1.49	-	-
Tier 4	> \$50,001	0.00%	\$ 1.49	-	-
Miscellaneous Fees		Per Account			
Account on File Fee			\$ 10.00		
Monthly Minimum Fee			\$ 15.00		
Application Fee			\$ 50.00		
ACH Return Transaction Fees		Per Item Fee		Per Item Fee	
Returns (Administrative)		each	\$ 6.00	-	\$ 6.00
Unauthorized Return Transaction Fee (Chargeback)		each	\$ 25.00	-	\$ 25.00
Verification		each	\$ 0.10	-	\$ 0.10

Initial:\_\_\_\_\_

## Certificate of Completion

Envelope Id: 26695B37AF574A67821F7DD5789CD91B	Status: Delivered
Subject: Please DocuSign: City of Pembroke Pines App ACH.pdf	
Source Envelope:	
Document Pages: 18	Signatures: 0
Certificate Pages: 4	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Jordan Sumner
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	2675 W 600 N
	Lindon, UT 84042
	jordan.sumner@openedgepay.com
	IP Address: 4.14.150.135

## Record Tracking

Status: Original	Holder: Jordan Sumner	Location: DocuSign
11/23/2020 3:59:06 PM	jordan.sumner@openedgepay.com	

## Signer Events

Signature	Timestamp
Lisa Chong	Sent: 11/23/2020 4:04:30 PM
lchong@ppines.com	Resent: 11/24/2020 10:51:05 AM
Finance Director	Resent: 12/14/2020 1:39:56 PM
City of Pembroke Pines	Viewed: 12/14/2020 3:26:06 PM
Security Level: Email, Account Authentication (None)	
<b>Electronic Record and Signature Disclosure:</b>	
Accepted: 12/14/2020 3:26:06 PM	
ID: 4d09a297-5c8b-42d8-8df1-28adff137ded	

## In Person Signer Events

## Signature

## Timestamp

## Editor Delivery Events

## Status

## Timestamp

## Agent Delivery Events

## Status

## Timestamp

## Intermediary Delivery Events

## Status

## Timestamp

## Certified Delivery Events

## Status

## Timestamp

## Carbon Copy Events

## Status

## Timestamp

## Witness Events

## Signature

## Timestamp

## Notary Events

## Signature

## Timestamp

## Envelope Summary Events

## Status

## Timestamps

Envelope Sent	Hashed/Encrypted	11/23/2020 4:04:30 PM
Certified Delivered	Security Checked	12/14/2020 3:26:06 PM

## Payment Events

## Status

## Timestamps

## Electronic Record and Signature Disclosure

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Global Payments Integrated (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**



Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### **How to contact Global Payments Integrated:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [startnow@openedgepay.com](mailto:startnow@openedgepay.com)

To contact us by paper mail, please send correspondence to:

Global Payments Integrated

2675 W 600 N

Lindon, UT 84042

#### **To advise Global Payments Integrated of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [startnow@openedgepay.com](mailto:startnow@openedgepay.com) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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#### **To request paper copies from Global Payments Integrated**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [startnow@openedgepay.com](mailto:startnow@openedgepay.com) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

#### **To withdraw your consent with Global Payments Integrated**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [startnow@openedgepay.com](mailto:startnow@openedgepay.com) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that applications may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

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