

**BANK OF AMERICA MERCHANT SERVICES
MERCHANT PROCESSING AGREEMENT
(GOVERNMENT)**

City and County of San Francisco

CUSTOMER's Legal Name		Doing Business As	
1 Dr. Carlton B. Goodlett Place	San Francisco	CA	94102
Street Address	City	State	Zip Code
Governmental Entity	California	94-6000417	
CUSTOMER's business organization type (corporation, LLC, partnership, non-profit or other entity)	State of Organization	Taxpayer Identification Number	
Greg Kato/Policy & Legislative Manager	415-554-5507		
Recipient/Title For Notices	Facsimile Number		

This MERCHANT PROCESSING AGREEMENT ("MPA") is entered into by and among the undersigned customer ("CUSTOMER"), on behalf of AGENCIES and NON-AGENCIES as further described below, BANK OF AMERICA, NA ("BANK") and BANC OF AMERICA MERCHANT SERVICES, LLC ("BAMS") (BAMS and BANK are collectively referred to as "SERVICERS") and together with the Agreement between the City and County of San Francisco and Banc of America Merchant Services, LLC and Bank of America, N.A. dated September 25, 2013 ("City Agreement") constitutes the agreement of the parties ("Agreement"). The parties acknowledge that CUSTOMER may, at its election, enter into Supplements to this Agreement with other third party providers in order to perform services hereunder. Unless otherwise specified in this MPA, (a) each SERVICER'S obligations under this MPA shall be joint, but not several, and (b) each SERVICER shall have separate but equal rights against the CUSTOMER.

This MPA governs processing services regarding credit, debit and certain other Card transactions and other services, as those services are further described in this MPA, the Fee Schedule attached hereto as Schedule A (including any additions and changes thereto, the "Fee Schedule"), any and all concurrent and subsequent addenda, supplements or schedules to this MPA (each, including the Fee Schedule, as amended from time to time, a "Supplement"), and the Card Organization Rules, all as elected by CUSTOMER and approved by SERVICERS (or their applicable Affiliate) (for the purposes of this MPA, collectively, the "Services"). For the avoidance of doubt, the Processing Fees set forth in the Fee Schedule will be a fixed rate for the term of the MPA. Unless otherwise expressly provided in this MPA or any Supplement, (i) references to each Supplement shall be deemed to include this MPA and (ii) references to this MPA shall be deemed to include each Supplement. To the extent the terms of a Supplement directly conflict with the terms of this MPA, the terms of that Supplement shall control. In performing this MPA, without diminishing SERVICERS' obligations to CUSTOMER, SERVICERS may use the services of third parties, including, without limitation, their respective Affiliates; and, for the purpose of providing SERVICES to CUSTOMER, SERVICERS will require such third parties to agree and comply with Applicable Law, Card Organization Rules and the terms of this MPA.

The intent of this MPA is to provide one set of standardized general terms and conditions to be utilized by (i) CUSTOMER, on behalf of AGENCIES, and (ii) each NON-AGENCY that executes a Participation Agreement as further described below, with respect to each such party's receipt of the Services. CUSTOMER represents and warrants to SERVICERS that it has the necessary power and authority under the laws of the City and County of San Francisco to enter into this MPA on behalf of AGENCIES and NON-AGENCIES as described herein. CUSTOMER acknowledges and agrees that SERVICERS may provide a copy of this MPA to AGENCIES and NON-AGENCIES.

All AGENCIES are part of the City and County of San Francisco and are not separate legal entities, and as such will not be required to enter into Participation Agreements; provided that CUSTOMER is responsible and liable to SERVICERS for each AGENCY'S compliance with the terms and conditions of this MPA (including payment obligations). CUSTOMER is solely responsible for providing a copy of this MPA and related materials to participating AGENCIES, and for communicating with participating AGENCIES with regard to the terms and conditions of this MPA. SERVICERS may terminate any individual AGENCY'S receipt of Services under this MPA for the same reasons that SERVICERS may terminate this MPA in its entirety. CUSTOMER and SERVICERS acknowledge that only the CUSTOMER'S Office of the Treasurer & Tax Collector can approve AGENCIES that would participate in this MPA. SERVICERS agree to contact CUSTOMER'S Office of the Treasurer & Tax Collector before engaging an entity to determine if it is an AGENCY or a NON-AGENCY.

A NON-AGENCY may not receive Services under this MPA unless and until it has entered into a Participation Agreement substantially in the form attached hereto as Exhibit A, and NON-AGENCY and SERVICERS have executed such Participation Agreement. Upon complete execution of a Participation Agreement, the NON-AGENCY that is a party thereto will have all the same rights and obligations that CUSTOMER has under this MPA as if that NON-AGENCY had separately entered into this MPA; provided, however, that (i) SERVICERS may terminate any Participation Agreement for the same reasons as it has to terminate this MPA and (ii) any amendments to this MPA will constitute simultaneous and identical amendments to each Participation Agreement. Each NON-AGENCY will be liable to SERVICERS only with respect to its own receipt of Services under this MPA, and no individual NON-AGENCY will be liable to SERVICERS under this MPA for any other NON-AGENCY. SERVICERS agree to contact CUSTOMER'S Office of the Treasurer & Tax Collector before engaging an entity to determine if it is an AGENCY or a NON-AGENCY.

In consideration of the mutual covenants and agreements set forth herein (including the City Agreement) and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, SERVICERS and CUSTOMER agree as follows:

- 1. Definitions.** As used in this MPA, capitalized terms will have the meaning set forth in Annex 1, the Operating Guide or Card

Organization Rules, as applicable.

2. Services.

- 2.1 The parties hereto acknowledge and agree that SERVICERS shall not be the exclusive provider of the Services contemplated hereunder, provided, however, that CUSTOMER shall be obligated to maintain the Minimum, as further described in Section 14, below.
- 2.2 Subject to Card Organization Rules, Services may be performed by BAMS or BANK subject to the agreements between them as the same may be modified from time to time. In addition to SERVICERS, one or more affiliates of BAMS may assist in providing Terminals or other equipment and local support functions in connection with this MPA.
- 2.3 SERVICERS will make the Services operational and available to CUSTOMER through a mutually agreed upon implementation plan. CUSTOMER agrees to at all times cooperate with SERVICERS and provide SERVICERS with all necessary information and assistance required by SERVICERS to provide the Services in accordance with the Card Organization Rules and Applicable Law, including, without limitation, making changes to Merchant Equipment as SERVICERS require. CUSTOMER will provide SERVICERS with information regarding AGENCIES as SERVICERS may request from time to time. CUSTOMER will be responsible for (i) use of the Services by CUSTOMER, AGENCIES, CUSTOMER's and each AGENCY's employees and agents, and Merchant Providers of CUSTOMER or any AGENCY, (ii) CUSTOMER's or any AGENCY's failure to properly access the Services in the manner prescribed by SERVICERS, and (iii) CUSTOMER's failure to supply accurate information regarding the Services.
- 2.4 SERVICERS will provide the Services substantially in accordance with the Service Level Agreement set forth in Exhibit 1 attached hereto (the "SLAs"). Notwithstanding any provision in the MPA to the contrary, CUSTOMER expressly acknowledges and agrees that a failure by SERVICERS to meet any or all of the SLAs (a "Performance Breach") shall not constitute a breach of the MPA, nor shall CUSTOMER have a right to bring any claim or action against SERVICERS under the MPA on the basis a Performance Breach. CUSTOMER acknowledges and agrees that CUSTOMER's sole remedy for a Performance Breach shall be termination of this MPA, as further described in Section 20 of City Agreement and Section 22.11 below. Additionally, SERVICERS' Relationship Manager shall meet with CUSTOMER's Office of the Treasurer & Tax Collector annually to review and discuss past and future performance and to provide training on topics specified by CUSTOMER.

3. Election of Cards, Duty to Honor Cards and Use of Marks.

3.1 Card Election. CUSTOMER has elected and SERVICERS have approved CUSTOMER to accept those Card types and Services designated in this MPA or the Supplements. CUSTOMER may change CUSTOMER's election of Card types and Services from time to time upon at least sixty (60) days' advance notice to SERVICERS; SERVICERS will use their reasonable efforts to accommodate CUSTOMER's requests in less than this time but SERVICERS will not be obligated to do so. Upon SERVICERS' approval of such new Card type or Service, the parties will execute a Supplement therefor. CUSTOMER will not seek authorization for or submit a transaction of a new Card type until the parties have entered into a Supplement for it. Unless otherwise directed by SERVICERS, CUSTOMER will not seek authorization for or submit a Card transaction of a Card type CUSTOMER desires to discontinue accepting later than the effective date of the notice to SERVICERS. With respect to inadvertent or unintentional acceptance of a transaction other than the type or service anticipated for CUSTOMER's account, CUSTOMER shall be liable, obligated and responsible for the current transaction fee(s) with respect to such Card, transaction and/or service and be liable, obligated and responsible under this MPA for any such transaction or service to the same extent as CUSTOMER would be if it was of an anticipated Card type or service.

3.2 Honoring Cards Generally. CUSTOMER will honor a Card by accepting it for payment. CUSTOMER will not engage in any acceptance practice or procedure that discriminates against, or discourages the use of, any particular Card type elected by CUSTOMER and approved by SERVICERS, in favor of any competing Card brand also elected and approved.

3.3 Cards Issued by US Card Issuers. For all Cards issued by U.S. Issuers, CUSTOMER will honor all Cards within the Card types elected and approved in accordance with this MPA. For example, if CUSTOMER elects and is approved to accept Visa credit Cards, CUSTOMER will submit payments from Visa-branded credit Card Cardholders without regard to whether the credit Card is a Visa-branded rewards credit Card or Visa-branded business purpose credit Card.

3.4 Cards Issued by Non-US Card Issuers. CUSTOMER will honor all Cards issued by non-U.S. Issuers if such Card type is elected by CUSTOMER for acceptance pursuant to this MPA. For example, even if CUSTOMER elects to limit CUSTOMER's acceptance of MasterCard Cards to MasterCard credit Cards, CUSTOMER will accept for processing a MasterCard debit Card issued by a non-U.S. Card issuer.

3.5 Marks Generally. CUSTOMER and SERVICERS acknowledge that no party will acquire any right, title or interest in or to the Marks of any other party or of any Card Organization or SERVICERS' agents by virtue of this MPA, without prior written consent. CUSTOMER will not assign to any third party any of the rights to use the Marks of SERVICERS, SERVICERS' agents or Card Organizations.

Except as otherwise provided herein, no party will use any other party's Marks, or use language from which the connection of such Marks may be inferred, in any advertising, written sales promotion, press releases or other publicity matters relating to this MPA without such party's prior written consent.

3.6 Special Provisions Regarding Discover Network Processed Cards. Services provided for transactions made with Discover branded Cards or DNP Card Types (as hereinafter defined) are processed by BAMS and not by BANK. DNP Card Types are Cards branded by Diners Club International®, JCB, China UnionPay, Korea Bank and Credit or any other Card Organizations subsequently designated by Discover, and each of those Card Organizations is referred to as a "DNP Card Organization". The Services provided, transactions processed and other matters contemplated under this MPA for Discover Cards and DNP Card Types and DNP Card Organizations are subject to the rest of this MPA; provided, however, that BANK is not a party to

this MPA insofar as it relates to Services for transactions made with Discover Cards or DNP Card Types, and BANK is not liable to CUSTOMER in any way with respect to such Services.

4. General Requirements and Restrictions for Card Transactions.

4.1 Accuracy of Data Submitted. CUSTOMER will be responsible for the quality and accuracy of all data provided to SERVICERS. SERVICERS may, at SERVICERS' option, return to CUSTOMER for correction before processing any data submitted by CUSTOMER which is incorrect, illegible or otherwise not in proper form. If CUSTOMER does not provide data in accordance with SERVICERS' specified format and schedule, SERVICERS will use reasonable efforts to reschedule and process the data as promptly as possible, but the expenses related to such rescheduling and processing shall be billed to CUSTOMER at the rate of one hundred twenty-five dollars (\$125.00) per hour.

4.2 Prohibitions on Increasing Price of Goods or Services. CUSTOMER will not increase the price of goods or services for a Card transaction or impose any fee for the service of accepting a Card except as allowed by the Card Organization Rules and Applicable Law. CUSTOMER may charge a convenience or service fee for a Card transaction only as permitted by the Card Organization Rules and Applicable Law. If clearly disclosed to the Cardholder, CUSTOMER may offer a discount from the standard price for payments by cash.

4.3 Payments from Cardholders. CUSTOMER agrees that CUSTOMER will not accept or process, any funds representing a Cardholder's payment to an Issuer.

4.4 Prohibition on Aggregating and Factoring and Employee Transactions. CUSTOMER is prohibited from submitting or presenting, and agrees not to submit or to present, any authorization requests for transactions and Sales Drafts arising from transactions between (i) CUSTOMER and Cardholders who are CUSTOMER's owners, partners, guarantors, officers or employees, other than genuine purchases, leases or rentals of goods or services from CUSTOMER or other payments to CUSTOMER, all in the ordinary course of CUSTOMER's business, and (ii) Cardholders and third parties for their goods or services or other payments to them.

4.5 Draft Requirements. All Sales Drafts and Credit Drafts must include all information required under and in accordance with the Operating Guide, Card Organization Rules and Applicable Law:

4.6 U.S. Dollars. Unless otherwise agreed in advance and writing by SERVICERS, CUSTOMER must submit all Card transactions in U.S. dollars.

5. Operating Guide; Card Organization Rules and Compliance; Order of Precedence.

CUSTOMER acknowledges that it has received the Operating Guide, the terms of which are incorporated into this MPA; any reference to this MPA includes the Operating Guide. Notwithstanding any provision to the contrary contained in this MPA, the parties hereto acknowledge and agree that the Operating Guide provides the principals of a sound Card program and contains the relevant subset of the Card Organization Rules. However, the Operating Guide is not a complete set of all Card Organization Rules. If CUSTOMER loses or otherwise misplaces the Operating Guide or notices of changes thereto, CUSTOMER shall be responsible for contacting SERVICERS to obtain replacement copies. From time to time, SERVICERS may change the Operating Guide, in whole or in part, and other operating procedures, by providing CUSTOMER with at least thirty (30) days' prior written notice of the change, including details of the specific item(s) changed. However, in the event of changes in the Card Organization Rules or due to security reasons, certain changes in Card procedures may become effective on shorter notice. If there is any conflict between the terms of this MPA and the Operating Guide, the terms of this MPA will govern, unless the conflict is directly related to a change in the Operating Guide which specifically addresses a procedure or requirement detailed in this MPA.

CUSTOMER must comply with the Card Organization Rules and Applicable Law, however, with regard to Card Organization Rules; CUSTOMER need only comply with those applicable to Cards. CUSTOMER will review the Card Organization Rules and Applicable Law from time to time for changes, and is responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the Card Organization Rules. Card Organization Rules are available on web sites, such as http://www.usa.visa.com/merchants/operations/op_regulations.html, and <http://www.mastercardmerchant.com>, as those links may be changed from time to time.

If CUSTOMER accepts DNP Card Types, CUSTOMER acknowledges and agrees that transactions made using Cards of DNP Card Organizations will be processed under and subject to Discover Card Organization Rules and the terms of this MPA applicable to Discover Card acceptance and transactions.

In the event there is a conflict between Applicable Law, the Card Organization Rules, this MPA and/or the Operating Guide, such documents shall govern in the following order of precedence: 1) Applicable Law; 2) Card Organization Rules applicable to Cards; 3) this MPA; and 4) the Operating Guide, to the extent the conflicting provision in the Operating Guide is not related to a Card Organization Rule.

6. Authorization.

6.1 CUSTOMER agrees to submit only Card transactions for which CUSTOMER has received an Authorization. Obtaining an Authorization will not ensure payment to CUSTOMER for a Sales Draft. The fact that an Authorization is obtained by CUSTOMER will not affect SERVICERS' rights thereafter to revoke Authorization of a Card transaction or to charge back the transaction to CUSTOMER. In no event will the fact that an Authorization is obtained by CUSTOMER be deemed to be SERVICERS' representation or warranty, either express or implied, that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder.

6.2 The Authorization number provided by SERVICERS shall be noted by CUSTOMER in the appropriate place on the Sales Draft. If Authorization is declined, CUSTOMER shall not complete the Card transaction.

6.3 CUSTOMER shall comply with any special authorization procedures contained in the Card Organization Rules and any other sections or parts of this MPA.

6.4 CUSTOMER acknowledges that Authorization, (i) indicates only the availability of credit at the time of Authorization; (ii) does not warrant that the person presenting the Card is the rightful Cardholder; and (iii) is not an unconditional promise or guarantee by SERVICERS that any Card transaction will not be subject to Chargeback.

6.5 If CUSTOMER obtains an Authorization by telephone, CUSTOMER shall record the approval number on the Sales Draft.

7. Electronic Commerce Transactions.

CUSTOMER and SERVICERS acknowledge that as of the date of execution of this MPA, the provisions in Section 7, Electronic Commerce Transactions, do not apply to CUSTOMER. However, if CUSTOMER thereafter engages in Electronic Commerce Transactions using Services provided by SERVICERS, the provisions in this Section 7 shall automatically apply. CUSTOMER and SERVICERS also acknowledge that only the CUSTOMER's Office of the Treasurer & Tax Collector can approve CUSTOMER locations that would engage in ECT.

CUSTOMER acknowledges and agrees that this Section 7 pertains only to ECTs that arise from transactions effected in U. S. dollars. All of CUSTOMER's ECTs must be in U.S. dollars and will be settled in U.S. dollars. Under the Card Organization Rules, ECTs are considered non face-to-face Card transactions. In addition, CUSTOMER must properly identify each ECT in the Sales Draft.

CUSTOMER agrees to develop and maintain a point of presence on the Internet at CUSTOMER's expense. CUSTOMER must post CUSTOMER's consumer data privacy policy and method of transaction security on CUSTOMER's web site(s) in accordance with the Card Organization Rules and Applicable Law. CUSTOMER will, in accordance with the Card Organization Rules and Applicable Law: (i) install and maintain a working firewall to protect data accessible via the Internet; (ii) keep security patches up to date; (iii) encrypt stored data; (iv) encrypt data sent across networks; (v) use and regularly update anti-virus software; (vi) restrict access to data on a "need to know" basis; (vii) assign a unique ID to each person with computer access to data; (viii) not use vendor-supplied defaults for system passwords and other security parameters; (ix) track access to data by unique ID; (x) regularly test security systems and processes; (xi) maintain a policy that addresses information security for employees and contractors; and (xii) restrict physical access to Cardholder data.

CUSTOMER's Internet web site must contain (a) a complete description of the goods or services offered, (b) CUSTOMER's returned merchandise and refund policy, (c) CUSTOMER's customer service contact information, including e-mail address and/or telephone number, (d) transaction currency, (e) export or legal restrictions (if known), (f) CUSTOMER's delivery policy and (g) CUSTOMER's country of domicile immediately prior to the Cardholder's accessing of payment instructions. In addition, CUSTOMER must disclose, at all points of Cardholder interaction (including any of CUSTOMER's supplier or subcontractor Internet web sites and any of CUSTOMER's promotional materials and invoices), to the Cardholder that CUSTOMER, and not any of any CUSTOMER's suppliers of goods or subcontractors for services, is the merchant of record and responsible for any Card transaction. CUSTOMER must also notify the Cardholder that CUSTOMER is responsible for (i) payment transactions, (ii) products and services, (iii) direct customer service, (iv) dispute resolution, and (v) all terms and conditions of the transaction. CUSTOMER must display on CUSTOMER's Internet web site(s) the Card Organization Marks, wherever CUSTOMER displays payment options, in accordance with the Operating Guide and Customer Cardholder Use of the MPA.

CUSTOMER will be responsible for all costs of connectivity and communication between CUSTOMER, the Internet and SERVICERS. CUSTOMER agrees to utilize SSL (Secure Sockets Layer) or other secure compatible encryption method acceptable to SERVICERS in providing CUSTOMER's ECTs to SERVICERS for authorization, processing and settlement.

CUSTOMER assumes all responsibility for identification of the Cardholder and the validity of the Card information for ECT. CUSTOMER agrees that each Authorization request will include a request for address verification and a positive response for it. CUSTOMER agrees to identify separately any high-risk transactions CUSTOMER submits. The high-risk transactions include, but are not limited to, any under Merchant Category Code 5967 – Direct Marketing – Inbound Telemarketing Merchants.

8. Multiple Sales Drafts and Partial Consideration.

8.1 Except as shall be specifically set forth in the Operating Guide or the Card Organization Rules, CUSTOMER shall list all items of goods and services purchased during each Card transaction and the total amount thereof on a single Sales Draft.

8.2 CUSTOMER shall comply with all special procedures and conditions applicable under the Operating Guide and the Card Organization Rules with respect to any partial payment, installment payment, delayed delivery or advance deposit situation and any delayed or amended charges for a travel and entertainment transaction. CUSTOMER shall not use more than one Sales Draft to represent a single Card transaction to avoid the need for Authorization.

9. Pre-Authorized Orders.

9.1 A Pre-Authorized Order may include the payment of recurring charges such as insurance premiums, subscriptions, membership fees, tuition or utility charges and may also include preauthorized health care payments (subject to a Supplement).

9.2 If CUSTOMER is authorized to accept Pre-Authorized Orders, Authorization for each such Card transaction, regardless of the amount, must be obtained, and CUSTOMER must write "Recurring Transaction" (for Visa and other non-MasterCard Card transactions) or "PO" (for MasterCard Card transactions) as applicable, on the Sales Draft in lieu of the Cardholder's signature.

9.3 Except for preauthorized health care payments for the incremental costs not covered by insurance, advance deposits and installment payments, all made in compliance with this MPA, a Pre-Authorized Order may not include partial payments made to CUSTOMER for goods or services purchased in a single transaction. In no event may any finance charges be imposed on any periodic payments in connection with a Pre-Authorized Order.

9.4 CUSTOMER may not accept a Pre-Authorized Order from a Cardholder for the purchase of goods or services which are delivered or performed periodically unless the Cardholder completes and delivers to CUSTOMER a written request (and when applicable, a written renewal request) identifying (i) the goods or services to be charged to the Cardholder's account, (ii) the amount of the preauthorized or recurring charges (unless such charges are for variable amounts), (iii) the

frequency of the preauthorized or recurring charges and (iv) the duration of time for which the Cardholder's permission is granted. If CUSTOMER accepts any Pre-Authorized Orders for variable amounts, CUSTOMER must comply with the supplemental provisions set forth in the applicable Supplements.

- 9.5 The Cardholder's written request (including any written renewal request) must be: (a) retained for the duration of the preauthorized or recurring charges; (b) provided in response to an Issuer's request for original documentation; and (c) used no longer after receiving notice of cancellation.

10. CUSTOMER Responsibilities for Persons Used by CUSTOMER.

10.1 Use of Persons. CUSTOMER's use of the services, equipment, Software, systems, materials, supplies or resources of Persons regarding CUSTOMER's Card transactions processing, including, without limitation, Merchant Providers and any third party lessors and licensors, will not affect CUSTOMER's obligations under this MPA to SERVICERS which will apply to the same extent as if CUSTOMER had not used them. SERVICERS have no liability or responsibility to CUSTOMER or others regarding these Persons, even if SERVICERS referred them to CUSTOMER. These third parties are CUSTOMER's agents, and CUSTOMER is solely responsible for (i) determining whether they can meet CUSTOMER's needs and standards, (ii) their actions, inactions and compliance with the terms of this MPA and Applicable Law and (iii) any and all fees, costs, expenses and other obligations owed to them by CUSTOMER or owed by them to SERVICERS or to the Card Organizations.

10.2 Merchant Providers. Before CUSTOMER engages any Merchant Provider, CUSTOMER must provide to SERVICERS in writing (a) the Merchant Provider's legal name, (b) contact information, and (c) intended function. CUSTOMER covenants with SERVICERS that CUSTOMER will not use, allow the use of, or provide to any Merchant Provider access to any Cardholder data, BAMS Systems, BAMS Software or Services until CUSTOMER receives SERVICERS' approval and, if required, confirmation of SERVICERS' registration of that Merchant Provider with applicable Card Organizations. CUSTOMER must ensure that CUSTOMER and Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with this MPA and Applicable Law, including without limitation, those provisions requiring security of Cardholder data. CUSTOMER may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules and Applicable Law. CUSTOMER is responsible for all of SERVICERS' costs and expenses associated with SERVICERS' review, approval, certification (and recertification as may be required by the Card Organization Rules) and registration of any Merchant Providers. SERVICERS shall provide CUSTOMER's Office of the Treasurer & Tax Collector with a detailed Scope of Work and firm price proposal before such review, approval, certification and recertification.

Upon request and reasonable notice, CUSTOMER will provide, and will ensure that Merchant Providers provide, to SERVICERS and SERVICERS' respective representatives prompt access to CUSTOMER's and their facilities and records for the purposes of performing any inspection and copying books or records pertaining to the transactions contemplated under this MPA. CUSTOMER must have written agreements with Merchant Providers requiring such access.

11. Cardholder Refunds and Credits.

11.1 If a Cardholder returns goods or cancels services purchased from CUSTOMER with a Card, or CUSTOMER allows any other price adjustment after a sale has been completed and a refund or adjustment is due to the Cardholder (other than any involuntary refund required by applicable airline or other tariff or by Applicable Law), CUSTOMER will not return cash to the Cardholder but will instead prepare a Credit Draft and process each such refund or adjustment, as specified in the Operating Guide and Card Organization Rules. CUSTOMER will give the Cardholder a copy of the completed Credit Draft.

11.2 If CUSTOMER establishes a policy limiting refunds or acceptance of returned merchandise (e.g., no refund, exchange only, in-store credit only, or special conditions), CUSTOMER must follow the procedures set forth in the Operating Guide regarding refunds and returned merchandise.

12. Presentment of Card Transactions.

12.1 Locations. CUSTOMER will provide SERVICERS with a complete list of all CUSTOMER's Locations processing with SERVICERS in the United States and its territories where CUSTOMER desires to accept Cards using the Services of the SERVICERS, with current information for each Location, including, physical address and telephone number(s), mailing address and, if available, fax number(s) and email address(es). CUSTOMER will provide an updated list as changes to any of CUSTOMER's Locations using the Services of the SERVICERS or their related information occur.

12.2 CUSTOMER shall electronically (or physically, when authorized by SERVICERS) deliver to SERVICERS Sales Drafts and Credit Drafts for all Card transactions to be processed and settled under this MPA. The deadlines for submitting Sales Drafts and Credit Drafts are set forth in the Operating Guide and Card Organization Rules corresponding to the applicable Card types and desired rates. In no event shall such deadlines be later than the fifth calendar day or third banking day (whichever is earlier) after completing Card transactions (unless CUSTOMER is entitled to any special extension of these deadlines). CUSTOMER acknowledges that the times specified in the preceding sentence are the maximum deadlines and that faster time frames are required to qualify for incentive programs.

12.3 CUSTOMER will not submit any Sales Draft that was not created in conjunction with a Card transaction between CUSTOMER and the applicable Cardholder. Under no circumstances will CUSTOMER submit any Sales Draft that has been previously charged back by the Cardholder and subsequently returned to CUSTOMER.

13. Settlement of Card Transactions.

13.1 Settlement of Sales Drafts. SERVICERS will settle with CUSTOMER for each Sales Draft acquired and accepted by SERVICERS under this MPA after SERVICERS receive payment for that Sales Draft from the related Card Organization, subject to the terms of this MPA. Unless SERVICERS agree in writing otherwise, SERVICERS will only acquire Sales Drafts for Visa, MasterCard and Discover Network Card types (including those of other Card Organizations processed under Visa, MasterCard or Discover Network Card Organization Rules); provided, however, that, if CUSTOMER has been classified by Discover Network as having a Discover Direct Strategic Relationship with Discover Network, SERVICERS

will not acquire CUSTOMER's Discover Network transactions and they will be subject to CUSTOMER's agreement with Discover Network. CUSTOMER acknowledges and agrees that if SERVICERS have not agreed to or do not acquire transactions for any Card type (i) SERVICERS have no liability or responsibility whatsoever for the settlement of or disputes regarding those transactions and (ii) CUSTOMER will pursue directly with the related Card Organization all claims and disputes regarding those transactions. CUSTOMER agrees to pay SERVICERS for per item processing, authorization and other fees in the Fee Schedule for any non-acquired transaction services CUSTOMER receives from SERVICERS.

- 13.2 Settlement Account, Fee Account and Their Operation. CUSTOMER will designate, in writing, and maintain (i) the Settlement Account for the purposes of settling transactions under this MPA and (ii) the Fee Account for the purposes of CUSTOMER's payment of fees and other amounts due and owing to SERVICERS under the MPA. Unless otherwise noted, all fees and deposits will flow through the Settlement Account; however CUSTOMER reserves the right to designate and utilize a Fee Account. If the Settlement Account or Fee Account is with BANK, in the absence of any other written agreement with BANK, the terms and conditions that apply to BANK's deposit accounts of the same type will apply. As amounts become payable to CUSTOMER or to SERVICERS under this MPA, SERVICERS may, unless otherwise agreed, make payments to or receive payments from CUSTOMER by crediting or debiting the Settlement Account or the Fee Account, as applicable, as provided herein. If CUSTOMER does not maintain a Settlement Account or Fee Account with BANK, payments between CUSTOMER and SERVICERS must be made via direct debit to the Settlement Account or the Fee Account. If CUSTOMER does not maintain sufficient balances in the Settlement Account or Fee Account to cover amounts owing under this MPA, CUSTOMER must pay on demand, in no more than five (5) Business Days, all such amounts directly to SERVICERS, and if CUSTOMER does not do so, at SERVICERS' discretion SERVICERS may cease processing additional Card transactions until the amounts due are paid.

CUSTOMER acknowledges and agrees that transfers to or from the Settlement Account or Fee Account will be made on the basis of account number and bank routing number only. SERVICERS are not responsible for detecting errors in any Settlement Account or Fee Account information CUSTOMER provides, including the account numbers and routing numbers associated with the Settlement Account or Fee Account, even if any of those numbers do not correspond to the account or bank identified by name. CUSTOMER's obligations and SERVICERS' rights regarding any transfers SERVICERS make in reliance on the account number(s) and bank routing number(s) for the Settlement Account or Fee Account are not excused in those circumstances, even if CUSTOMER provides SERVICERS erroneous information.

SERVICERS will initiate a transfer of settlement funds to CUSTOMER as set forth in Section 13.3. SERVICERS will not be liable for any delays in receipt of settlement funds or errors in credits or debits to the Settlement Account or Fee Account that are caused by Persons, including but not limited to, delays or errors of any Card Organization or any financial institution other than BANK.

SERVICERS may debit the Settlement Account or Fee Account, as applicable, for the following purposes: (a) to correct accounting or other settlement errors, (b) for the amount of Credit Drafts, adjustments or Chargebacks, (c) fees and fines imposed upon SERVICERS by a Card Organization or Issuer as a result of CUSTOMER's actions or omissions and (d) ~~as required under the Bank Card Organization's policies and procedures. SERVICERS will provide advance notice to CUSTOMER of (i) all fines and (ii) all fees in an amount greater than \$1,000.~~ of the preceding sentence, SERVICERS will provide advance notice to CUSTOMER of (i) all fines and (ii) all fees in an amount greater than \$1,000.

- 13.3 Settlement Amounts and Time for Settlement. All settlements to CUSTOMER for Sales Drafts will occur on a daily basis and be based upon gross sales, minus any Credit Drafts, adjustments, Chargebacks, and fees, fines and other amounts imposed upon SERVICERS by a Card Organization or Issuer as a result of CUSTOMER's actions or omissions. SERVICERS will collect all other amounts due from CUSTOMER to SERVICERS (including, without limitation, Third Party Based Fees, Discount Rate and other transaction fees set forth on the Fee Schedule, Schedule A), on a monthly basis, via a debit to the Fee Account or Settlement Account as provided in Section 14.3. All credits to CUSTOMER's Settlement Account or other payments to CUSTOMER are provisional and are subject to (i) SERVICERS' final audit and confirmation, (ii) fees and fines imposed upon SERVICERS by a Card Organization or Issuer as a result of CUSTOMER's actions or omissions and (iii) any other obligations owed by CUSTOMER to SERVICERS.

Except as otherwise set forth in this MPA, if SERVICERS receive CUSTOMER's Sales Drafts by the applicable cut off time established by SERVICERS, SERVICERS will initiate a transfer of applicable settlement funds, after receipt thereof from the Card Organizations, via ACH (or other payment system available from SERVICERS for these types of transfers) to CUSTOMER's Settlement Account. SERVICERS will generally initiate this transfer by the following Business Day after SERVICERS process the applicable transactions. The Settlement Account will be credited within one Business Day after SERVICERS' initiation of the transfer if CUSTOMER maintains its Settlement Account with BANK.

- 13.4 Settlement Amounts Subject to Adjustments. This MPA is a contract whereby SERVICERS are extending financial accommodations to CUSTOMER within the meaning of Section 365(c) of the Bankruptcy Code. CUSTOMER's right to receive any amounts due or to become due from SERVICERS or SERVICERS' respective Affiliates, related to this MPA, is expressly subject and subordinate to Chargeback, setoff, lien, security interest and SERVICERS' rights to withhold settlement funds under this MPA, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

- 13.5 Suspension/Change in Payment Terms. In addition to any other remedies available to SERVICERS under this MPA, CUSTOMER agrees that should an uncured (if applicable based on the provisions set forth in this MPA) CUSTOMER Events of Default (ii), (iv), (vii), or (ix) (see Section 22) occur, SERVICERS may, with or without notice, change processing or payment terms (not to include pricing) and/or suspend credits or other payments of any and all funds, money and amounts now due or hereafter become due to CUSTOMER pursuant to the terms of this MPA, until SERVICERS have

had reasonable opportunity to investigate such event. CUSTOMER further agrees that should any of the other CUSTOMER Events of Default occur, SERVICERS may take similar actions as previously outlined upon ten (10) calendar days' notice to CUSTOMER.

14. Fees; Adjustments; Collection of Amounts Due; Reconciliation.

14.1 Fees and Card Organization Charges. CUSTOMER will pay SERVICERS, within the times specified by SERVICERS; all the fees and charges for the Services calculated pursuant to the Fee Schedule, which includes fees that are in whole or in part based on (i) fees set by Card Organizations, including, without limitation, interchange fees ("**Card Organization Based Fees**"), (ii) fees set by Persons related to the Services (together with Card Organization Based Fees, "**Third Party Based Fees**"), and (iii) fees that SERVICERS set. Fees will be charged for all authorization requests, whether or not approved, all Sales Drafts submitted for processing, all Credit Drafts and all Chargebacks. If a Card transaction does not qualify for the lowest interchange rate for which it is eligible, then that Card transaction will be downgraded and processed at a more costly interchange rate for which it qualifies. CUSTOMER will pay retroactive increased interchange fees for any Card transactions that a Card Organization determines did not qualify for the rates originally used.

CUSTOMER acknowledges that the fees stated herein are based upon the qualification of CUSTOMER's Card transactions for certain reduced interchange fees as set by the applicable Card Organizations. If a transaction fails to qualify for CUSTOMER's anticipated interchange levels or CUSTOMER inadvertently or intentionally accepts a Card transaction other than the type anticipated for its account (including a different Card type), then, as applicable to the pricing set forth in the Fee Schedule, CUSTOMER will be charged a higher interchange or non-qualified interchange fee, as well any applicable surcharge for that transaction, all as set forth in the Fee Schedule.

CUSTOMER shall be responsible for notifying BAMS, in writing, when CUSTOMER believes it has achieved actual bankcard volume that qualifies CUSTOMER for movement to another tier as reflected in Schedule A. Additionally, BAMS will conduct an annual review of CUSTOMER's bankcard volume, commencing on the Effective Date of this MPA. BAMS shall move CUSTOMER to the next tier for which CUSTOMER's actual volume qualifies for, within thirty (30) days of BAMS' confirmation of CUSTOMER's actual bankcard volume.

14.2 Card Organization Fines, Assessments and Penalties. The fees for Services set forth in the Fee Schedule may be adjusted to reflect increases, or new fees imposed by Card Organizations, including without limitation, interchange, assessments and other Card Organization fees, or to pass through increases or new fees charged to SERVICERS by other Persons related to the Services as specifically authorized in Section 14.4, below. All such adjustments shall be CUSTOMER's responsibility to pay and shall become effective upon the date any such change or addition is implemented by the applicable Card Organization or other Person as specified in SERVICERS' notice. In addition, CUSTOMER will pay to SERVICERS all fines and penalties, including, but not limited to, any of the foregoing related to CUSTOMER's non compliance with data security requirements or otherwise based on any CUSTOMER action or failure to act.

14.3 Payment of Fees, Charges and Other Amounts. SERVICERS will debit the Fee Account or Settlement Account for, or withhold from funds SERVICERS owe CUSTOMER under this MPA, all amounts CUSTOMER owes SERVICERS under this MPA. If the Fee Account or the Settlement Account has insufficient funds, SERVICERS may, without advance notice, withdraw the funds CUSTOMER owes SERVICERS from the Reserve Account. If sufficient funds are not available from those sources, CUSTOMER must pay the amount of any deficiency upon demand, in no more than five (5) Business Days.

14.4 Third Party Based Fee Changes. CUSTOMER will be responsible for any increased or new Third Party Based Fees (i) that result from CUSTOMER's change in telecommunications provider or (ii) that are imposed on SERVICERS by a governmental entity or under Applicable Law. SERVICERS will provide CUSTOMER with at least thirty (30) days' advance notice of any increased or new Third Party Based Fees. However, SERVICERS' ability to provide such notice depends on SERVICERS' receipt of timely notice from the applicable Persons and in those instances, SERVICERS may not be able to provide CUSTOMER with thirty (30) days notice. In any event, any increased or new Third Party Based Fees will become effective and CUSTOMER shall be responsible for paying them as of the date specified in the notice.

14.5 Fees for Supplies and Other Services. In addition to the other payments required in this MPA, CUSTOMER agrees to pay SERVICERS for any other fees and charges and any special services or handling CUSTOMER requests or requires not covered in this MPA. CUSTOMER also agrees to pay SERVICERS for amounts CUSTOMER owes to Persons that SERVICERS pay, for example, payments for leased or rented Merchant Equipment.

14.6 ACH Credits or Debits. To the extent the Automated Clearing House ("**ACH**") settlement process is used to effect debits or credits to CUSTOMER's Settlement Account or Fee Account, CUSTOMER agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association ("**NACHA**"), as in effect from time to time. CUSTOMER hereby authorizes SERVICERS to initiate credit and debit entries and adjustments as permitted under this MPA to CUSTOMER's account through the ACH network and/or through direct institutions to the financial institution where CUSTOMER's Settlement Account or Fee Account is maintained for amounts due under this MPA and under any agreements with SERVICERS or SERVICERS' respective Affiliates for any related services, as well as for any credit entries in error. CUSTOMER hereby authorizes the financial institution where CUSTOMER's Settlement Account and Fee Account are maintained to effect all such credits and debits to CUSTOMER's Settlement Account and/or Fee Account, as specified. This authority will remain in full force and effect until SERVICERS have given written notice to the financial institution where CUSTOMER's Settlement Account and/or Fee Account is maintained that all monies due under this MPA and any other agreements with SERVICERS or SERVICERS' Affiliates for any related services have been paid in full.

14.7 Intentionally Deleted.

14.8 Duty to Review Statements. CUSTOMER must promptly and carefully review, statements and reports provided or made available to CUSTOMER (physically, electronically or otherwise) reflecting Card transaction activity, including, activity in the Settlement Account and Fee Account, whether provided by SERVICERS or Persons.

14.9 Duty to Notify SERVICERS of Discrepancies or Adjustments. If CUSTOMER believes any discrepancies exist or adjustments are needed with respect to any debits or credits effected by SERVICERS with respect to CUSTOMER's Settlement Account and Fee Account, or for any amounts due to or due from CUSTOMER, or if CUSTOMER has any other questions or concerns regarding CUSTOMER's Card transactions that are processed and settled by SERVICERS or regarding any statement or report provided or made available by SERVICERS (physically, electronically or otherwise), CUSTOMER must notify BAMS in writing (i) within sixty (60) days after such debit or credit is effected, such transaction is processed and settled, or such statement or report is provided, or (ii) such shorter time as is provided in the terms and conditions covering that account. If CUSTOMER fails to notify BAMS within such time frame, SERVICERS will not be required to, investigate the matter or effect any related adjustment, absent any willful misconduct by SERVICERS. If CUSTOMER notifies BAMS after such time period, SERVICERS may, in SERVICERS' discretion and at CUSTOMER's cost, investigate the matter addressed in CUSTOMER's notice, but SERVICERS will not have any liability to effect any related adjustment absent any willful misconduct by SERVICERS. Any voluntary efforts by SERVICERS to assist CUSTOMER in investigating such matters will not create any obligation to continue such investigation or any future investigation.

14.10 Electronic Statements. If CUSTOMER elects to receive statements via electronic mail or online via the Internet, then (a) CUSTOMER authorizes SERVICERS to deliver statements and reports, Card Organization and regulatory information and notices of change in terms that SERVICERS would typically include with paper statements and notifications to review them (collectively, "Electronic Statements") at a web-accessible location on SERVICERS' computer servers, to CUSTOMER electronically, (b) SERVICERS are not required to provide CUSTOMER with a paper copy of statements but SERVICERS may, in SERVICERS' sole discretion, do so at any time, (c) CUSTOMER may request a paper copy of CUSTOMER'S merchant account statement(s) from SERVICERS; and (d) Electronic Statements are part of the Services provided under this MPA.

If CUSTOMER elects to receive Electronic Statements for its merchant account(s) via electronic mail ("e-mail"), CUSTOMER represents and warrants to, and covenants with, SERVICERS and agrees that: (i) CUSTOMER will disable any spam filter (or similar device or software that could prevent delivery of e-mail from to CUSTOMER) and add "@cedarcod.com" (the specific addressee portion will vary due to automation) (and such other e-mail address or domain that we may specify from time to time or from which CUSTOMER otherwise receives and Electronic Statement from SERVICERS) as a safe e-mail address or domain with respect to the e-mail account CUSTOMER designates for SERVICERS to send Electronic Statements; (ii) CUSTOMER is responsible for the accuracy and validity of all e-mail addresses provided by CUSTOMER and/or its agents; (iii) CUSTOMER will ensure that the e-mail account(s) designated for SERVICERS to send CUSTOMER Electronic Statements are under CUSTOMER's ownership or control and will be regularly accessible and actively monitored by CUSTOMER's authorized representatives; (iv) CUSTOMER will not share or permit to be known by any Person not authorized to view Electronic Statements on CUSTOMER's behalf, or store as an "autofill" field on a web browser, any password or encryption key; (v) CUSTOMER will notify SERVICERS promptly if CUSTOMER has not received an Electronic Statement from SERVICERS in the time frame that CUSTOMER normally receives Electronic Statements from SERVICERS, but in no event later than fifteen (15) Business Days after the close of the statement cycle; (vi) CUSTOMER will notify SERVICERS of any change in e-mail address(es) designated for receipt of Electronic Statements; (vii) Electronic Statements are subject to the reconciliation time frames described above; and (viii) immediately after being transmitted from SERVICERS'S e-mail server, CUSTOMER will be solely responsible for preventing the disclosure, interception and viewing of Electronic Statements by any unauthorized Person or Person that is otherwise not in compliance with applicable law.

14.11 Duty Regarding Merchant Systems. CUSTOMER will be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition within the Merchant Systems, and for notifying SERVICERS of any errors in the foregoing after receipt of the applicable report from SERVICERS. CUSTOMER will notify SERVICERS of all incorrect reports or output within five (5) Business Days after receipt of such reports or output. Within one (1) Business Day of the original transaction, CUSTOMER must balance each Location to the BAMS system for each business day that each Location is open. If CUSTOMER determines that transaction(s) have been processed in error, CUSTOMER will initiate the appropriate transaction for adjustment to correct the transaction in question. CUSTOMER is responsible for all applicable adjustment fees per applicable Card Organization.

14.12 Annual Minimum Volume. Each Contract Year of the term of this MPA (with "Contract Year" defined as twelve months from the date of full execution of this MPA and, thereafter, twelve months from the anniversary date of full execution of this MPA), CUSTOMER shall be responsible for maintaining a minimum of \$72,000,000.00 in annual bankcard volume (the "Minimum"). If, at the end of any Contract Year, CUSTOMER'S actual bankcard volume is insufficient to meet the Minimum, SERVICERS shall bill and CUSTOMER hereby agrees to pay, a fee of .02 basis points on the Shortfall, which shall mean "the difference between CUSTOMER's actual annual bankcard volume" and the "Minimum." The Minimum shall only include Billable Transactions as defined in Schedule A of the MPA. For example, if the Shortfall is \$5,000,000.00, the fee for such Shortfall would be \$1,000.00.

15. **Chargebacks.**

15.1 Chargebacks Payable Immediately. CUSTOMER will pay SERVICERS the amount of each Card transaction that CUSTOMER submitted to SERVICERS for processing that is charged back to SERVICERS for any reason permitted by the Card Organization Rules. Each Chargeback to CUSTOMER is immediately due and payable by CUSTOMER.

15.2 Disputing Chargebacks. CUSTOMER may dispute a Chargeback as provided in the Card Organization Rules, including any requirements for timely submission. SERVICERS' obligation to CUSTOMER respecting Chargeback disputes is limited to the permissible presentation of CUSTOMER's dispute to the appropriate Card Organization. SERVICERS will not engage in direct collection efforts against Cardholders on CUSTOMER's behalf.

15.3 Chargeback Fees. CUSTOMER will pay SERVICERS the fees associated with processing Chargebacks as provided in the Fee Schedule, without regard to whether the Chargeback is settled in CUSTOMER's favor or the Cardholder's favor. In addition, in the event the percentage of Chargebacks to CUSTOMER's merchant account meets or exceeds the percentage considered excessive by the Card Organizations, CUSTOMER will pay SERVICERS the excess chargeback fee specifically stated in the Fee Schedule (in addition to any fees imposed on SERVICERS by the Card Organizations). The rate and the method of calculation for what each Card Organization considers excessive may be found in its Card Organization Rules. All fees related to processing Chargebacks, including any excess chargeback fees, are immediately due and payable to SERVICERS upon assessment.

16. Representations; Warranties and Covenants.

16.1 Without limiting any other warranties hereunder, CUSTOMER represents, warrants and covenants with SERVICERS and with the submission of each Sales Draft reaffirms, the following representations, warranties and covenants:

- (i) each Card transaction is genuine and arises from a bona fide transaction, permissible under the Card Organization Rules and Applicable Law, by the Cardholder directly with CUSTOMER;
- (ii) each Card transaction represents a valid obligation for the amount shown on the Sales Draft, Preauthorized Order, or Credit Draft, and does not involve the use of a Card for any other purpose;
- (iii) each Card transaction represents an obligation of the related Cardholder for the amount of the Card transaction;
- (iv) the amount charged for each Card transaction is not subject to any dispute, set off or counterclaim;
- (v) each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased or rented or other payments to CUSTOMER and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this MPA, that merchandise or service was actually delivered to or performed for the Cardholder entering into that Card transaction simultaneously upon CUSTOMER accepting and submitting that Card transaction for processing;
- (vi) with respect to each Card transaction, CUSTOMER has no knowledge or notice of any fact, circumstance or defense which would indicate that such Card transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectability of that Cardholder's obligation arising from that Card transaction or relieve that Cardholder from liability with respect thereto;
- (vii) each Card transaction is made in accordance with the terms of this MPA and Applicable Law;
- (viii) each Sales Draft is free of any alteration not authorized by the related Cardholder;
- (ix) CUSTOMER has completed one Card transaction per sale; or one Card transaction per shipment of goods for which the Cardholder has agreed to partial shipments;
- (x) CUSTOMER is validly existing, in good standing and free to enter into this MPA;
- (xi) all information provided to SERVICERS in support of this MPA is true and correct;
- (xii) CUSTOMER is not doing business under a name or style not previously disclosed to SERVICERS;
- (xiii) CUSTOMER has not changed the nature of CUSTOMER's business, Card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different merchant category code under Card Organization Rules, in a way not previously disclosed to SERVICERS;
- (xiv) CUSTOMER will use the Services only for CUSTOMER's own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person;
- (xv) CUSTOMER has not filed a bankruptcy petition not previously disclosed to SERVICERS;
- (xvi) CUSTOMER owns and controls the Fee Account and the Settlement Account, and no security interest or lien of any type in favor of a Person exists regarding the Fee Account, Settlement Account or any Card transaction;
- (xvii) CUSTOMER will not at any time during the term of this MPA, or until all amounts due under this MPA have been paid in full, grant or pledge any security interest or lien in the Fee Account, Settlement Account or transaction proceeds to any Person, without SERVICERS consent; and
- (xviii) CUSTOMER will use best efforts to seek appropriations, including any special appropriations, in order to fulfill its obligations for amounts due and owing to SERVICERS under this MPA.

16.2 SERVICERS represent and warrant to CUSTOMER that:

- (i) SERVICERS will perform their obligations pursuant to this MPA in accordance with the Applicable Law and the Card Organization Rules;
- (ii) SERVICERS are validly existing, in good standing and free to enter into this MPA;
- (iii) SERVICERS are properly authorized by the Card Organizations to provide the Services. CUSTOMER can verify this authorization by visiting <http://usa.visa.com/merchants/new-acceptance/merchant-acquirer-list.html> and <http://www.mastercard.us/merchants/accept-mastercard/acquirers-list.html>;
- (iv) SERVICERS have the right to sublicense BAMS Software to CUSTOMER.

17. Retention of Records.

17.1 Unless prohibited by the Card Organization Rules, CUSTOMER will retain, for a period of at least eighteen (18) months from the date of the Card transaction or such other longer period as may be required by the Card Organization Rules, legible copies or images (electronically or otherwise) of CUSTOMER's Sales Drafts, Cardholder consents for Pre-Authorized Orders and Credit Drafts. CUSTOMER's obligation to retain records does not provide authority for CUSTOMER to retain Card magnetic stripe data.

17.2 CUSTOMER will submit to SERVICERS a legible copy or image of a Sales Draft, Cardholder consent for a Pre-Authorized Order or Credit Draft if any Issuer requests one. CUSTOMER's deadline for providing to SERVICERS a legible copy or image of the requested Sales Draft, Cardholder consent for a Pre-Authorized Order or Credit Draft is ten calendar (10) days after the date of the Issuer's retrieval request, or as specified in the notice from SERVICERS. CUSTOMER acknowledges that CUSTOMER's failure to properly and timely respond to any retrieval requests may result in a MER's failure to pay Chargeback.

17.3 SERVICERS will maintain books and records relating to this MPA and make them available to CUSTOMER as provided in Paragraph 28 of the City Agreement.

18. System Testing and System Enhancements.

18.1 SERVICERS reserve the right to conduct testing of the Merchant Systems for a period of time reasonably necessary for them to meet SERVICERS', the Merchant Equipment manufacturers', any third party integrators' and the Card Organizations' then-current applicable requirements. Throughout the term of this MPA, if CUSTOMER changes or modifies the Merchant Systems for any reason, including but not limited to modifications to accommodate changes in Card Organization Rules or Applicable Law, CUSTOMER will immediately notify SERVICERS of such changes or modifications, and SERVICERS will have a reasonable amount of time to conduct certification testing of the Merchant Systems to verify that it meets SERVICERS', any third party integrators' and the Card Organizations' then-current applicable requirements. The first such standard re-certification will be performed by SERVICERS at no cost to CUSTOMER; however, subsequent re-certifications will be billed to CUSTOMER at the rate of one hundred twenty-five dollars (\$125) per hour. Notwithstanding anything to the contrary, by conducting implementation or certification testing, SERVICERS do not guarantee that CUSTOMER's transactions will qualify at the lowest possible interchange level. CUSTOMER assumes all liability resulting from CUSTOMER's failure to notify SERVICERS of the changes or modifications or CUSTOMER's refusal to allow SERVICERS to conduct the implementation or certification testing.

18.2 If, after the effective date of this MPA, CUSTOMER requests SERVICERS to perform or provide any system enhancements, custom reports, special files, terminal applications, related service enhancements or new services (collectively, "System Enhancements"), and SERVICERS agree to do so, these System Enhancements will be made in accordance with terms and conditions, including pricing, agreed to by the parties in writing.

19. Proprietary or Confidential Information.

19.1 To the extent allowed by applicable state and local laws, (including but not limited to Cal Gov't Code § 6250 et seq. and San Francisco Municipal Code, Administrative Code, Chapt. 67, Article III) CUSTOMER will treat this MPA and any information supplied or otherwise made accessible by SERVICERS or SERVICERS' agents as confidential and will not disclose the same to any third parties except as provided herein, including without limitation: (i) information about the products, services, operations, procedures, customers, suppliers, sales, pricing, business plans and marketing strategies of SERVICERS, their Affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords either SERVICER a competitive advantage over its competitors; (iii) user IDs, security codes, passwords, personal identification numbers, and other security devices and procedures for the Services or related thereto; and (iv) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable.

19.2 SERVICERS' confidential information shall be used by CUSTOMER only to exercise CUSTOMER's rights and to perform CUSTOMER's obligations hereunder. CUSTOMER shall not disclose the confidential information to any Person, except as may be agreed upon in writing by SERVICERS or as required by law. CUSTOMER shall safeguard all of SERVICERS' confidential information using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by SERVICERS or upon termination of this MPA, CUSTOMER shall return to SERVICERS any confidential information in its possession or control.

19.3 SERVICERS will keep confidential, in accordance with Applicable Law and the Card Organization Rules, any information received by SERVICERS from CUSTOMER or CUSTOMER's agents regarding CUSTOMER's use of the Services, including any relationship and transaction information; provided that SERVICERS may disclose such information (i) to Persons to the extent necessary to provide the Services, (ii) SERVICERS' respective auditors and attorneys (internal and external) and regulators, (iii) as required or permitted by Applicable Law and (iv) to SERVICERS' respective Affiliates as SERVICERS deem appropriate. CUSTOMER acknowledges and agrees that any information obtained by SERVICERS may be shared with SERVICERS' respective Affiliates, who have a need-to-know, in connection with the provision of the Services, as long as such Affiliates are under obligation to treat such information with the same degree of care as required of SERVICERS.

19.4 In addition to the information security provisions elsewhere in this MPA, neither CUSTOMER nor SERVICERS will use, store, disclose, sell or disseminate any Cardholder data obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders), except in accordance with the Card Organization Rules and Applicable Law (e.g., for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, retrieval requests or similar issues involving Card transactions). The foregoing will not apply in the instance of a court or governmental request, subpoena or order. SERVICERS may use any Cardholder data for purposes associated with BANK's role as an Issuer if such Cardholder data is derived from a Card transaction in which the Card used was issued by BANK. Further, in accordance with the Operating Guide, Card Organization Rules and Applicable Law, SERVICERS may participate in sharing Cardholder data among SERVICERS' Affiliates, other financial institutions, regulatory authorities, law enforcement agencies and any other Persons authorized by the Card Organization Rules and Applicable Law. In addition, SERVICERS may participate in sharing Cardholder data with any Card Organization or its designee at the request of that Card Organization.

19.5 CUSTOMER acknowledges that it will not obtain ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a Person as an asset upon a bankruptcy, insolvency or failure of CUSTOMER'S business. Upon a bankruptcy, insolvency or failure of CUSTOMER'S business, all Card transaction information must be returned to SERVICERS or acceptable proof of the destruction of all Card transaction information must be provided to SERVICERS.

19.6 The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that (i) was in the public domain prior to the date of this MPA or subsequently came into the public domain through no fault of the party that received such confidential information; (ii) was received from a Person free of any obligation of confidence of the disclosing party and which Person to the receiving party's knowledge, was not under an obligation to keep the information confidential; (iii) was already in the receiving party's possession prior to receipt from the disclosing party; (iv) is required to be disclosed by law, regulation or court order after giving the disclosing party as much advance

- notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by the receiving party's employees, consultants or agents without use of or reference to the disclosing party's confidential information.
- 19.7 CUSTOMER acknowledges that breach of the restrictions on use or disclosure of SERVICERS' confidential information may result in immediate and irreparable harm to the applicable SERVICER, and money damages would be inadequate to compensate for that harm. SERVICERS shall be entitled to seek injunctive relief, in addition to all other available remedies, to redress any breach.
- 19.8 Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under SERVICERS' confidential information to CUSTOMER. Except as specifically provided for herein, no license is hereby granted to CUSTOMER under any patent, trademark, copyright, trade secret or other proprietary rights of SERVICERS, and CUSTOMER shall not assign to any Person the rights to use the Marks of SERVICER or its agents. All right, title, and interest in and to all intellectual property related to the Services (including, without limitation, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods), owned, developed or licensed by SERVICERS prior to, during the term of, or after the MPA, or employed by SERVICERS in connection with the Services and any updates, changes, alterations or modifications to or derivative works from such intellectual property, shall be and remain, as among the parties, SERVICERS' exclusive property.
- 19.9 CUSTOMER agrees that SERVICERS may obtain relevant information from any applicable telecommunications provider utilized by CUSTOMER, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by CUSTOMER in connection with the Services.
- 19.10 Notwithstanding any contrary provisions in the controlling documents for any other accounts CUSTOMER has with BANK, BANK may share and exchange with BAMS and its respective Affiliates and agents information about CUSTOMER and those accounts in connection with the Services, and any services provided by TeleCheck Services, Inc., First Data Merchant Services Corporation, or any other SERVICERS of Services under this MPA, to the extent CUSTOMER has engaged TeleCheck Services, Inc., First Data Merchant Services Corporation or any other SERVICERS of Services under this MPA, for the purpose of providing SERVICES to CUSTOMER. BANK will require its affiliates and service providers to agree to and abide by the terms of the MPA.
- 19.11 Notwithstanding the foregoing, SERVICERS acknowledge that CUSTOMER may be subject to the provisions of applicable state "public records" laws ("**Public Records Law**") and that under certain circumstances, CUSTOMER may be required to release a copy of this MPA to a third party under the Open Records Law. In the event that CUSTOMER receives a request for confidential information from any third party under the Public Records Law, CUSTOMER shall immediately (but not later than the next Business Day) notify SERVICERS of such request. Such notification shall include a copy of the written request received by CUSTOMER. As soon as is reasonably possible following such notice, CUSTOMER will provide SERVICERS with copies of any documents and/or other materials that CUSTOMER believes to be responsive to such request. CUSTOMER shall respond to such request by either (x) rejecting such request or (y) acknowledging receipt of such request and advising the requesting party that a subsequent response will be forthcoming. SERVICERS may take whatever action (legal or otherwise) SERVICERS deem necessary to prevent CUSTOMER's disclosure of such confidential information, and CUSTOMER shall provide SERVICERS with reasonable assistance. However, with respect to Cardholder account numbers, personal information and other Card transaction information, CUSTOMER will not disclose such information to any such requesting party, and may only disclose such information as otherwise required or permitted under Applicable Law or the Card Organization Rules.

20. Examinations, Audits and Corrective Action.

20.1 SERVICERS' Rights. SERVICERS or their respective designees will have the right, during the term of this MPA and for one (1) year thereafter, upon ten Business Days' notice, unless there is a significant business risk or specific request by a Card Organization or regulatory body that mandates shorter notice, and during normal business hours, to conduct a review of the books, records, operations and Merchant Equipment of CUSTOMER, Merchant Providers and CUSTOMER's other third party service providers to determine or to verify CUSTOMER's and their compliance with CUSTOMER's obligations under this MPA.

20.2 Card Organization and Investigation. CUSTOMER will, upon reasonable prior written notice from SERVICERS and as directed by any Card Organization, permit any Person acceptable to that Card Organization to examine and audit the records, operations and Merchant Systems relevant to such Card Organization. The scope, standards and frequency of the examinations and audits will be determined by the Card Organization requesting it. The results, including, but not limited to any written reports of such examinations and audits, must be made available to the Card Organization requesting it and SERVICERS. All expenses related to such examinations and audits will be paid by CUSTOMER.

20.3 Remediation. CUSTOMER must promptly take corrective action acceptable to SERVICERS and the Card Organizations to rectify (i) any failure to comply with this MPA or any problem identified in any report, examination or audit that could reasonably be expected to have an adverse impact on SERVICERS, Issuers, Card Organizations or Cardholders and (ii) any control deficiencies identified in such report.

20.4 Regulatory Agencies. Notwithstanding anything to the contrary in Sections 19 (Proprietary and Confidential Information) and 24 (Information Security) of the MPA, CUSTOMER agrees to provide reasonable access to Merchant Systems and CUSTOMER's facilities and records and those of Merchant Providers during normal business hours for examination purposes to any state or federal agencies with jurisdiction over SERVICERS or any Card Organization, upon SERVICERS' prior written request.

21. Intentionally Deleted.

22. Term; Events of Default.

22.1 This MPA and the applicable Supplements shall become effective upon the date this MPA and the Supplements are signed by SERVICERS, which shall in all instances be on or after the date(s) CUSTOMER signs this MPA and the applicable Supplements. CUSTOMER acknowledges and agrees that to the extent this MPA does not represent a renewal or extension of a current agreement between the parties for the Services contemplated hereunder, CUSTOMER shall not process a "live", non-test Card transaction under this MPA until such time as CUSTOMER has been approved by BAMS' credit department and BAMS and BANK have executed this MPA.

22.2 This Agreement shall remain effective through the initial term of five (5) years from the date of this Agreement with an option to renew the agreement for two successive two (2) year terms. Any extension or renewal shall be effective only upon a written agreement signed and executed by the parties. If CUSTOMER terminates this Agreement and continues to use the Services after the effective date of such termination, then CUSTOMER's termination shall be deemed rescinded and the Agreement shall remain in effect until subsequently terminated.

22.3 (a) If any of the following events shall occur (each a "CUSTOMER Event of Default"):

- (i) a material adverse change in the financial condition, business procedures, products or services of CUSTOMER; or
- (ii) fraudulent or suspected fraudulent Card sales by CUSTOMER (1.0% of total dollar or transaction volume as measured over a 30 day period) or excessive Chargebacks (1.0% of total dollar or transaction volume as measured over a 30 day period); or
- (iii) any representation, warranty or covenant of CUSTOMER in this MPA is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made; or
- (iv) (a) CUSTOMER shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this MPA; or (b) CUSTOMER shall fail to comply with Information Security requirements as detailed in Section 24 or shall fail to pay SERVICERS for any amounts due and owing under this MPA or shall fail to establish and maintain any Reserve Account in compliance with the terms of Section 23; or
- (v) Intentionally Deleted.
- (vi) CUSTOMER shall default in the payment when due, whether upon maturity or otherwise, of any material indebtedness for borrowed money or any material trade payable; or
- (vii) CUSTOMER shall: commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or entry into a composition agreement or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; generally become unable to pay its debts or trade obligations as they become due; make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- (viii) a case or other proceeding shall be commenced against CUSTOMER, in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator or the like of CUSTOMER, or of all or any substantial part of the assets, domestic or foreign, of CUSTOMER, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding against CUSTOMER (including, but not limited to, an order for relief under the Bankruptcy Code) shall be entered; or
- (ix) the independent certified accountants retained by CUSTOMER shall refuse to deliver an unqualified opinion with respect to the annual financial statements of CUSTOMER;

then, upon the occurrence of (1) a CUSTOMER Event of Default specified in subparagraphs (ii), (iv)(b), (vii) or (viii) above, SERVICERS may consider this MPA to be terminated immediately, without notice, and all amounts payable hereunder by CUSTOMER to SERVICERS shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by CUSTOMER, and (2) any other CUSTOMER Event of Default, this MPA may be terminated by SERVICERS by giving not less than thirty (30) days' notice and concurrent cure period to CUSTOMER, and, upon such notice and failure to cure, all amounts payable hereunder by CUSTOMER to SERVICERS shall be due and payable on demand.

(b) If any of the following events shall occur (each a "SERVICERS Event of Default"):

- (i) any representation, warranty or covenant of SERVICERS in this MPA is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made; or
- (ii) SERVICERS shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this MPA;
- (iii) SERVICERS fail, due to causes within SERVICERS' sole and exclusive control, to make any settlement payment when due and payable pursuant to this MPA and such settlement payment is not paid within three (3) Business Days following notice of such failure to pay; or
- (iv) SERVICERS shall: commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or entry into a composition agreement or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; generally become unable to pay its debts or trade obligations as they become due; make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- (v) a case or other proceeding shall be commenced against SERVICERS, in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator or the like of SERVICERS, or of all or any substantial part of the assets, domestic or foreign, of SERVICERS, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding against SERVICERS (including, but not limited to, an order for relief under the Bankruptcy Code) shall be entered;

then, upon the occurrence of (1) a SERVICERS Event of Default specified in subparagraphs (b) (iii) (iv) or (v) above, CUSTOMER may consider this MPA to be terminated immediately, without notice, and all amounts payable hereunder by SERVICERS shall be due and payable in full, without demand or other notice of any kind, all of which are expressly waived by SERVICERS, and (2) any other SERVICERS Event of Default, this MPA may be terminated by CUSTOMER by giving not less than thirty (30) days' notice to SERVICERS. The parties hereto acknowledge and agree that SERVICERS' obligations to pay CUSTOMER all amounts due and owing CUSTOMER as contemplated in this paragraph shall continue to be subject to (A) SERVICERS' receipt of such funds from the applicable Card Organization and (B) the provisions of Sections 13 through 15 of this MPA.

22.4 Neither the expiration nor termination of this MPA shall terminate the obligations and rights of the parties pursuant to provisions of this MPA which by their terms are intended to survive or be perpetual or irrevocable and such provisions shall survive the expiration or termination of this MPA.

22.5 Upon the occurrence of an uncured CUSTOMER Event of Default, SERVICERS may, in their sole discretion, exercise all of their rights and remedies under this MPA and Applicable Law, including, without limitation, exercising their rights under Section 23.

22.6 This MPA also may be terminated by SERVICERS without notice or penalty, if in their sole discretion, such termination is necessary for SERVICERS to comply with their obligations under any Applicable Law, rule or regulation including, but not limited to, the Office of Foreign Assets Control ("OFAC") Regulations and Card Organization Rules. SERVICERS' termination of this MPA pursuant to this Subsection 22.6 shall not be deemed a breach of contract by SERVICERS.

22.7 If this MPA is terminated for cause, the parties acknowledge that each party may be required to report the other party's business name and the names and other identification of its principals to the terminated merchant files maintained by the Card Organizations. The parties expressly agree and consent to such reporting in the event the party is terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by a Card Organization. Furthermore, the parties agree to waive and hold the other party harmless from and against, any and all claims which the party may have as a result of such reporting.

22.8 In addition to the provisions of the MPA that survive termination, the terms and provisions governing CUSTOMER's obligations and liabilities and SERVICERS' rights regarding the following matters will survive termination until all these matters are resolved or settled and all amounts owed to SERVICERS regarding these matters are fully and irrevocably paid: (i) processing and settlement of Card transactions, Sales Drafts and Credit Drafts, (ii) adjustments, (iii) all amounts due to SERVICERS under this MPA, (iv) the resolution of any Chargebacks, disputes or other issues involving Card transactions, (v) Compromised Data Events and (vi) all SERVICERS' rights regarding CUSTOMER's breach of any of its agreements, representations, warranties, covenants or other obligations under this MPA. In addition to the above and any terms and provisions which by their terms or nature survive termination, including those listed in Paragraph 22 of the City Agreement, the terms and provisions of Sections 9, 14 through 21, inclusive, 23 through 31, inclusive, Subsection 22.6 and this Subsection 22.8 shall survive any termination of this MPA. Upon termination of this MPA, CUSTOMER agrees to immediately send SERVICERS all the data relating to Card transactions made up to the date of termination.

22.9 After termination of this MPA for any reason whatsoever, CUSTOMER shall continue to bear total responsibility for all Chargebacks, fees, credits and adjustments resulting from Card transactions processed pursuant to this MPA and all other amounts then due or which thereafter may become due to SERVICERS under this MPA or which may be due to SERVICERS before or after such termination to either SERVICERS or any of SERVICERS' respective Affiliates for any related equipment or related services.

22.10 In the event CUSTOMER files for protection under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency assignment for the benefit of creditors or similar laws, and CUSTOMER continues to use the Services, it is CUSTOMER's responsibility to open new accounts to distinguish pre and post filing obligations. CUSTOMER acknowledges that as long as it utilizes accounts established prior to such filing, SERVICERS will not be able to systematically segregate CUSTOMER'S post-filing transactions or prevent set-off of the pre-existing obligations. In that event, CUSTOMER will be responsible for submitting an accounting supporting any adjustments that CUSTOMER may claim.

22.11 In the event that CUSTOMER can confirm that SERVICERS failed to meet any of the SLA's in Exhibit 1 (not including scheduled downtime if applicable) for two consecutive months or any three months in a calendar year, due solely to the acts or omissions of SERVICERS (each, an "SLA Failure"), CUSTOMER may terminate this MPA, without penalty, by providing SERVICERS with written notice within thirty (30) days of the SLA Failure. Should CUSTOMER not exercise its right of termination during such thirty day period, such right shall be automatically rescinded and thereafter null and void until the occurrence of a future SLA Failure. Notwithstanding any provision in the MPA to the contrary, CUSTOMER expressly acknowledges and agrees that an SLA Failure shall not constitute SERVICERS' breach of the MPA, nor shall CUSTOMER have a right to bring any claim or action against SERVICERS under the MPA on the basis of an SLA Failure. CUSTOMER acknowledges and agrees that CUSTOMER's sole and exclusive remedy for a SLA Failure shall be termination of this MPA, as expressly set forth herein.

22.12 This MPA may be terminated by CUSTOMER upon thirty (30) days prior written notice and concurrent cure period in the event SERVICERS breach a material obligation under this MPA.

23. **Reserve Account, Security Interest, Set-Off**

23.1 To the extent permitted under Applicable Law, CUSTOMER expressly authorizes SERVICERS to establish an account (the "Reserve Account") pursuant to the terms and conditions set forth in this Section 23. The initial amount of such Reserve Account shall be set by SERVICERS, in their sole discretion, but will not exceed the sum of (i) nine (9) months of Chargebacks, (ii) two (2) months of credits/adjustments, (iii) the value of any goods and/or services billed in advance

of fulfillment, (iv) the amount of any fees or discount due SERVICERS and (v) the amount of any current or anticipated Card Organization fees or fines (hereinafter, I, II, III, IV and V, in the aggregate, the "Reserve Formula"). The calculation for the credits and Chargebacks portion of the Reserve Formula will be based upon CUSTOMER processing history and the anticipated risk of loss to SERVICERS.

- 23.2 The Reserve Account shall be fully funded upon three days' notice to CUSTOMER, or in instances of fraud or a CUSTOMER Event of Default, Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to CUSTOMER's Settlement Account or Fee Account; (ii) one or more deductions or off sets to any payments otherwise due to CUSTOMER; (iii) CUSTOMER's delivery to SERVICERS of a letter of credit; or (iv) if SERVICERS so agree, CUSTOMER's pledge to SERVICERS of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to SERVICERS and shall be in a form satisfactory to SERVICERS. In the event of termination of this MPA by either CUSTOMER or SERVICERS, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by BANK for the greater of ten (10) months after termination of this MPA or for such longer period of time as is consistent with BANK's liability for Card transactions in accordance with Card Organization Rules. SERVICERS, however, will review the Reserve Account on a quarterly basis following the effective date of termination of this MPA for consideration of a reduction to or elimination of such account, with the amount to be maintained in the Reserve Account, following each review, not to exceed the Reserve Formula as then calculated. CUSTOMER's funds held in a reserve account may be held in a commingled Reserve Account for the reserve funds of BANK's customers, without involvement by an independent escrow agent. At CUSTOMER's request, SERVICERS will provide CUSTOMER with an accounting of CUSTOMER's funds held in a commingled Reserve Account. SERVICERS will hold funds pursuant to this Section 23 in master account(s) with your funds allocated to separate sub accounts. CUSTOMER will not at any time during the term of this MPA, or until all amounts due under this MPA have been paid in full, grant or pledge any security interest or lien in the Reserve Account to any Person without SERVICERS' consent. CUSTOMER acknowledges and agrees that Section 14.8 (Duty to Review Statements) and Section 14.9 (Duty to Notify Servicers of Discrepancies or Adjustments) shall apply with respect to the Reserve Account.
- 23.3 If CUSTOMER's funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from CUSTOMER, or if the funds in the Reserve Account have been released, CUSTOMER agrees to promptly pay SERVICERS such sums upon request. In the event of a failure by CUSTOMER to fund the Reserve Account, SERVICERS may fund such Reserve Account in the manner set forth in Subsection 23.2 above. CUSTOMER acknowledges and agrees that its failure to establish or maintain funds in the Reserve Account as required by SERVICERS hereunder shall be a material default of CUSTOMER under this MPA pursuant to Section 22.3(iv).
- 23.4 To secure CUSTOMER's performance of CUSTOMER's obligations under this MPA, and any other agreement for the provision of related equipment or related service CUSTOMER grants SERVICERS security interests in each transaction and its proceeds, the Settlement Account, the Reserve Account (if any) and the Fee Account. SERVICERS may enforce these security interests without notice or demand to the extent permitted by the Card Organization Rules and applicable law. CUSTOMER's obligations are irrevocably paid and performed in full. In addition, CUSTOMER's assent to the terms of this MPA will be considered CUSTOMER's agreement to obtain and execute an appropriate control agreement, pursuant to Article 9 of the Uniform Commercial Code, among CUSTOMER, SERVICERS and any other financial institution, under which agreement SERVICERS, CUSTOMER and that other financial institution agree to the disposition of funds in the Settlement Account, the Fee Account, the Reserve Account or any other account or property duly authorized by CUSTOMER and therefore subject to the security interest in this MPA without further consent by CUSTOMER, provided that such agreement will not obligate CUSTOMER to pay additional fees to SERVICERS.
- 23.5 In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, SERVICERS are hereby authorized by CUSTOMER at any time and from time to time, without notice or demand to CUSTOMER or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and for the benefit of CUSTOMER's obligations to SERVICERS and their respective Affiliates under this MPA and any other agreement with SERVICERS or any of SERVICERS' respective Affiliates for any related equipment or related services whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. CUSTOMER agrees to duly execute and deliver to SERVICERS such instruments and documents as SERVICERS may reasonably request to perfect and confirm the lien, security interest, right of set-off, recoupment and subordination set forth in this MPA.

24. Information Security.

24.1 Data Protection. CUSTOMER must, and must ensure that Merchant Providers, have proper security measures in place for the protection of Cardholder data, and comply with the Data Security Standards adopted by the PCI Security Standards Council, LLC (as amended, the "PCI DSS"), which may be reflected in the Visa Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection Program ("SDP") and Discover Network's Information and Security Compliance ("DISC"), in addition to all other Card Organization Rules, now or in the future. Additional information regarding the CISP, SDP programs and DISC is available at the Visa web site, www.visa.com/cisp, the MasterCard web site, www.mastercard.com/bankssdp/, Discover Network's web site, www.DiscoverNetwork.com/fraudsecurity/disc.html, and at the PCI DSS web site: <http://www.PCIStandards.org>, as those links may be updated by such parties, respectively, from time to time. In addition, when available, CUSTOMER must use only services and Merchant Equipment that have been certified as PCI DSS compliant by the Card Organizations. CUSTOMER must have written agreements with Merchant Providers requiring such compliance. CUSTOMER is responsible for demonstrating CUSTOMER's and Merchant Providers' compliance with the CISP, SDP, DISC and PCI DSS programs and providing SERVICERS or SERVICERS' designee with reasonable access to CUSTOMER's Locations and facilities, and ensuring that Merchant Providers provide reasonable access to their facilities, to verify CUSTOMER's and Merchant Providers' ability to prevent security violations.

24.2 Controls. CUSTOMER must, and must ensure that all Merchant Providers, have, maintain, and use at all times proper controls as specified in the Card Organization Rules and Applicable Law for secure storage of, limited access to, and rendering unreadable prior to discarding, all records containing Cardholder data, Card imprints and Cardholder signatures. CUSTOMER must not retain or store magnetic stripe or PIN data or Card Validation Codes after a transaction has been authorized. If CUSTOMER stores any electronically captured Cardholder signature, CUSTOMER may reproduce such signature only upon SERVICERS' request.

24.3 Costs. In addition to CUSTOMER's obligations as set forth in Sections 27 (Responsibility of the Parties) and 14 (Fees; Adjustments; Collection of Amounts Due; Reconciliation) of this MPA, if CUSTOMER or a Merchant Provider (or other Person used by CUSTOMER) is determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information (together, "**Compromised Data Event**") and regardless of CUSTOMER's belief that CUSTOMER has complied with the Card Organization Rules and Applicable Law or any other security precautions and is not responsible for the Compromised Data Event, CUSTOMER must promptly pay SERVICERS for all related expenses, claims, assessments, fines, losses, costs, and penalties and Issuer reimbursements imposed by the Card Organizations against SERVICERS (together, "**Data Compromise Losses**").

24.4 Issuer Costs. In addition to CUSTOMER's obligations in Sections 27 (Responsibility of the Parties) and 14 (Fees; Adjustments; Collection of Amounts Due; Reconciliation) and Subsection 24.3 (Information Security - Costs) of this MPA, CUSTOMER must pay SERVICERS promptly for all expenses and claims made by Issuers against SERVICERS alleging CUSTOMER's responsibility for the loss, disclosure, theft or compromise of Cardholder data or transaction data, apart from any claim procedures administered by the Card Organizations.

24.5 Compromised Data Event Appeals. If SERVICERS are allowed under the Card Organization Rules to contest or appeal any claim of an Issuer, or any amount assessed by a Card Organization against SERVICERS, which CUSTOMER is obligated to pay under this Section 24, CUSTOMER will be given the opportunity to advise whether CUSTOMER wishes SERVICERS to contest or appeal the claim, assessment, penalty or fine. The decision to contest or appeal will be in SERVICERS' reasonable discretion, and if CUSTOMER asks SERVICERS to contest or appeal, all related costs will be paid by CUSTOMER. Any amount returned to SERVICERS as a result of the contest or appeal will be promptly refunded to CUSTOMER.

24.6 Notice of Data Breach. CUSTOMER will (i) immediately notify SERVICERS of any suspected, alleged or confirmed Compromised Data Event, regardless of the source, including any from any Merchant Provider, and (ii) engage, at CUSTOMER's expense, a certified forensic vendor acceptable to SERVICERS and the Card Organizations no later than the time required by a Card Organization, which may be no longer than 24 hours following CUSTOMER's suspected or actual discovery of that Compromised Data Event. If required by a Card Organization, SERVICERS will engage a forensic vendor approved by a Card Organization at CUSTOMER's expense. CUSTOMER must cooperate with the forensic vendor so that it may immediately conduct an examination of Merchant Equipment, Merchant Systems, and CUSTOMER's and Merchant Providers' procedures and records and issue a written report of its findings. CUSTOMER agrees that upon CUSTOMER's suspected or actual discovery of a Compromised Data Event, CUSTOMER will not alter or destroy any related records. CUSTOMER agrees to maintain complete and accurate documentation regarding any modifications made to the records. CUSTOMER will share with SERVICERS information related to CUSTOMER's or any Card Organization's investigation related to any actual or suspected Compromised Data Event (including, but not limited to, forensic reports and systems audits), and SERVICERS may share that information with Card Organizations.

24.7 System Scans. Upon notice to CUSTOMER, SERVICERS or SERVICERS' respective representatives may conduct remote electronic scans of Merchant Systems, similar to those conducted under the PCI DSS, to confirm compliance with the requirements of the PCI DSS and similar requirements of the Card Organizations. CUSTOMER must promptly cooperate with SERVICERS to facilitate the scans.

24.8 Increased Fees for Non-Compliance. In addition to any other permitted action, if SERVICERS determine that CUSTOMER is not in compliance with any of the data security requirements imposed by this MPA, SERVICERS must notify CUSTOMER of the MID or MIDs responsible for the non-compliance and provide CUSTOMER with the requisite notice as required by the Card Organizations to agree or disagree with SERVICERS' assessment of non-compliance. If CUSTOMER agrees that one or more MIDs is not in compliance, CUSTOMER will be given the requisite notice as required by the Card Organizations to correct the non-compliance after which SERVICERS may increase the fees for authorizing and processing transactions under this MPA for the non-compliant MID or MIDs by ten percent (10%). If CUSTOMER disagrees that one or more MIDs is not in compliance, CUSTOMER will, using a Qualified Security Assessor, demonstrate in the requisite time frame as required by the Card Organizations that the MID or MIDs are in compliance. If, after the expiration of this time period, CUSTOMER cannot produce a compliance report from a Qualified Security Assessor, SERVICERS may increase the fees for authorizing and processing transactions under this MPA for the non-compliant MID or MIDs by ten percent (10%). The above fee increases will be in addition to CUSTOMER'S obligation to reimburse SERVICERS for any Data Compromise Losses and Issuer Costs and will be in until such time as SERVICERS are satisfied that CUSTOMER has adequately corrected such noncompliance or CUSTOMER demonstrates that CUSTOMER has adequately corrected the noncompliance as evidenced by an independently produced report of compliance provided from a Qualified Security Assessor in accordance with Card Organization procedures.

24.9 SERVICER Requirements. SERVICERS must comply with all applicable Card Organization Rules, including without limitation, those related to PCI DSS. SERVICERS may in their sole discretion, suspend or terminate Services under this MPA for any Compromised Data Event.

25. Compliance with Applicable Law. In performing its obligations under this MPA, the parties agree to comply with all Applicable Law. To the extent that CUSTOMER'S obligations under this MPA would cause CUSTOMER to violate any Applicable Law, CUSTOMER'S obligation to comply with such Applicable Law will prevail. CUSTOMER shall be solely responsible for (i) determining which laws and regulations apply to their activities under this MPA and (ii) maintaining compliance with all Applicable Law. CUSTOMER further agrees to cooperate with, and to provide information requested by, any SERVICER as such SERVICER deems necessary to facilitate its compliance with all Applicable Law. CUSTOMER must not use the Services for transactions

prohibited by Applicable Law or the Card Organization Rules, such as those prohibited for alcoholic beverages, tobacco products, gambling, Internet gambling (for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., as may be amended from time to time), drugs, weapons, adult-content material, or adult web sites, services or entertainment.

26. Financial and Other Information.

To the extent CUSTOMER's financial statements are not publicly available, CUSTOMER agrees to provide SERVICERS with such annual and quarterly financial statements of CUSTOMER which CUSTOMER prepares in the ordinary course of business and in accordance with applicable state law. CUSTOMER will provide such statements to SERVICERS within one hundred twenty (120) days after the end of each fiscal year, in the case of annual financial statements, or within forty-five (45) days after the end of each quarter in the case of quarterly statements. Such financial statements shall be prepared in accordance with U.S. generally accepted accounting principles applicable to government entities. CUSTOMER also shall provide such other information concerning CUSTOMER's business and CUSTOMER's compliance with the terms and provisions of this MPA. CUSTOMER authorizes SERVICERS to obtain from third parties financial and credit information relating to CUSTOMER, as authorized under this MPA. Such information will be used by SERVICERS in connection with their determination whether to accept this MPA and their continuing evaluation of the financial and credit status of CUSTOMER. Pursuant to Applicable Law, including the USA PATRIOT Act, SERVICERS are obtaining information and will take necessary action to verify CUSTOMER's identity. Upon request, CUSTOMER shall provide to SERVICERS or their representatives or regulators reasonable access to CUSTOMER's facilities and records for the purpose of performing any inspection and/or copying of CUSTOMER's books and/or records related to the Card transactions contemplated in this MPA. Alternatively, CUSTOMER may elect to provide copies of such books and/or records to SERVICERS.

27. Responsibility of the Parties.

27.1 CUSTOMER agrees to reimburse each SERVICER, and its Affiliates, agents, subcontractors, employees directors and officers, for all Claims brought against such SERVICER, and all related Losses (including attorneys' fees deemed reasonable by agreement of the parties, or, in the absence of such agreement, by a third party arbitrator or court of law and collection costs), to the extent such Claims result from: (a) any breach of any warranty, covenant or obligation of CUSTOMER under this MPA; (b) any misrepresentation by CUSTOMER under this MPA; (c) any gross negligence or willful misconduct of CUSTOMER, its employees, or agents in connection with CUSTOMER's Card transactions; or (d) CUSTOMER's provision of goods and services to Cardholders. In addition, CUSTOMER agrees to defend, indemnify and hold harmless SERVICERS, its Affiliates, agents, subcontractors, employees, directors and officers from and against all Excluded Claims (as defined below) brought against SERVICERS, and all related Losses.

27.2 SERVICERS agree to defend, indemnify and hold harmless CUSTOMER from and against all Claims brought against CUSTOMER, and all related Losses (including attorneys' fees deemed reasonable by agreement of the parties, or, in the absence of such agreement, by a third party arbitrator or court of law), to the extent such Claims result from: (a) any breach of any warranty, covenant or obligation of SERVICERS under this MPA; (b) any misrepresentation by SERVICERS under this MPA; or (c) any infringement or misappropriation of any patent, copyright, trademark, service mark, trade secret or other proprietary right, collectively, "Intellectual Property Rights", of a third party by the BAMS Systems or the Services, except to the extent such Claim, or caused by, results from or arises out of: (i) CUSTOMER's failure to use the BAMS Systems or the Services as required under this MPA, (ii) CUSTOMER's configuration, modification or use of the BAMS Systems or the Services in combination with other products or services (including software, equipment or systems) that are not provided by SERVICERS, and that combination creates a process or method that is the causation for the alleged infringement or misappropriation, (iii) SERVICERS' use of any designs, artwork, concepts, specifications or other materials provided by or on behalf of CUSTOMER in connection with this MPA or (iv) SERVICERS' custom development of the BAMS Systems or the Services, or other actions taken by SERVICERS with respect to the BAMS Systems or the Services, at CUSTOMER's request (the Claims referred to in the foregoing clauses (i), (ii), (iii) and (iv) are herein referred to collectively as the "Excluded Claims"). Furthermore, if SERVICERS determine that any portion of the BAMS Systems or the Services likely infringes or misappropriates a third party's Intellectual Property Rights, or that it is otherwise in SERVICERS' best interests to reduce or avoid the risk of an actual or potential infringement or misappropriation of a third party's Intellectual Property Rights, then SERVICERS, at its option and expense, may either: (A) obtain the right for CUSTOMER to continue using the infringing or misappropriating portion of the BAMS Systems or the Services; (B) modify the infringing or misappropriating portion of the BAMS Systems or the Services to make it non-infringing or non-misappropriating; (C) replace the infringing or misappropriating portion of the BAMS Systems or the Services with a non-infringing or non-misappropriating equivalent; or (D) terminate the MPA in its entirety upon written notice to CUSTOMER, and without further liability to CUSTOMER hereunder. The obligations of SERVICERS set forth in this Section 27.2 are CUSTOMER's sole and exclusive remedies with respect to any and all Claims made by a third party against CUSTOMER relating to the actual or alleged infringement or misappropriation of such third party's Intellectual Property Rights by the BAMS Systems or the Services.

27.3 In the event of any legal action or claim with any third parties concerning any transaction or event in which a claim for reimbursement or indemnification against a party may be made under this MPA, the party to be reimbursed or indemnified hereunder (the "reimbursed party") agrees to: (a) promptly notify the reimbursing party hereunder (the "reimbursing party") of the legal action or claim, (b) reasonably cooperate with the reimbursing party in the making of claims or defenses, and (c) provide information, assist in the resolution of the legal action or claim and make available at least one employee or agent who can testify regarding said claim or defenses. To the extent applicable, the reimbursing party shall, upon written notice from the reimbursed party, immediately undertake the defense of any said legal action or claim with counsel reasonably satisfactory to the reimbursed party. In any event the reimbursing party shall be entitled to direct the defense and settlement thereof with counsel reasonably satisfactory to the reimbursed party, provided however that the reimbursing party shall not compromise or settle any claim or action affecting the reimbursed party to the extent that it involves more than the payment of money by the reimbursing party hereunder without the reimbursed party's written consent.

28. Warranties; Limitation on Liability; Exclusion of Consequential Damages.

28.1 **Disclaimer of Warranties.** THIS AGREEMENT IS AN AGREEMENT FOR THE SERVICES AND EXCEPT AS EXPRESSLY PROVIDED HEREIN, SERVICERS AND THEIR RESPECTIVE AFFILIATES DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO CUSTOMER OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

28.2 **Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SERVICERS' CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUDING OF ANY INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT, WHETHER SUCH CLAIMS ARE RELATED OR UNRELATED TO ONE ANOTHER) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OF, (I) \$100,000; OR (II) THE AMOUNT OF FEES (OTHER THAN THIRD PARTY BASED FEES) RECEIVED BY SERVICERS PURSUANT TO THIS AGREEMENT FOR THE SERVICES IN THE IMMEDIATELY PRECEDING 12 MONTHS.

28.3 **Exclusion of Consequential Damages.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT SHALL NOT BE PROHIBITED BY THIS PARAGRAPH.

29. **Independent Contractor; Subcontractors; Third Party Beneficiaries.** For the avoidance of doubt, the parties are independent contractors. No party shall have any authority to bind any other party. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any Person, any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Agreement.

30. **Publicity.** Neither party will initiate publicity relating to this Agreement without the prior written approval of the other, except that either party may make disclosures required by legal, accounting or regulatory requirements. In no event will either party publicly disparage the other party.

31. **Force Majeure.** No party hereto shall be held responsible for any delays in or failure or suspension of service caused, directly or indirectly, by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), failure, delay or error in clearing or processing a transaction through the ACH Network or Federal Reserve system, if applicable, the nonperformance, delay or error by a third party or in any other third party system (other than any Merchant Provider or Merchant Provider system) for any similar cause beyond the reasonable control of such party; including without limitation, failures or fluctuations in telecommunications, transmission links or other equipment; any outbreak or escalation of hostilities, war, riots, terrorism or civil disorders in any country; strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, earthquake, fire, flood, elements of nature or other acts of God, any act or omission of the other party or any government authority, or other causes reasonably beyond the control of such party.

32. Intentionally Deleted.

33. **Waiver of Jury Trial.** To the extent permitted by Applicable Law, CUSTOMER and SERVICERS waive any right to trial by jury in any action or proceeding regarding any litigation related to this Agreement, and agree that any such actions or proceedings will be tried by a judge without a jury.

34. **Attorney Fees Related to Contract Obligations.** Except as set forth in Section 27, above, each party shall be liable for any and all of its own attorneys' fees, collection costs and other costs and expenses paid or incurred by that party in the enforcement hereof, or in collecting any amount due from the other party hereunder or resulting from any breach by the other party of any of the terms or conditions of this MPA.

35. Intentionally Deleted.

36. **IRS Reporting Information.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities (like BANK) and third party settlement organizations are required to file an information return reflecting all payment card transactions and third party network transactions occurring in a calendar year. This requirement applies to returns for calendar years after December 31, 2010. Accordingly, CUSTOMER will receive a form 1099-k reporting CUSTOMER's gross transaction amounts for each prior calendar year, beginning with transactions processed in calendar year 2011.

In addition, amounts payable under Section 6050W are subject to backup withholding requirements. Payors are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that CUSTOMER provides BANK with the correct name and TIN that CUSTOMER uses when filing its income tax return that includes the transactions for CUSTOMER's business.

37. Intentionally Deleted.

38. Intentionally Deleted.

39. **Survival.** This Section 39, Sections 14-21 (inclusive), Section 22.8, Sections 23-30 (inclusive), and Sections 32-38 (inclusive) will survive termination of this MPA.

40. **Counterparts; Electronic Originals.** This MPA and any Supplements hereto may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this MPA or any Supplement, by facsimile or other electronic means, shall be effective as delivery of a manually executed counterpart of this MPA or any Supplement.

41. **Conversion Assistance.** The parties hereto acknowledge and agree that the CUSTOMER shall be required to convert from the Original Platform to the BAMS Platform in order to continue to receive the Services contemplated under the MPA (the "Conversion"). The parties further acknowledge that in order to facilitate Conversion, the CUSTOMER shall be required to obtain new point of sale terminals that are certified to the BAMS Platform.

To assist CUSTOMER with the cost of Conversion, BAMS shall subsidize up to \$10,000.00 in equipment costs which shall be used to offset the cost of new point of sale terminals necessary for Conversion ("Conversion Assistance"), subject to the following conditions:

- a. Conversion must be completed by October 31, 2013 ("Conversion Completion Date");
- b. BAMS shall issue Conversion Assistance in the form of a check payable to CUSTOMER within thirty (30) days of BAMS' receipt and validation of documentation reflecting equipment costs;
- c. In no event shall the Conversion Assistance exceed \$10,000.00, regardless of the cost of Conversion. Once the Conversion Assistance amount has been depleted, CUSTOMER shall be responsible for any additional Conversion costs;
- d. In the event Conversion is not completed by the Conversion Completion Date due to circumstances within CUSTOMER's control, CUSTOMER shall be responsible for repayment to BAMS of one hundred percent (100%) of the Conversion Assistance provided by BAMS up to such date, and BAMS shall be entitled to offset such amounts from any amounts otherwise due and payable to BAMS until such amounts are paid in full;
- e. Additionally, in the event the MPA is terminated for any reason prior to the end of the five year term, and termination is not the result of a contract breach by BAMS, CUSTOMER shall pay BAMS an amount equal to a pro rata portion of the Conversion Assistance determined by (a) multiplying by a factor of 0.00167 (b) the number of months, including any partial month, between the last day of the three year term and the effective date of termination of this MPA; then multiplying the product of (a) "times" (b) by (c) the total amount of the Conversion Assistance received by CUSTOMER prior to such termination.

42. Card Organization Disclosure

~~Member Bank Information: Bank of America~~

The BANK's mailing address is 1231 Durrett Lane, Louisville, KY 40213 and its phone number is 800-430-7161.

Important Member Bank Responsibilities

- (a) The BANK is the only entity approved to extend acceptance of Visa and MasterCard products directly to a Merchant.
- (b) The BANK must be a principal (signer) to this Agreement.
- (c) The BANK is responsible for educating Merchants on pertinent Card Organization Rules with which Merchants must comply but this information may be provided to CUSTOMER by BANK.
- (d) The BANK is responsible for and must provide settlement funds to the CUSTOMER in accordance with the terms of this Agreement.
- (e) The BANK is responsible for all funds held in reserve that are derived from settlement.

Important Merchant Responsibilities

- (a) Ensure compliance with Cardholder data security and storage requirements.
- (b) Maintain fraud and Chargebacks below Card Organization thresholds.
- (c) Review and understand the terms of the Agreement.
- (d) Comply with Card Organization Rules.

The parties hereto have caused this Agreement to be executed by their duly authorized officers. THIS AGREEMENT IS NOT BINDING UPON SERVICERS UNTIL SIGNED BY SERVICERS.

CITY AND COUNTY OF SAN FRANCISCO
("CUSTOMER")

By: Pauline Au

Name: _____
(Please Print or Type)

Title: _____

Date: _____

BANK OF AMERICA, N.A.
("BANK")

By: BANC OF AMERICA MERCHANT SERVICES, LLC,
PURSUANT TO A LIMITED POWER OF ATTORNEY

Name: Ed Syle
(Please Print or Type)

Title: SVP

Date: 11/5/2013

DENNIS HERERRA, CITY ATTORNEY

Dennis Hererra
DEPUTY CITY ATTORNEY
Date: 10/24/13

BANC OF AMERICA MERCHANT SERVICES, LLC
("BAMS")

By: Ed Syle

Name: Ed Syle
(Please Print or Type)

Title: SVP

Date: 11/5/2013

ANNEX 1

The following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Acquirer," for the purposes of this MPA, means Bank, in the case of MasterCard, Visa and certain debit Card transactions, and Processor, in the case of Discover Card and DNP Card Types transactions.

"Agency" means a City and County of San Francisco agency, division, office, department, bureau, commission or other entity performing a governmental or proprietary function for the City and County of San Francisco.

"Affiliate" means a Person that, directly or indirectly, (i) owns or controls a party to this MPA or (ii) is under common ownership or control with a party to this MPA.

"Agreement" means, collectively, the City Agreement and this MPA (including the Supplements) and the Operating Guide, as each may be amended from time to time.

"Applicable Law" means all federal, state and local statutes, ordinances, laws, regulations and executive, administrative and judicial orders applicable to this Agreement, the transactions or other matters contemplated under this Agreement (including, without limitation, the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury), and all amendments thereto.

"Authorization" means an approval by, or on behalf of, the Issuer to validate a Card transaction. An Authorization indicates only the availability of the Cardholder's credit limit or funds at the time the Authorization is requested.

"BAMS Platform" means the authorization and processing platforms, BANK Software and Bank Systems that BAMS and its Affiliates maintain on behalf of BANK.

"BAMS Software" means Software licensed to CUSTOMER by BAMS, including any third party Software BAMS sublicensed to CUSTOMER.

"BAMS Systems" means any and all Card-related information reporting, operating and processing systems used by BAMS or Persons on BAMS' behalf, including, without limitation, hardware, BAMS Software, related documentation, technical formats and specifications, technical and business information related to inventions, present and future products and product lines, intellectual property, know-how, and any other information that is identified as BAMS' systems, whether owned by BAMS or Persons used by BAMS.

~~**"Bankrupt"** means a State or the United States or any of its territories, possessions, or other areas under the jurisdiction of the United States that has declared bankruptcy or is in the process of declaring bankruptcy.~~

"Business Day" means Monday through Friday, excluding Bank holidays.

"Card" - See either Credit Card or Debit Card.

"Cardholder" means a Person whose name is embossed on the Card (or Debit Card, as applicable) and any authorized user of such Card.

"Card Organization" means any entity formed to administer and promote Cards, including without limitation Visa U.S.A., Inc. ("Visa"), MasterCard International Incorporated ("MasterCard") and DFS Services LLC ("Discover"), and any applicable Debit Networks

"Card Organization Rules" means the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association (including, with respect to EBT, the Quest Operating Rules and with respect to PIN debit Cards, the rules, regulations, policies and procedures of the applicable Debit Network).

"Card Validation Codes" means a three-digit value printed in the signature panel of most Cards and a four-digit value printed on the front of an American Express Card. Visa's Card Validation Code is known as CVV2; MasterCard's Card Validation Code is known as CVC2; Discover's Card Validation Code is known as a CID. Card Validation Codes are used to deter fraudulent use of an account number in a non face-to-face environment (e.g., mail orders, telephone orders and Internet orders). See Operating Guide, for further information on card not present transactions.

"Chargeback" means a Card transaction (or disputed portion thereof) that is returned to SERVICERS by the Issuer, the liability of which is the CUSTOMER's responsibility.

"City Agreement" means the Agreement between the City and County of San Francisco and Banc of America Merchant Services, LLC and Bank of America, N.A. dated _____ 2013

"Claim" means any third party claim, demand, suit, action, cause of action or proceeding of any form, kind or nature (including contract claims and negligence and other tort claims).

"Credit Card" means a valid device bearing the Marks of Visa, MasterCard, Discover or a DNP Card Organization and authorizing the Cardholder to buy goods or services on credit and, to the extent the Supplements so provide, a valid device authorizing the Cardholder to buy goods or services on credit and issued by any other Card Organization specified on such Supplements.

"Credit Draft" means a document evidencing the return of merchandise by a Cardholder to CUSTOMER, or other refund or price adjustment made by the CUSTOMER to the Cardholder, whether electronic, paper or some other form, all of which must conform to Card Organization Rules and Applicable Law.

"Debit Card" - See either PIN Debit Card or Non-PIN Debit Card.

"Debit Network" means the telecommunications and processing system of a shared electronic funds transfer network. For the avoidance of doubt, this definition does not include ACH.

"Discount Rate" means a percentage rate and/or amount charged a merchant for processing its qualifying daily Credit Card and Non-PIN Debit Card transactions, as further described in Subsection 14.1 of this Agreement and in the Fee Schedule. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Subsection 14.1 of this Agreement and the Fee Schedule.

"Electronic Benefits Transfer" ("EBT") means the electronic transfer of government benefit funds to individuals through the use of Card technology with point of sale terminals, as further described in the applicable Addenda.

"EBT Network" means a shared electronic funds transfer network that is used by its members to assist government agencies in the distribution of benefits to eligible Recipients, whether such benefits are for the delivery of services or the transfer of funds or information.

"Electronic Commerce Transaction" ("ECT") means a Card transaction that occurs on the Internet, as further described in Section 7.

"Fee Account" means the account in which BAMS or Bank withdraws monthly charges associated with the Services provided under the Agreement.

"Fee Schedule" means the fee schedules provided with this Agreement, including, without limitation, Schedule A and any attachments thereto, and all additions or changes SERVICERS make to them, whether contained in updated versions or in separate communications.

"Imprinter" means a manual or electric machine used to physically imprint the merchant's name and ID number as well as the Cardholder's name and Card number on Sales Drafts.

"Issuer" means the Card Organization or its financial institution member that has provided a Card presented to CUSTOMER by a Cardholder for a Card transaction.

"Location" means a physical location, internet address, division, processing method or business activity for which (i) CUSTOMER has requested and SERVICERS have approved the assignment of a unique merchant account number or (ii) SERVICERS have otherwise determined a unique merchant account number is required and have assigned it.

"Losses" means any liability, obligation, loss, damage, judgment, settlement, cost or expense of any kind or nature (including attorneys' fees, expert witness fees and collection costs), regardless of whether suit is brought, and any assessment, fee or fine imposed by any Card Organization.

"Magnetic Stripe" means a stripe of magnetic information affixed to the back of a plastic Credit or Debit Card. The Magnetic Stripe contains essential Cardholder and account information.

"Marks" means names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations.

"Merchant Equipment" means any and all equipment CUSTOMER uses in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, including, without limitation, all telecommunication lines and wireless connections and Software (excluding BAMS Software), Purchased Equipment and Merchant Systems, Terminals, card readers, merchandise and card scanners, printers, PIN pad devices and other hardware, whether owned by CUSTOMER, Merchant Providers or other Persons used by CUSTOMER.

"Merchant Provider" means any Person engaged by CUSTOMER to provide services to CUSTOMER involving or relating to (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs). "Merchant Provider" also includes any corporate entity or franchisor that provides or controls a centralized or hosted network environment irrespective of whether Cardholder data is being stored, transmitted or processed through it.

"Merchant Systems" means any and all Card acceptance and processing systems used by CUSTOMER (except BAMS Systems), including, without limitation, Software (except BAMS Software), related documentation, technical formats and specifications, technical and business information related to inventions and present and future products and product lines, intellectual property, know-how, and any other information that is identified as CUSTOMER's systems, whether owned by CUSTOMER or Merchant Providers or other Persons used by CUSTOMER.

"MPA" means, collectively, this Agreement (including the Supplements) and the Operating Guide, as each may be amended from time to time.

"Non-Agency" means any government entity or political subdivision (other than an Agency) located in the City and County of San Francisco, such as a school district or other agency with separate statutory authority to procure services for itself (e.g., the San Francisco Housing Authority).

"Non-PIN Debit Card" means a device with a Visa, MasterCard, Discover or other Card Organization Mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.

"Operating Guide" means the then-current manual prepared by SERVICERS, containing operational procedures, instructions and other directives relating to Card transactions, as amended from time to time.

"Original Platform" means the Authorization and processing platforms, BANK Software and Bank Systems that BANK maintains or are maintained on BANK's behalf by Persons other than BAMS and its Affiliates.

"PAN Truncation" means a procedure that results in only the last four digits of a Cardholder's account number appearing on the copy of a Sales Draft or Credit Draft that the CUSTOMER provides to the Cardholder and, as required by applicable law or Card Organization Rules, the Sales Draft or Credit Draft retained by the CUSTOMER.

"Person" means a third party individual or entity, other than the CUSTOMER or SERVICERS.

"PIN" means the Personal Identification Number used by a Cardholder to complete a PIN Debit Card transaction.

"PIN Debit Card" means a device bearing the Marks of ATM networks (such as NYCE or Star) used at a Location by means of a Cardholder-entered PIN in the merchant PIN Pad.

"Pre-Authorized Order" means any Card transaction permitted by this Agreement for which a Cardholder provides CUSTOMER advance permission to charge the Cardholder's Card for recurring sales, delayed delivery orders or other preauthorized orders.

"Purchased Equipment" means any and all Merchant Equipment sold to CUSTOMER by BAMS (or its applicable Affiliate) pursuant to this Agreement or any Supplement.

"Resubmission" means a transaction that the CUSTOMER originally processed as a Store and Forward transaction but received a soft denial from the respective PIN Debit network or Card Organization. The resubmission transaction allows the merchant to attempt to obtain an approval for the soft denial, in which case CUSTOMER assumes the risk that the transaction fails.

"Sales Draft" means evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, CUSTOMER using a Card, including preauthorized orders and recurring transactions (unless the context requires otherwise); regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and Applicable Law.

"Settlement Account" means an account or accounts at a financial institution designated by CUSTOMER as the account to be debited and credited by SERVICERS for Card transactions, fees, Chargebacks and other amounts due hereunder or in connection herewith (e.g., fines, penalties, attorneys' fees, etc.).

"Software" means any and all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, whether equipment, PC, server or Internet based.

"Store and Forward" means a transaction that has been authorized by a CUSTOMER when the CUSTOMER cannot obtain Authorization while the Cardholder is present, typically due to a communications failure. The CUSTOMER will store the transaction electronically in their host system and retransmit the transaction when communications have been restored.

"Terminal" means a device placed in a Location which is connected to the BAMS Systems via telephone lines and is designed to authorize, record and transmit settlement data by electronic means for all sales Card transactions.

**Schedule A to Merchant Processing Agreement
Fee Schedule**

Merchant Name:	City & County of San Francisco	Average Ticket:	\$31.03
Contract Term (Years):	5 Years	Annual Bankcard Volume:	\$90,322,784.37
Transmission Method:	Combination of Methods	Qualifying VS Interchange Level:	CPS Retail 2
Pricing Method:	Interchange Plus	Qualifying MC Interchange Level:	Domestic Merit III
Fee Collection Frequency	Monthly	Qualifying DS Interchange Level:	Emerging Market

Processing Fees:		*Authorization Fee- Per Authorization Attempt	
		**Per Item Fee- Per Settled Transaction	
Card Type	Auth Fee*	Per Item Fee**	
VS/MC/DS Full Service:			
Tier 1: <= 3,700,000 transactions	\$0.035	\$0.000	
Tier 2: = or > 3,700,001 transactions	\$0.030	\$0.000	
America Express	\$0.100	\$0.000	
PIN Debit	\$0.000	\$0.040	
Other Fees			
Chargeback Fees	\$10.00	Per Chargeback	
ACH Reject Fee	Waived	Per ACH Returned Item	
Pin Debit Adjustment Fee	N/A	Per Pin Debit Adjustment	
Paper Statement Fee	Waived	Per Statement Mailed	
Franchise Per Location Fee	N/A	Per Franchise Location Per Month	
ClientLine	Waived	Per ClientLine Sign-On	
Voice Auth/ARU Fees	\$0.95	Per Voice Auth/ARU Item	
ACH Deposit Fee	Waived	Per ACH Deposit	
Wire Deposit Fee	N/A	Per Wire Deposit	
Minimum Discount Fee	\$10.00	Per MID Per Month	
Servicers Hourly Rate	\$125.00	Fee Outlined in Sections 4.1 and 18.1	

Interchange Schedule and Qualification Attachments (Interchange Schedules)	
MasterCard Interchange	BANA CP MCIP
Visa Interchange	BANA CP VSIP
Discover Interchange	BANA CP DSIP
Debit Network Fees	BAMS DEBIT FEES
Visa Fixed Acquirer Network Fee	VS FANF PT

Capitalized terms not defined above are defined in the Merchant Processing Agreement ("**Agreement**") to which this Schedule A is attached.

1. The Bankcard Service Fees above are per Visa, Discover and/or MasterCard transaction. Sales plus Interchange and Assessments will be charged daily.
2. The transaction fees set forth in Schedule A are based on the average ticket and annual bankcard volume set forth above, and CUSTOMER's transactions qualifying at the Target Qualification interchange levels set forth above (the "**Qualifying Interchange Level(s)**"). The Qualifying Interchange Levels above are anticipated assumptions. The interchange applicable to each transaction will be based on the actual qualification level of the transaction. For each transaction not at the Qualifying Interchange Level identified above, we will charge you an additional fee as described below.

Important Information About Your Fees

Interchange

A significant amount of the fees that we charge you for processing your transactions consists of charges that we must pay to issuing banks (or that are otherwise charged to us by the Card Organizations) under the Card Organization Rules. These charges are often referred to as "Interchange fees" or simply "interchange". Interchange fees are set by the Card Organizations based upon a series of Interchange levels that they establish and modify from time to time. Thus, the Interchange fee charged for a given transaction depends on the Interchange level applicable to that transaction; and that interchange level depends on a number of factors established by the Card Organizations, such as the type of Payment Instrument presented, specific information contained in the transaction, how and when the transaction is processed, your industry and other factors. For a transaction to qualify at any specific interchange level, the applicable qualification criteria must be met. Note that the Card Organizations regularly add new Interchange levels, and change the Interchange rates and qualification criteria for existing Interchange levels.

Target Discount Rate and Target Qualification Level

The Target Qualification Level is the Interchange level that we expect to apply to your transactions. It is determined based on the type of transactions you submit and how they will most likely be processed. However, it is possible that some or many of your

transactions will downgrade to a more costly interchange level, resulting in higher interchange. This may occur because those "Non-Qualified Transactions" do not meet the criteria to qualify at your Target Qualification Level. BAMS has set your Target Qualification Level (as set forth in this Schedule A) based on the assumption that all of your transactions will satisfy the criteria established by the Card Organization Rules to meet that qualification level. The actual Interchange applicable to each transaction though, will be based on the actual qualification level of the transaction.

Non-Qualified Transactions

Non-Qualified Transaction will qualify at a level resulting in Interchange fees higher than those applicable to your Target Qualification Level. For processing each such Non-Qualified Transaction, we will charge you both the actual Interchange applicable to the transaction and a - "Billback" as defined below (or elsewhere on this Schedule A). The total of any -billback will appear on your statement.

Billback

Billback is the difference between the target interchange level and the higher interchange level the transaction qualified at.

Non-Qualified Surcharge: a fee assessed by Servicers for processing a Non-Qualified Transaction, and is calculated as a percentage of the amount of the Non-Qualified Transaction. The Non-Qualified Surcharge applicable to your Non-Qualified Transaction is N/A

3. Equipment Costs:

Product	Purchase	Monthly Rental
First Data Equipment		
FD100 TI Terminal	\$400.00	\$31.00
FD100 TI WiFi Terminal	\$450.00	\$38.00
FD200 TI Terminal	\$550.00	\$42.00
FD200 TI WiFi Terminal	\$600.00	\$47.00
FD300 TI Terminal	\$520.00	\$40.00
FD300 TI WiFi Terminal	\$570.00	\$45.00
FD400 GT GPRS Terminal **	\$840.00	\$50.00
FD35 Pin Pad	\$200.00	\$24.00
Hypercom		
Optimum T4210 Terminal	\$385.00	\$31.00
Optimum T4220 Terminal	\$540.00	\$41.00
P1300 w/ 6 ft cable	\$135.00	\$18.00
VeriFone		
Vx570 Terminal	\$600.00	\$48.00
Nurit 8000/8050 GPRS PCI **	\$950.00	\$73.00
1000 SE PCI Pin Pad	\$150.00	\$20.00
** Wireless fee \$15 will be added		

4. Card Organization Pass Through Fees:

In addition to the interchange rates, SERVICERS may pass through to CUSTOMER any fees assessed to SERVICERS by the Card Organizations, including but not limited to, new fees, fines, penalties and assessment imposed by the Card Organizations. These pass through fees include the following:

Fee/Name	Fee/Description
VISA ASSESSMENT	.11% of the total dollar amount of all Sales Drafts.
VISA KILOBYTE FEE	\$0.0025 per kilobyte.
VISA ZERO DOLLAR VERIFICATION FEE	\$0.025 assessed on ALL Account Verification messages submitted for \$0.00, including both approved and declined, AVS, and SMS account verification messages.
VISA ZERO FLOOR LIMIT FEE	\$0.10 assessed on all clearing transactions when the Transaction ID

	on the Authorization does not match the Transaction ID on the Clearing. Fee also applies when Transaction ID is missing altogether.
VISA NETWORK ACQUIRER PROCESSING FEE (NAPF) - Credit	\$0.0195 assessed on all Visa authorizations, including POS Check, to merchants not using Visa's Merchant Direct Exchange (MDEX). Merchants using MDEX shall be assessed \$0.0145, shown as an increase to the variable V.I.P. Access Fee. The NAPF fee will not apply to Account Verification messages, pre-authorization requests, Interlink/PLUS PIN Debit, adjustment messages, authorization reversals, and other administrative messages.
VISA NETWORK ACQUIRER PROCESSING FEE (NAPF) - Debit & Prepaid	\$0.0155 assessed on all Visa authorizations, including POS Check, to merchants not using Visa's Merchant Direct Exchange (MDEX). Merchants using MDEX shall be assessed \$0.0105, shown as an increase to the variable V.I.P. Access Fee. The NAPF fee will not apply to Account Verification messages, pre-authorization requests, Interlink/PLUS PIN Debit, adjustment messages, authorization reversals, and other administrative messages.
VISA AUTHORIZATION SYSTEM MISUSE FEE (MISUSE)	\$0.045 per authorization that is not followed by a matching Visa clearing (or is not properly reversed in the case of a cancelled/voided transaction) as shown by a matching transaction ID.
VISA INTERNATIONAL SERVICE FEES (FOR PURCHASE TRANSACTIONS)	0.40% of the source amount on U.S. Acquired Original Purchase transactions when the Issuer Country is different from the Merchant Country.
VISA INTERNATIONAL SERVICE FEES (FOR CASH ADVANCE TRANSACTIONS)	0.40% of the source amount on U.S. Acquired Cash Disbursement transactions when the Issuer Country is different from the Merchant Country.
U.S. VISA INTERNATIONAL HIGH RISK ACQUIRER FEE (IAF)	0.45% per transaction conducted at U.S. merchant locations with a non-U.S. issued card; applicable to high-risk merchants in MCCs 5962 (Direct Marketing - Travel-Related Arrangement Services), 5966 (Direct Marketing - Outbound Telemarketing Merchants), and 5967 (Direct Marketing - Inbound Telemarketing Merchants).
Visa US Debit Integrity Transaction Fee	\$.10 charged on each signature debit, non-PIN transaction (including Visa Consumer and Business debit cards and Visa Consumer and Commercial Prepaid Cards) that does not meet the qualification criteria defined under the Visa U.S. Custom Payment Service (CPS) program.
Visa Fixed Acquirer Network Fee	See Visa Fixed Acquirer Network Fee section of rate schedule for Visa/MasterCard/Discover Interchange referenced in Interchange Schedules section above.
VISA PARTIAL AUTHORIZATION NON PARTICIPATION FEE (PANPF) FOR AFD MERCHANTS	\$0.01 per authorization for Merchants in MCC 5542 (Automated Fuel Dispensers) who are required to support partial authorizations. PANPF is imposed on AFD transactions that do not support partial authorization. This fee was initially effective in April 2008 but was then delayed to allow merchants time to become compliant.

MASTERCARD FEES: The following fees result from charges assessed to SERVICERS from MasterCard and are subject to increases, decreases and additional new fees imposed by MasterCard.

Fee/Name	Fee/Description
MASTERCARD ASSESSMENT FEE	0.11% of the total dollar amount of all Sales Drafts.
MASTERCARD ASSESSMENT FEE (>=\$1,000)	0.02% fee assessed on the gross dollar amount of MasterCard Consumer and Commercial credit transactions, that are \$1,000 or greater.
MASTERCARD KILOBYTE FEE	\$0.0035 per Kilobyte.
MASTERCARD CROSS BORDER FEE (US)	0.40% of the total dollar amount of a transaction that is completed at a U.S. merchant location with a non U.S. or a non U.S. Territory issued card.
MASTERCARD CROSS BORDER FEE (Asia/Pacific)	0.80% of the total dollar amount of a transaction that is completed in the Asia/Pacific merchant location with a non Asia/Pacific issued card.
MASTERCARD CROSS BORDER FEE (Latin America/Caribbean)	0.80% of the total dollar amount of a transaction that is completed in the Latin American/Caribbean merchant location with a non Latin American/Caribbean issued card.
MASTERCARD CROSS BORDER FEE (Canada)	0.80% of the total dollar amount of a transaction that is completed at a Canadian merchant location with a non Canadian issued card. Any combination of merchant location and issuer in USA, Puerto Rico, Virgin Islands, Guam, Marshall Islands and Northern Mariana Islands will be exempt from the Cross Border fee. Transaction on a MasterCard branded credit or debit card processed through MasterCard's clearing system in which the cardholder country code

	differs from the country code of the merchant; applicable to sale/purchase transactions, chargeback re-presentment and reversal transactions.
MASTERCARD NETWORK ACCESS AND BRAND USAGE (NABU) FEE	\$0.0185 assessed on all MasterCard authorization attempts and credit (sales return) transactions that are processed with a U.S. issued card at a U.S. merchant location. Does not apply to authorization reversals and \$0 Account Status Inquiry transactions.
MASTERCARD CARD NOT PRESENT AVS ACCESS FEE	\$0.075 assessed on all MasterCard Card Not Present authorizations that use the Address Verification Service (AVS) that are submitted for more than \$0.
MASTERCARD AVS CARD PRESENT FEE	\$0.005 assessed on all MasterCard card present authorizations that use the Address Verification Service (AVS) that are submitted for more than \$0.
MASTERCARD ACCOUNT STATUS INQUIRY FEE - INTERREGIONAL	\$0.03 assessed on all Account Status Inquiry Service messages where the country code of the merchant is different from the country code of the cardholder. Account Status Inquiry Service transactions must be submitted for \$0 and are used to validate cardholder account numbers and other elements, such as CVC2 and AVS prior to obtaining an actual authorization. Effective June 14, 2011.
MASTERCARD ACCOUNT STATUS INQUIRY FEE - INTRAREGIONAL	\$0.025 assessed on all Account Status Inquiry Service messages where the country code of the merchant is the same as the country code of the cardholder. Account Status Inquiry Service transactions must be submitted for \$0 and are used to validate cardholder account numbers and other elements, such as CVC2 and AVS prior to obtaining an actual authorization. Effective June 14, 2011.
MASTERCARD PROCESSING INTEGRITY FEE	\$0.055 assessed on all MasterCard authorized transactions which are not followed by a matching MasterCard clearing transaction (or reversed in the case of a cancelled transaction). Car Rental (3351-3441, 7512), Hotel/Motel (3501-3999), 7011). Cruise Line / Steamship (4411) not subject to this fee. Effective August 1, 2011.
MASTERCARD LICENSE VOLUME FEE	0.005% of MasterCard volume. Fee based on a good faith effort to recover and allocate among our customers MasterCard's annual fees for licensing and third party processing and calculated by multiplying your settled MasterCard dollar volume by the percentage rate (which rate may be adjusted to reflect changes in those MasterCard fees and/or our allocation). Effective August 1, 2012.
DISCOVER NETWORK FEES: The following fees result from charges assessed to SERVICERS from Discover Network and are subject to increases, decreases, and additional new fees imposed by Discover Network.	
Fee/Name	Fee/Description
DISCOVER DATA USAGE FEE	\$0.0185 per Discover Transaction.
DISCOVER NETWORK ASSESSMENT	0.105% of the total dollar amount of all Sales Drafts.
DISCOVER NETWORK INTERNATIONAL SERVICE FEE	0.55% of amount of Card Sales. Discover Network shall charge to Acquirers for Card Sales (excluding Cash Over) conducted at a Merchant location in the United States where the domicile of the Issuer of the Card used in the Card Sale is a country other than the United States, provided that such fee is not applicable to Card Sales with JCB and China Unionpay Cards.

6. **General Pricing Information:**

a. **Interchange Schedules.** The fees and assessments and qualifying criteria set forth above and in the rate schedules referenced in the Interchange Schedules section above which are annexed hereto by such references thereto may be changed from time to time as a result of Card Organization changes. References in those rate schedules to the "Program Guide" and "Application" shall mean the Agreement.

b. **Visa and MasterCard Credit Transactions:**

- (i) Billable Transactions include: purchases, returns, declines, reversals, Terminal balancing totals and authorizations.
- (ii) The Visa/MC transaction fee includes authorization, data capture and settlement.
- (iii) The fees and charges set forth on this Schedule A are in addition to all other Third Party Based Fees and all fees due and payable to SERVICERS and/or any applicable Person and will be collected by SERVICERS as set forth in the Agreement.
- (iv) Supplies provided at SERVICERS' then-current costs, plus a minimum supplies handling fee for shipping and handling per shipment.
- (v) CUSTOMER shall be responsible for payment of all shipping costs associated with any equipment purchased, leased or maintained by SERVICERS under this Agreement.

c. **Discover Network Credit Transactions:**

- (i) Billing transactions include: purchases, returns, declines, reversals authorizations and Terminal balancing totals.
- (ii) The Discover Card and DNP Card Types transaction fees include authorization, data capture and settlement.
- (iii) The fees and charges set forth on this Schedule A are in addition to all other Third Party Based Fees and all fees due and payable to SERVICERS and/or any applicable Person and will be payable to SERVICERS as set forth in the Agreement.
- (iv) The fees, rates and interchange programs for DNP Card Types are the same as those for Discover Card transactions.

Other Card Services Supplement to Merchant Processing Agreement and Attachment I

Debit Transactions Supplement to Merchant Processing Agreement and Attachment II

Equipment Purchase and Rental Supplement to Merchant Processing Agreement

**Exhibit A
PARTICIPATION AGREEMENT**

This PARTICIPATION AGREEMENT ("**Participation Agreement**") is entered into as of _____, 20__ by and among BANK OF AMERICA, NA ("**Bank**"), BANC OF AMERICA MERCHANT SERVICES, LLC ("**BAMS**") (BAMS and BANK are collectively referred to as "**SERVICERS**") and _____, a _____ of the City and County of San Francisco ("**Non-Agency**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement (as defined below):

WHEREAS, Servicers and the City and County of San Francisco ("**Customer**") entered into a Merchant Processing Agreement, effective as of _____, 20__ (together with any and all amendments, addenda and supplements thereto, collectively, the "**Agreement**"), for the provision of processing services regarding credit, debit and certain other Card transactions and other services as further described therein (collectively, "**Services**");

WHEREAS, the Agreement provides that the Services will be provided to any government entity, municipality or political subdivision (other than an Agency) located in the City and County of San Francisco, such as a city, county, public university or other agency with separate statutory authority to procure services for itself, that enters into a Participation Agreement with Servicers and agrees to become a party to the Agreement; and

WHEREAS, Non-Agency desires to become a party to the Agreement and receive the Services as provided in and subject to the Agreement, as further specified in this Participation Agreement.

1. Participation Terms and Conditions.

- A. Non-Agency represents that it has received, reviewed and retained a true and correct copy of the Agreement. Non-Agency agrees to be bound by (i) the terms and conditions of the Agreement to the same extent as Customer (but only for Non-Agency's use of the Services) as provided therein, and (ii) the terms and conditions of this Participation Agreement. Non-Agency further agrees to abide by any decisions made by Customer on all matters involving the Agreement (including any amendments thereto), and acknowledges that amendments to the Agreement made in accordance with its terms will constitute amendments to this Participation Agreement.
- B. This Participation Agreement will remain in effect unless and until it is terminated in accordance with its terms or the Agreement is terminated, in which case this Participation Agreement will automatically terminate as of the effective date of termination of the Agreement. Servicers and Non-Agency may terminate this Participation Agreement for the same reasons such parties have to terminate the Agreement.
- C. Non-Agency agrees to pay in accordance with the terms of the Agreement, all fees charged by Servicers under the Agreement for the Services received by Non-Agency. Non-Agency will verify that it has established and maintained a Settlement Account separate from the Fee Accounts and Settlement Accounts of Customer, other Agencies and other Non-Agencies.
- D. Non-Agency will provide Servicers with information as Servicers may request from time to time. Non-Agency agrees that Servicers may share certain information with Customer, on an as-needed basis in accordance with Applicable Law and the Card Organization Rules, regarding the Services provided to Non-Agency in order for Servicers to carry out the program established by Customer and Servicers with respect to the provision of Services to Non-Agency.

2. Notices.

- A. All notices and other communications to Non-Agency required or permitted under this Participation Agreement or the Agreement shall be sent to Non-Agency at the following address in accordance with the notice procedures specified in the Agreement:

Non-Agency Name: _____
Street Address: _____
City, State, Zip: _____
Recipient/Title for Notices: _____
Facsimile Number: _____
Email Address: _____
Taxpayer ID Number: _____

- B. All notices and other communications to any party other than Non-Agency required or permitted under this Participation Agreement or the Agreement shall be sent to such party in accordance with the notice procedures specified in the Agreement.

- C. Routine notices given by Servicers to Non-Agency, such as transaction details, changes in terms required by systems updates or Card Organization changes and the like, may be delivered by electronic mail to the address provided by Non-Agency above.

3. General.

- A. This Participation Agreement and the Agreement contain the entire understanding of the parties and supersedes any and all previous discussions, proposals or agreements, if any, by and among the parties with respect to the subject matter hereof.
- B. This Participation Agreement may be amended for the same reasons and in the same manner as the Agreement; provided however, that no amendment to this Participation Agreement may be signed by Non-Agency unless also approved in writing by Customer.
- C. This Participation Agreement is binding upon Servicers and Non-Agency and their respective successors and assigns. Non-Agency may not assign or transfer this Participation Agreement, in whole or in part, without the written consent of Servicers and Customer.
- D. To the extent the terms of the Agreement directly conflict with the terms of this Participation Agreement, the terms of this Participation Agreement shall control.

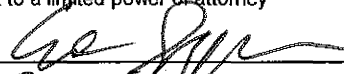
IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be duly executed by their authorized officers, as of the date first written above.

[]
("NON-AGENCY")


BANK OF AMERICA, N.A.
("BANK")

By Banc of America Merchant Services, LLC
pursuant to a limited power of attorney

By: _____
Name: _____
Title: _____
Date: _____

By: 
Name: Ed Byrnes
Title: SVP
Date: 11/5/2013

BANK OF AMERICA MERCHANT SERVICES, LLC
("BAMS")

By: 
Name: Ed Byrnes
Title: SVP
Date: 11/5/2013

Other Card Services Supplement to Merchant Processing Agreement and Attachment I to Schedule A

This Other Card Services Supplement to Merchant Processing Agreement and Attachment I to Schedule A (referred to herein as the "OCS Supplement") supplements the Merchant Processing Agreement (the "Agreement") and Schedule A to which is attached and sets forth the terms applicable to BAMS provision of the specified services for the Card transactions set forth below:

OTHER CARD SERVICES SUPPLEMENT TO MERCHANT PROCESSING AGREEMENT:

1. **GENERAL:** CUSTOMER understands and acknowledges that BAMS' sole responsibility with respect to Issuer Card transactions shall be to provide the services specified in this OCS Supplement.

In the event CUSTOMER has a separate agreement with an Issuer to accept such Issuer's cards ("Issuer Agreement") respective Issuer, all Chargeback and financial obligations including but not limited to fees and issues related thereto shall be governed by the terms of such Issuer Agreement. CUSTOMER shall comply with all terms and conditions of the Issuer Agreement and the applicable rules, regulations, interpretations and other requirements of the respective Issuer and shall not seek authorization for or submit for processing or settlement hereunder any Issuer Card transactions at any time when CUSTOMER does not have in effect a valid Issuer Agreement with such Issuer. CUSTOMER agrees to notify BAMS immediately upon the termination of any Issuer Agreement to which it is a party. Upon such termination, BAMS shall have no further obligations hereunder to provide any services to CUSTOMER with respect to any transactions involving such Issuer Cards.

In the event CUSTOMER does not have a separate Issuer Agreement with a respective Issuer, the Issuer Card services to be provided hereunder shall be in accordance with the terms of the Agreement and this OCS Supplement. Issuer Cards shall be considered "Credit Cards" for purposes of Services provided by SERVICERS or BAMS with respect to them and "Card Organizations" shall be deemed to include any Card Organizations set forth in this OCS Supplement for purposes of such Services.

2. ISSUER CONSENTS:

CUSTOMER shall be responsible for obtaining any operational consents required of Issuer to comply with procedures or practices contemplated by both CUSTOMER and BAMS under this OCS Supplement.

3. AUTHORIZATION SERVICES ONLY:

In the event BAMS is providing authorization services only for Issuer Card transactions as specified herein, CUSTOMER shall seek such authorization through BAMS. In the event that BAMS is not providing processing services for Issuer Card transactions as specified in this OCS Supplement, CUSTOMER shall be responsible for processing and submitting directly to the applicable Issuer for settlement of such Card transactions.

4. PROCESSING AND SUBMISSION TO ISSUERS:

In the event BAMS is providing processing services for Issuer Card transactions as specified herein, CUSTOMER shall submit to BAMS for processing all of CUSTOMER's Issuer Card transactions and BAMS shall process such transactions and transmit them electronically to the applicable Issuer with a summary of such Card transactions

BAMS does not warrant or bear responsibility for the performance of any Issuer in any way.

5. DISCOVER PROCESSING PROVISIONS:

Acceptance of DNP Card Types: Except as provided in this OCS, the terms and conditions governing CUSTOMER's acceptance of DNP Card Types are as specified in the Agreement. CUSTOMER agrees to follow the Agreement concerning CUSTOMER's acceptance of DNP Card Types.

Any provision contained in the Agreement which directs CUSTOMER to contact Discover for customer services or for any other inquiry or purpose is modified hereby to provide that CUSTOMER is to contact BAMS for customer service or in relation to such inquiry or purpose.

ATTACHMENT I TO SCHEDULE A:

American Express* <input checked="" type="checkbox"/>	Diners Club*** <input type="checkbox"/>	Discover® <input type="checkbox"/>
JCB*** <input type="checkbox"/>	Fleet* <input type="checkbox"/>	Voyager** <input type="checkbox"/>
Wright Express* <input type="checkbox"/>		

*Card processing services for these transaction types may be subject to a separate agreement.
 **SERVICERS will settle Voyager transactions directly to merchants. All other Card types listed in this Attachment shall be settled by the Issuer.
 ***These are DNP Card Types will be processed via Discover systems and subject to Discover Card Organization Rules; BAMS will settle transactions for all Discover Cards and DNP Card Types, unless CUSTOMER is classified by Discover Network as a Discover Direct Strategic Relationship as further described in Subsection 13.1 of the Agreement.

1. FEES: See Schedule A.

General Pricing Information:

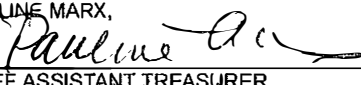
Billable Transactions include: purchases, returns, declines, reversals, authorizations & Terminal balancing totals.

Unless expressly set forth above, the Card transaction fee includes authorization and data capture. Settlement and payment for such Card types will be provided by the applicable Issuer, pursuant to the agreement between CUSTOMER and such Issuer.


The fees and charges set forth above are in addition to all other Third Party Based Fees and all fees due and payable to SERVICERS and/or any applicable Person and will be collected by SERVICERS as set forth in the Agreement.

CITY AND COUNTY OF SAN FRANCISCO
(CUSTOMER)

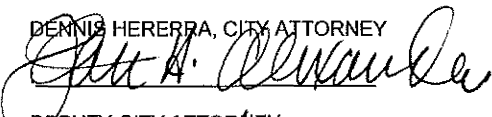
PAULINE MARX,

By: 
CHIEF ASSISTANT TREASURER
Date: 10/16/13

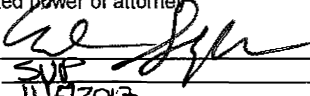
BANC OF AMERICA MERCHANT SERVICES, LLC
(BAMS)

By: 
Title: SVP
Date: 11/5/2013

DENNIS HERERRA, CITY ATTORNEY


DEPUTY CITY ATTORNEY
Date: 10/21/13

BANK OF AMERICA, N.A.
(BANK) by Banc of America Merchant Services, LLC, pursuant
to limited power of attorney

By: 
Title: SVP
Date: 11/9/2013

Debit Transactions Supplement to Merchant Processing Agreement and Attachment II to Schedule A

This Debit Transactions Supplement to Merchant Processing Agreement and Attachment II to Schedule A ("Debit Supplement") is entered into by and among the undersigned Customer ("CUSTOMER"), Banc of America Merchant Services, LLC ("BAMS") and Bank of America, N.A. ("BANK") (collectively, "SERVICERS") and supplements the Merchant Processing Agreement by and among CUSTOMER, BAMS and BANK (the "Agreement") and Schedule A to Agreement to which it is attached and sets forth the additional terms applicable to BAMS' provision of the specific services for the PIN Debit Card transactions ("Debit Services"). Capitalized terms not defined below have the meanings set forth in the Agreement. CUSTOMER understands and agrees that BAMS is the service provider for Debit Services pursuant to the terms herein. The sponsoring member of the Debit Networks is BANK, or its successors or assigns ("Debit Network Bank"). Unless stated otherwise, any reference to this Debit Supplement shall include the Agreement.

DEBIT TRANSACTIONS SUPPLEMENT TO AGREEMENT:

1. Special Provisions For PIN Debit Card

The special provisions outlined in this Debit Supplement apply only to those PIN Debit Card transactions that are processed by a Cardholder entering a PIN. These provisions do not apply to Non-PIN Debit Card transactions which do not involve entry of a PIN. Except and to the extent provided below in this Debit Supplement, the terms and conditions of the Agreement (which may be amended from time to time, as provided in the Agreement) shall govern the Debit Services.

1.1. PIN Debit Card Acceptance. Most, but not all, PIN Debit Cards can be accepted at the point of sale at participating Locations. Examine the back of the PIN Debit Card to determine if the Card participates in a Debit Network that CUSTOMER is authorized to accept. Debit Network Mark(s) are usually printed on the back of the Card. If the PIN Debit Card is valid and issued by a financial institution Issuer participating in a Debit Network, CUSTOMER must comply Applicable Law and Card Organization Rules with respect to PIN Debit Card transactions submitted by CUSTOMER. In addition, CUSTOMER agrees as follows:

- CUSTOMER must honor all valid PIN Debit Cards when presented that bear authorized Debit Network Marks.
- CUSTOMER must treat transactions by Cardholders from all Issuers in the same manner.
- CUSTOMER may not establish a minimum or maximum transaction amount for PIN Debit Card acceptance.
- CUSTOMER may not require additional information, besides the PIN, for the completion of the PIN Debit Card transaction unless the circumstances appear suspicious. A signature is not required for PIN Debit Card transactions.
- CUSTOMER shall not disclose transaction related information to any party other than CUSTOMER's agent, a Debit Network, or Issuer and then only for the purpose of settlement or error resolution.
- CUSTOMER may not process a Credit Card transaction in order to provide a refund on a PIN Debit Card transaction.

1.2. Transaction Processing. The following general requirements apply to all PIN Debit Card transactions:

- All PIN Debit Card transactions must be authorized and processed electronically. There is no voice authorization or Imprinter procedure for PIN Debit Card transactions.
- CUSTOMER may not complete a PIN Debit Card transaction that has not been authorized. If CUSTOMER cannot obtain an Authorization at the time of sale, CUSTOMER should request another form of payment from the Cardholder or process the transaction as a Store and Forward or Resubmission, in which case CUSTOMER assumes the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined.
- CUSTOMER may not complete a PIN Debit Card transaction without entry of the PIN by the Cardholder. The PIN must be entered into the PIN pad only by the Cardholder. CUSTOMER cannot accept the PIN from the Cardholder verbally or in written form.
- The Debit Network used to process PIN Debit Card transaction will depend upon, among other things, SERVICERS' business considerations the availability of the Debit Network at the time of the transaction and whether a particular PIN Debit Card is enabled for a particular Debit Network, the routing requirements established by the Debit Networks and the Issuers, or other factors. CUSTOMER agrees that SERVICERS may, in their sole discretion, utilize any Debit Network available to SERVICERS for a given PIN Debit Card transaction.
- CUSTOMER must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.
- CUSTOMER may not manually enter the account number. The account number must be read electronically from the Magnetic Stripe. If the Magnetic Stripe is unreadable, CUSTOMER must request another form of payment from the Cardholder.
- Any applicable tax must be included in the total transaction amount for which Authorization is requested. Tax may not be collected separately in cash.
- CUSTOMER acknowledges that CUSTOMER shall not perform or attempt to perform PIN Debit Card return transactions on PIN Debit Card sales transactions. CUSTOMER shall not prompt Cardholder to enter PIN for return transactions. Rather, CUSTOMER shall offer the Cardholder the option of either a cash return or issuance of a regular Credit Card return.

CUSTOMER IS RESPONSIBLE TO SECURE CUSTOMER'S TERMINALS AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS AND VOIDS THAT DO NOT

REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.

1.3. Cash Back From Purchase. CUSTOMER has the option of offering cash back to Cardholders when they make a PIN Debit Card purchase. CUSTOMER may set a minimum and maximum amount of cash back that CUSTOMER will allow. If CUSTOMER is not now offering this service, CUSTOMER's Terminal may require additional programming to begin offering cash back.

1.4. Settlement. Within one Business Day of the original PIN Debit Card transaction, CUSTOMER must balance each Location to the BAMS System for each Business Day that each Location is open.

1.5. Adjustments. An adjustment is a transaction that is initiated to correct a PIN Debit Card transaction that has been processed in error, CUSTOMER will be responsible for all applicable adjustment fees that may be charged by a Debit Network. Some Debit Networks may have established minimum amounts for adjustments.

There are several reasons for adjustments being initiated:

- The Cardholder was charged an incorrect amount, either too little or too much.
- The Cardholder was charged more than once for the same PIN Debit Card transaction.
- A processing error may have occurred that caused the Cardholder to be charged even though the PIN Debit Card transaction did not complete normally at the point of sale. All parties involved in processing adjustments are regulated by time frames that are specified in the Card Organization Rules, the Electronic Funds Transfer Act, Federal Reserve System, Regulation E, and other Applicable Law.

1.6. Change in Sponsorship. Upon notice to CUSTOMER, another Debit Network member may be substituted for Debit Network Bank under whose sponsorship this Supplement is performed. Upon substitution, such other Debit Network member shall be responsible for all obligations required of Debit Network Bank, including without limitation, as may be expressly required by applicable Card Organization Rules. Subject to Card Organization Rules, BAMS and Debit Network Bank may assign or transfer this Supplement and their rights and obligations hereunder and may delegate their duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without the notice to or consent of CUSTOMER.

ATTACHMENT II TO SCHEDULE A TO AGREEMENT:

2.0. CUSTOMER agrees to pay the fees for the Debit Services set forth in Schedule A, CUSTOMER expressly acknowledges and agrees that the fees set forth in Schedule A are in addition to all other Third Party Based Fees and all fees due and payable to SERVICERS and/or any applicable Person, will be payable by CUSTOMER as set forth in the Agreement.

CITY AND COUNTY OF SAN FRANCISCO
(CUSTOMER)

PAULINE MARX,

By: *Pauline Marx*
CHIEF ASSISTANT TREASURER
Date: 10/16/13

DENNIS HERERRA, CITY ATTORNEY

Dennis Hererra
DEPUTY CITY ATTORNEY
Date: 10/29/13

BANC OF AMERICA MERCHANT SERVICES, LLC
(BAMS)

By: *[Signature]*
Title: SVP
Date: 11/5/2013

BANK OF AMERICA, N.A.
(BANK) by Banc of America Merchant Services, LLC, pursuant to limited power of attorney

By: *[Signature]*
Title: SVP
Date: 11/5/2013

EQUIPMENT PURCHASE AND RENTAL SUPPLEMENT TO MERCHANT PROCESSING AGREEMENT

This Equipment Purchase and Rental Supplement to Merchant Processing Agreement ("**Equipment Supplement**") is being entered into by and between Banc of America Merchant Services, LLC ("**BAMS**") and the party identified on the signature panel of this Equipment Supplement ("**CUSTOMER**") and supplements the Merchant Processing Agreement ("**Agreement**"). In this Equipment Supplement, the words "we", "our" and "us" refer to BAMS and its successors and assigns and the words "you" and "your" refer to CUSTOMER and its permitted successors and assigns. References to the Agreement in this Equipment Supplement shall include this Equipment Supplement. Capitalized terms not defined in this Equipment Supplement are defined in the Agreement.

Unless otherwise expressly provided in the Agreement or this Equipment Supplement, references to each Supplement in the Agreement shall be deemed to include this Equipment Supplement. To the extent the terms of this Equipment Supplement directly conflict with the terms of the Agreement, this Equipment Supplement shall control.

This Equipment Supplement governs any equipment that is rented to you on a month to month basis or that is sold to you by BAMS under the purchase or rental agreements and/or other documentation provided in connection with the purchase or rental of Equipment ("**Equipment Documents**"). If the Equipment Documents provide that your equipment is leased, then your lease is governed by a separate Addendum to the Agreement with one of our Affiliates ("**Lease Addendum**"), Equipment rented to or purchased by you under the Equipment Documents is referred to in this Equipment Supplement as the "**Equipment**." THE EQUIPMENT IS NOT BEING SOLD OR RENTED TO YOU FOR HOME OR PERSONAL USE. Sales and rentals of equipment are made by BAMS.

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASED OR RENT FROM US, OR SUBSEQUENTLY PURCHASE OR RENT FROM US, MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THE AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE RENTED OR PURCHASED HEREUNDER.

- 1. Purchased Equipment; Supplies.** We will sell to you, and you will buy from us the Equipment identified in the Equipment Documents throughout the term of the Agreement as being purchased by you (individually and collectively, the "**Purchased Equipment**"), free and clear of all liens and encumbrances (subject to Section 7), except that any BAMS Software provided in connection with the Purchased Equipment will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 8 of the Agreement. You shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable Taxes, in accordance with the Equipment Documents or at our option, such amounts will be payable in accordance with Section 5. We will provide you supplies as requested by you from time to time. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable Taxes, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be payable in accordance with Section 5. ~~Maintenance and repair of merchant-owned equipment is our responsibility. Should your terminal become inoperable, we can provide you with equipment at a monthly rental fee. There will also be a monthly shipping and handling fee. For such rental equipment contact the POS Help Desk.~~
- 2. Rental Equipment.** We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Equipment Documents as being rented to you (individually and collectively, the "**Rental Equipment**"), according to the terms and conditions of this Equipment Supplement. In addition, any Equipment ordered by and rented to you during the term of the Agreement shall constitute Rental Equipment and be governed by the terms of this Equipment Supplement.
- 3. Effective Date and Term of Equipment Supplement.** This Equipment Supplement shall become effective on the first date you receive any piece of Equipment covered by this Equipment Supplement. This Equipment Supplement will remain in effect until all of your obligations and all of our obligations under the Agreement have been satisfied. We will deliver the Equipment to the site designated by you. You shall be deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation, (b) delivery to you if your site is not prepared and ready for installation, or (c) for Equipment that we have not agreed to install for you, seven (7) days after shipment of each such piece of Equipment. The rental period with respect to each piece of Rental Equipment shall commence on the date such Equipment is deemed accepted and shall terminate at the scheduled termination date (but not upon any early termination) of the Agreement and/or any other agreement then in effect with us for Card services. The provisions of this Equipment Supplement shall survive the termination of the Agreement and continue until all Rental Equipment is returned or paid for.
- 4. Site Preparation, Installation & Maintenance.** You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.
 - Upon request, you must allow us (or our agents) reasonable access to the premises where Authorization terminals or other communications Equipment (e.g., printers) are or will be located.
 - Any alterations required for installation of Authorization terminal(s) or other communications Equipment will be done at your expense.
 - Only we or our agents can alter or modify Authorization terminal(s) or other communications equipment owned by us.
 - If a terminal or printer appears to be defective, you must immediately call the POS Help Desk.
 - You are responsible for safeguarding Equipment from loss, damage, unauthorized use, misuse or theft; we should be notified immediately if any of the foregoing occurs.

- If necessary, we will assist you in obtaining replacement Equipment. If you fail to return any defective Equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the Equipment owner in connection with recovering Equipment.
- You are responsible for keeping all communication Equipment free of any claims, liens and legal processes initiated by creditors.
- Equipment may not be subleased at any time. The cost of comparable new Equipment, as well as any associated legal and/or collection costs incurred by us or the owner of the Equipment, will be assessed to you for each piece of Equipment not returned upon termination of the Agreement by either party, or upon request for the return of the Equipment for any reason.
- You may not relocate, remove, disconnect, modify or in any way alter any equipment used in connection with the Services without first obtaining our permission.
- You must provide us with thirty (30) days' prior written notice to request the relocation of any Equipment.
- Should you require additional equipment, you must contact Relationship Management or Customer Service (there may be additional costs or fees charged to you in connection with any new equipment ordered, including download fees).

5. Payment of Amounts Due.

(a) You agree to pay the monthly rental charge specified in the Equipment Documents which shall be due and payable on the first day of each month of the rental period for each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of Rental Equipment shall be due and payable upon acceptance of such Equipment by you at the location designated in the Equipment Documents or, upon delivery if the site is not prepared for installation (as provided in The monthly rental charge for fractions of a calendar month shall be prorated based on a thirty (30) day month. The applicable fees and charges will be payable by you as provided in Section 14.3 (Payment of Fees, Charges and Other Amounts) of the Agreement.

(b) In addition to the purchase price or monthly rental charge due hereunder, you shall pay, or reimburse us for, amounts equal to any Taxes levied or based on such charges or the Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.

(c) Separate charges will apply for supplies; they are not included in monthly rental charges.

6. Use and Return of Equipment; Insurance.

(a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer and in connection with the Services. You shall not use the Equipment or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.

(b) You shall not permit any physical alteration or modification of the Equipment without our prior written consent.

(c) You shall not change the installation site of the Equipment without our prior written consent, which consent we will not unreasonably withhold.

(d) You shall not assign your rights or obligations under this Equipment Supplement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Rental Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.

(e) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.

(f) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.

(g) Promptly upon termination of all applicable rental periods or promptly following any action by us pursuant to Section 11(b), you shall deliver possession of the Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, reasonable wear and tear excepted.

(h) For each item of Rental Equipment that you fail to return to us at your cost in the same operating order, repair, condition and appearance that it had at the time of delivery to you, reasonable wear and tear excepted, by the 10th Business Day after (i) termination of the applicable rental period, or (ii) any action by us pursuant to Section 11(b), you agree to pay us the greater of \$250 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us. Such amounts will be payable as provided in Section 5.

(i) Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.

(j) You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft of or damage to the Rental Equipment shall not relieve you from your obligation to pay the full purchase price or rent payable hereunder.

(k) Except for Purchased Equipment that has been paid in full, the Equipment shall be kept at the address indicated in the Equipment Documents and shall not be removed from there without our prior written consent (except where normal use of the Equipment requires temporary removal).

(l) You will be liable for your loading of additional software onto Equipment or using such software, or using Equipment or BAMS Software to access the Internet.

(m) In order to return Equipment, you should:

- Call Customer Service for the address of the location to send the Equipment.
- The following information must be included within the shipping box:
 1. Company name, complete address and phone number.
 2. Name of person to contact if there are any questions.
 3. Your Merchant Account Number.
 4. Serial number of the Equipment (found on the underside of it).
- Please maintain proof of delivery documents for your records, and the Equipment serial number.
- Rental fees may be continued until Equipment is returned.

7. **Security Interest; Financing Statements.** You hereby grant to us a security interest in (a) all Purchased Equipment and the related BAMS Software to secure payment of the purchase price, and (b) all Rental Equipment and the related BAMS Software to secure payment of the monthly payments therefor and authorize us to file financing statements with respect to the Equipment and the BAMS Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.

8. **Software License.** Anything in this Agreement to the contrary notwithstanding, we retain all ownership and copyright interest in and to all BAMS Software provided in connection with the Equipment, and you shall have only a nonexclusive license to use the BAMS Software in your operation of the Equipment. You shall not reverse engineer, disassemble or decompile the BAMS Software. You shall not give any Person access to the BAMS Software without our prior written consent. Your obligations under this Section 8 shall survive the termination of the Agreement.

9. **Limitation on Remedy.** Notwithstanding any provision of this Equipment Supplement to the contrary, our liability arising out of or in any way connected with the Equipment shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved.

10. **Default; Remedies.**

(a) If you fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision in this Equipment Supplement, or if any other default occurs under the Agreement, any such event shall be a default hereunder.

(b) Upon the occurrence of any CUSTOMER Event of Default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Equipment Supplement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, in which case this Equipment Supplement shall terminate as soon as your obligations to us are satisfied, or (ii) accelerate and declare immediately due and payable all monthly rental charges for the remainder of the applicable rental period and proceed in any lawful manner to obtain satisfaction of the same.

CITY AND COUNTY OF SAN FRANCISCO
(CUSTOMER)

PAULINE MARX,

By: Pauline Marx
CHIEF ASSISTANT TREASURER
Date: 10/16/13

DENNIS HERERRA, CITY ATTORNEY

By: Dennis Hererra
DEPUTY CITY ATTORNEY
Date: 10/21/13

BANC OF AMERICA MERCHANT SERVICES, LLC
(BAMS)

By: [Signature]
Title: SVP
Date: 11/5/2013

BANK OF AMERICA, N.A.

(BANK) by Banc of America Merchant Services, LLC, pursuant to limited power of attorney

By: [Signature]
Date: 11/5/2013
Title: SVP

**Exhibit 1
Service Level Agreement**

Global Measurements	Global SLA Goal*	Definitions
Authorization System Availability	98.5%	Percentage of availability of authorization networks as defined by the ability for the merchant to successfully complete and authorization. Merchant authorization outages that occur as a result of third party network issuer outages, payment networks and communications carrier outages not included, nor are scheduled outages, or network connection outages with merchants who selected to have a single point of failure connection.
ACH Timeliness	98.5%	ACH Files will be processed and sent out within 1 business day.
Settlement: Timeliness - Visa and MasterCard Interchange %	98.5%	For settlement files completely received by the cutoff point established by cut-off guidelines, the interchange-out files will be sent to MasterCard and Visa within the schedule association windows for each month's cycles. Not liable for delays caused by MasterCard or Visa.
Customer Service – Live Agent Answer Rate	70.0% of calls in 30 seconds	Percentage of calls answered by a live agent within 30 seconds. Calls received during periods of third party networks, issuers, association and communications carrier outages are excluded from the measurement.
Customer Service – Abandon Rate	4.0%	Percentage of incoming calls abandoned after waiting > 5 seconds in queue. Calls received during periods of third party networks, issuers, association and communications carrier outages are excluded from the measurement.

*SLAs are global, measured across all BAMS clients and are not client-specific.